Claiming Our Place:

Working the Human Rights System to Women's Advantage

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Claiming Our Place is the result of a project convened by the Institute for Women, Law and Development, which brought together human rights advocates from around the world to explore conceptual and strategic dimensions of gender and human rights. The resulting workshop, held in Vienna in June 1993 during the UN Human Rights Conference, provided the impetus for the current publication. The interest expressed by the participants to "take home" with them something of the workshop, inspired us to put together *Claiming Our Place.*

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Introduction

Claiming Our Place: Challenges and Strategies

Margaret Schuler

Expanding the Human Rights Agenda

Over the past decade activism at national and local levels to improve women's rights—particularly in the "third world"—led inexorably into an arena where "human rights" emerged as an important aspect of the women's global agenda. Women discovered that the value of using the human rights paradigm lay in the political and legal effectiveness that actions at the international level have on the understanding and exercise of rights in specific contexts at the local level.

The limitations of the existing human rights consensus, however, led women logically to the next step of opening up a serious debate on the gender dimensions of human rights content and practice. The presence of women from every corner of the earth at the UN Human Rights Conference in Vienna in June 1993 sent a clear signal that women have indeed entered the formal human rights arena and will not be content with second class citizenship. Having discovered the value of using the

human rights framework as a powerful tool in their struggle to attain equality and dignity, women have already made a mark. However, challenging the prevailing norms and practice does not automatically translate to a new human rights consensus that includes an integral gender dimension. Nor does it mean that women have achieved adequacy in their use and understanding of the international system.

Conceptual and Structural Challenges

While the Declaration of Vienna and the Program of Action explicitly mentioned women and gave recognition to violence against women and other types of abuse as violations of human rights, the UN Conference did not effect a significant expansion of the human rights conceptual framework or mandate the structural changes required for implementing its recommendations. Thus, while some recognition of women's rights was gained in Vienna, it is important to recognize this as but the first step. Some of the challenges that remain are:[1]

- *Removing the public/private dichotomy and making states accountable for violations of women's rights.* The traditional human rights emphasis on state responsibility and civil and political rights remains intact. The Vienna documents did not essentially alter the current human rights perspective which fails to adequately acknowledge the typical abuses experienced by women—abuses that are often in the so-called "private" sphere.
- *Preserving the universality of human rights.* Although the Vienna Declaration states that religion and culture may not be used to justify violations of women's human rights, the importance it accords "national and regional particularities and historical, cultural, and religious backgrounds" leaves too much space for interpretations not favorable to women's interests.
- *Expanding the definition of economic and social rights.* The Program of Action does make mention of economic rights and recommends that women have access to adequate health care and other essential services. However,

[1]See papers prepared by the International Human Rights Law Group, Washington D.C. and the Lawyer's Committee on Human Rights, New York for a more complete analysis of the outcomes of the Vienna Conference.

the Program of Action does little to move beyond the previous and inadequate framework surrounding economic rights. There is still no mechanism for holding multilateral financing agencies, such as the World Bank and the IMF accountable for the effects of structural adjustment on the citizenry, particularly women.

- *Improving UN human rights monitoring.* The Conference made several recommendations for improving monitoring and implementation procedures, specifically: establishing an optional protocol under the Women's convention, naming a special Rapporteur under the UN Human Rights Commission, training UN personnel to recognize women's rights violations, etc. However, these recommendations are not mandated and require action by still other bodies to be effected.

Moving Beyond Recommendations to Implementation

Although the rhetoric of the Declaration of Vienna and the Program of Action supports the integration of women's human rights into the mainstream of UN human rights bodies and improved coordination among existing gender-specific mechanisms, implementation processes and mechanisms are still to be articulated. The mainstream mechanisms have not yet become "gender effective" and existing gender-specific mechanisms (CEDAW, CSW) are still too "ghettoized" to be effective within the UN system. Only when accountable mechanisms (both gender-specific and mainstream) are in place and *utilized* in defense and promotion of women's rights will the gender vacuum in the UN be overcome.

In order to effect such a change, women's rights advocates have an important role to play. They must be catalysts in the day to day work of making human rights norms and mechanisms relevant and real in the lives of women. They cannot view the task of building the new consensus as an academic exercise or one left to the university or the "human rights professionals" alone. Practicing women advocates are essential to the process for two reasons: 1) they bring the real life experiences of women to bear on the task; and 2) their own practice benefits as they expand the range of remedies available to them.

Developing Strategies and Skills to Bridge the Rhetoric/Action Gap

In order to make changes in the human rights consensus truly effective in the lives of women, what remains to be done is to bridge the gap between rhetoric and action, between theory and practice. Globally, women are at a stage in which they have begun to identify limitations in women's rights advocacy work—their own as well as that of the mainstream human rights agencies. The experience of the past ten years has exposed the need for coherent new approaches and for a spectrum of new skills requisite for an effective advocacy strategy. There is a need to work out practical steps for translating human rights theory into operative principles that will legitimize women's rights at a practical level. Women's use of the human rights framework and mechanisms is relatively recent—as is attention to gender at the level of international NGO human rights activism. Improved communication between human rights and women's rights groups nationally and internationally is needed to produce a synergistic process of combining the expertise of women's rights activists in identifying violations, with the skills of human rights monitors in documenting abuses under international human rights law.

Women have always recognized the need to consolidate their ongoing strategies, such as, enhancing women's legal capacity, dealing comprehensively and creatively with violence against women, or establishing emergency assistance for serious violations. Thus, while bridging the gap between theory and practice is an ongoing necessity, the UN conference exposed a fresh layer of needs to contend with, making the task even more urgent.

The contemporary challenge that lies before the women's rights movement—making the human rights framework an accessible vehicle in function of women's rights—requires action on both conceptual and structural levels. Effectiveness in either of these areas in turn requires complementary "strategic action" skills. Building intellectual consensus and coherent strategies around a gendered concept of human rights translates into three interactive areas of action:

- influencing human rights theory and practice based on women's experience of violations;
- sharpening the critical analytical and action skills needed for effective promotion and defense of women's rights; and
- articulating and implementing effective strategies at local, national, and international levels in defense and promotion of women's rights.

Claiming Our Place

"Claiming our place" is not a request or even a demand that will be accorded to us by a higher authority. We claim our place by taking our place. We make human rights relevant by engaging the system and challenging it to change, pressing it from both within and without. One critical means of challenging the system is by "working the system" to women's advantage.

Claiming Our Place: Working the Human Rights System to Women's Advantage[2] offers some ideas about using the system. It also challenges us to refine our understanding of the fundamentals of human rights as well as the emerging issues that touch on rights and gender. *Claiming Our Place* also challenges us to improve our knowledge of and capacities to access the structures of the system in defense and promotion of women's rights.

The contributors to this book are all outstanding women's rights and human rights advocates and practitioners. They offer insights drawn both from experience and focused research. They span the major geographical regions of the world and come from a base of commitment as well as knowledge.

- **"Part One: Gender Issues in Human Rights"** examines the bases and limitations of the human rights framework. It explores issues such as the treatment of violence against women and women's economic rights in the major human rights instruments. It also explores the critical issues of state accountability and the principle of

[2]The papers contained in this book were first given at a Workshop on Gender and Human Rights organized by the Institute for Women, Law and Development as part of the NGO Activities during the 1993 UN World Conference on Human Rights in Vienna.

universality. By no means exhaustive, this section offers a brief introduction to some of the key issues confronting women's rights advocates vis a vis human rights.

- **"Part Two: International Strategies"** deals with the system itself and strategies to access it. The section focuses on human rights law and procedures at the international and regional levels. It explores the relevant UN human rights bodies, the mechanisms available and the potential use of each one. The articles on the "regional systems," including the European, the Inter-American, and the African examine these underutilized mechanisms and also their potential as an element of a women's rights strategy.

- **"Part Three: NGO Strategies"** probes the various roles, characteristics, and approaches taken by national, regional and international human rights NGOs. As women enter the more formal human rights arena, there is a fresh opportunity for developing new forms of interaction at national and international levels and new, creative ways of meshing the women's and the human rights agendas. The three papers in this section examine these dimensions.

- The **Appendix** includes a chart describing the structure of the UN Human Rights system and a procedural "handbook" summarizing the various bodies and complaint procedures, including addresses for forwarding communications alleging violations.

The Challenge to the Future . . .

Arising from the experiences of women's rights work globally since the end of the UN Decade for Women in 1985, one key and overriding need emerged. That need, felt today with urgency, is to make the concept of human rights a *functional framework* vis a vis women's rights. Such a framework is needed in order to increase the power and relevance of a broad range of strategies aimed at improving women's social and legal status, such as, reforming legislation, educating and mobilizing

around rights and creating networks of solidarity and common action, among others.

This goal will not be achieved, however, until women play an active and leading role in pressing for better frameworks and more adequate structures; until we stretch our own capacities to even greater conceptual and strategic clarity and forge a presence in the human right arena that is consistent, informed, conscious and systematic.

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Part One:
Gender Issues in Human Rights

Limitations of the Human Rights Framework for the Protection of Women

Florence Butegwa

One of the defining characteristics of international human rights law is that it state-based (i.e., it is negotiated between States), even though its purpose is to benefit defined groups such as the family. Therefore, human rights abuses are considered violations under the various human rights instruments only if a state party to those instruments can be held responsible for the abuse. This raises several problems and limitations for women's human rights.

The Public v. the Private Sphere

Often, private individuals, not the state or its agents, perpetuate human rights violations against women. This is primarily true in cases of violence against women, discrimination against women in employment and in the acquisition of land rights. States and human rights NGOs have long argued that such violations are not concerns of international human rights law as they are not committed by the law, but rather take place in the private sphere.

There is no justification for this argument. The language of international human rights law in defining the obligation of States is clear. Article 2 of the International Covenant on Civil and Political Rights is a prototype. Article 2(1) requires states "... to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant ..." Article 2(2) requires states to "... adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant."

The obligation of each state party to any human rights instrument is to ensure that all individuals within its jurisdiction enjoy the rights defined in such instrument. If any individual or groups of individuals systematically violate the guaranteed rights, the state within whose jurisdiction the violation occurs should be held responsible. However, the state consistently has failed to "ensure" individuals the enjoyment of rights and to take the necessary measures which to prevent those violations.

International human rights NGOs, like Human Rights Watch, have used this argument to establish state responsibility in a number of cases. For example, Brazil and Malaysia have been held responsible for rural violence on poor peasants although the violence is committed by private militias employed by rich landowners. [2]A similar argument can be made for states' failure to protect women against systematic violations of rights.

While it may be easy to adopt the above reasoning in respect to actions or inaction of individuals identifiable within a state, it does not rend itself easily applicable to violations attributable to policies, actions, or inaction of multilateral agencies like the World Bank and the IMF. Many Third World countries are witnessing violations of women's human rights attributable to economic structural adjustment policies imposed by these agencies. Are recipient states of the programs responsible for the violations or should the multilateral agencies themselves be regarded as persons in international law for purposes of liability. For instance, can responsibility be attributed to states who shape the policies of the multilateral agencies? This is an issue on which much thinking, analysis, and testing is required.

[2]K. Roth, "Domestic Violence as a Human Rights Issue", Toronto, August 31—September 2, 1992.

Position of Individuals within States

A third factor arising from the nature of international human rights law is the inaccessibility of human rights instruments to individuals whose states are not party to the relevant instruments. International human rights law like all international law, is adopted and ratified by individual States on a voluntary or consensus basis. Can the international community allow whole populations to remain unprotected because its state chooses not to ratify the human rights instrument?

Related to this question is the issue of broad reservations which a significant number of States have entered on ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). States, through such reservations, free themselves from the obligation to remove discrimination against women on religious and/or cultural grounds. Again, should the international human rights community leave women in these countries with little or no protection? I am raising a fundamental issue concerning the extent to which individual states have or should have the sovereign right to ratify or not ratify human rights instruments and to enter broad reservations of the nature seen under CEDAW.

The recent past has witnessed some advancement in the acceptance of the idea that the way a state treats its citizens may not necessarily only be a matter of internal affairs of that state. The international community may intervene if there is systemic and widespread violations of human rights. This is a development in human rights thinking that women's rights activists may want to develop further and use where a state refuses to ratify human rights conventions or enter reservations which deny women protection from discrimination and other gender-specific violations.

Universality of Human Rights

Human rights are universal in the following way: they apply to all human beings. The international community of States recognizes human rights for all persons throughout the world. All persons are seen as equal and valuable beings endowed with certain inalienable rights. Human rights are universal in this sense and all instruments emphasize this. Article (2) of the International Covenant on Civil and Political Rights require each state party "to respect and to ensure to all individuals in its territory the rights it recognizes without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property or other status." Similar provisions can be found in the Covenant on Economic, Social and Cultural rights and the regional human rights regimes.

Religious and Cultural Perspectives

The concept of universal human rights has not always been accepted by all members of the international community of states. Some states, especially those with influential religious lobby groups, have argued that individual human rights must be subject to religious laws. Other states have pleaded "culture" as a reason for not respecting and/or protecting the human rights of specific groups and/or communities.

This challenge has very significant implications for women's human rights. A look at the reservations entered by states on ratification of specific human rights instruments clearly illustrate this. CEDAW currently has the most reservations lodged by states of any Convention. The reservations are allegedly based on religious and cultural considerations. What is worrisome is the fact that the challenges to the universality principle tend to arise in areas where women's human rights are most at risk.

Selectivity in International Response to Violations

While the international community continues to assert that human rights must be seen as universal, its often unpredictable response to human rights violations undermine this assertion.

Of major concern is the selectivity exhibited in the condemnation and other sanctions meted out to states violating human rights law. This selectivity ranges from the countries condemned to the issues. One notable fact is that there has been very little outrage from the international community in respect to the widespread abuse of women's human rights all over the world.

Accessibility of International Human Rights Law and Mechanisms

The effectiveness of international human rights law and mechanisms is also influenced by the extent to which they are accessible. Only a portion of this problem is highlighted here—namely the lack of awareness which individuals and NGOs have regarding the content, procedure and remedies, if any, of international human rights organizations. How can the system be used to protect and promote women's human rights, if women and activist NGOs do not understand how to access it and how it works? Whose responsibility is it to disseminate human rights information? Do states, the United Nations, and other treaty-based human rights bodies have a responsibility to carry out and/or support NGO human rights education efforts? The potential for individuals and communities to protect and promote their own human rights through monitoring, reporting and community action must never be underestimated.

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The Principle of Universality and Cultural Diversity

Radhika Coomaraswamy

Most of us, who have been fighting for women's rights and human rights over the last decade, have focused on the nation-state as the main target of our actions. We have demanded that international standards be adopted and ratified, that nation-states enact standard setting laws and that there be effective implementation machinery at the national level and at the international level to make these rights relevant in the lives of women. The recent Vienna Declaration is an indication and a measure of the success of such lobbying.

But for many of us in South Asia this is only a small part of a greater battle. While the struggle for standards and implementation at the international and national level persists, there is a greater battle taking place and that struggle is being fought in civil society. That battle is between those who are struggling for democracy, pluralism and ethnic tolerance and those who are strongly nationalistic or believe in a return to religious fundamentalism. This dividing line is increasingly tearing women and society into two camps and the state allies itself with one to

promote some ends and the other to promote other ends. Many of the women who believe in the values of democracy and tolerance, not only in crisis but in every day life, are now fighting with their backs against the wall, as movements in civil society emerge which are rooted in the idea of identity politics-- a politics which privileges your religious and ethnic identity over others; where birth and blood are more important than rational self-interest; and where communities of language and religion are more important than communities of interest or political beliefs.

This primordilisation of politics took many unawares and emerged as the primary theme in the discourse of contemporary politics all over South Asia. Whether it is Hindu fundamentalism, Islamic fundamentalism, Sinhala nationalism or Tamil nationalism, the community of interest is branded at birth and by tribe and not on what is fair, just and equal. Subjective concerns have overwhelmed national or international objective standards. Who you are is more important than what you believe.

There are many who feel that this rise in nationalism and fundamentalism is a positive phenomenon. To some, this is part of the same process of decolonisation which took place in the sixties and seventies--a cultural resistance to the west. It is also the emerging alternative discourse to western imperialism. With the collapse of the Soviet Union, the alternative discourse to western imperialism is no longer in fashion. What is emerging is a cacophony of movements rooted in what is called a "million mutinies of the particular." In the eyes of many, nationalism and fundamentalism are a challenge to the western world view which they feel dominates the international arena. This is a serious criticism which has enormous popularity in the countries concerned. However, to subscribe to such a view is to throw the baby out with the bathwater.

To save the international standards of human rights from destruction in our countries, we must also join other third world countries in demanding that the United Nations and the international arena be more aware of third world issues and that international decision-making be more representative.

We must make it clear that fighting for third world rights is not fighting the international conventions on human rights; and that western countries, as well as our own, are subject to the same standards. This must not only be true but also appear to be true in international action and practice. The fight for democracy at home must be coupled with a struggle for more representative politics at the international level. Legitimacy with regard to international standards will only be strengthened if international processes, as a whole, seem to be fair and just. So, for third world women there is a twin battle cry, human rights at home and representative politics at the international level.

There are those who argue that the rise of nationalist and fundamentalist movements in civil society is a sign of politicization where citizens are beginning to make claims of the state. They argue that pluralism will be strengthened if these views are articulated and if there is a contest in civil society where different ideas may be expressed (i.e., let there be a vibrant marketplace of ideas with vitriolic debate.) This contradiction between the push for pluralism and the pull toward international human rights documents is an aspect which has to be negotiated with sensitivity.

When minorities ask for autonomy and a recognition of their identity, most of us would consider it a positive sign, a pluralist demand that would further democracy. But, when majorities claim the same rights, then pluralism is actually perverted and we have a self-righteous majority dictating terms to those who, because of their numbers, will never be able to capture state power. What concerns us is this growth in the assertion of majority culture as the only culture of the nation, to be celebrated regardless of international standards. This is a threat to both democracy and pluralism within a nation-state. The tragedy is that in South Asia at least, the growing militancy on the part of some members of the majority community is matched by violence and hatred unleashed by political groups claiming to represent minority communities. Alternative nationalist and/or fundamentalist symbols also appeals to this minority in their struggle for power, and to legitimize this militancy. When there is a battle between different forms of

militancies in one civil society, democracy and pluralism are actually lessened. That is the lesson of South Asia today.

As others have pointed out, this battle is not being waged with words but with violence, violent speech, and violent action. The riots of the 1980's in South Asia, whether in Colombo or New Delhi, are examples of this concern. The discourse of fairness and justice--the discourse of the liberal socialist movements of the past--has been lost to the discussion on birthright, homelands, religious exclusivity and linguistic purity.

Nationalism has been defined in many ways. People have called it the foremost ideology in the world. It is said to have a protean character and has a promiscuous habit of linking itself to other ideologies--almost any ideology. As a result, we have right wing nationalism, revolutionary nationalism against colonial powers, economic nationalism, etc. And yet, though it is linked up with various forms of nationalism there are certain variables which are constant. Nationalism puts forward a doctrine that there is a link between a people and a territory and that this union should be the starting point of any political analysis within a given nation-state. If a group, which defines itself as a nation, does not have state power, nationalism is the ideology which motivates them toward acquiring statehood. So the paradox: nationalism is the ideology of majority communities when they keep nations-states together by consensus or coercion and it is also the ideology that minority groups ascribe to when they demand autonomy or a separate state. More often than not, we have two or more sets of nationalism or fundamentalism in a fierce contestation for resources and power within a particular nation-state, one using nationalism to keep the territory together and the other using nationalism to demand autonomy and a separate state. My country, Sri Lanka, is one such case-study. These dual nationalisms are tearing the country apart, not only in a secession sense, but with regard to people, resources and suffering.

Fundamentalism on the other hand is not limited by territory. It is a movement in civil society which often cuts across national borders, a remnant of the religious dynasties of the past but which urges a re-reading of fundamental religious texts with emphasis on the textual essence and nothing else.

Popular practices and non-authentic practices are discarded, and a new "pure" religion interpreted by modern day religious personages is accepted. Fundamentalism does have a political face in that it is a lobby against the use of state power which would in any way challenge the textual legitimacy of a religion. It is also exclusivist and is very clear in delineating the self from the other, US from THEM.

Nationalism and fundamentalism are movements of civil society. Their relationship to the state is another problematic area. When these lobbies become powerful enough, they may end up capturing state power or become primary spokespeople for a community. Then the state and the movement become one. In other contexts, they may remain a movement in civil society which brings pressure to bear on elected governments threatening the voter base of the government in power. This fear of losing a voter block then drives the state to follow a policy of appeasement which then determines the terms of political debate.

The strength of these movements is their autonomy and independence from state power and their capture of institutions of civil and religious society. Their trained cadres, their organizational skills, their discipline, and their ability to mobilize thousands gives them enormous strength in negotiating with governments in power. Unlike human rights models, where an individual can be pitted against the state before the judiciary supported by NGOs, the movements for nationalism and fundamentalism are mass movements whose organizations follow the principles of a highly disciplined political party. Their organizational superiority and their other movements in civil society, especially those NGOs in civil society fighting for peace and tolerance. Their discipline and effectiveness make peace NGOs look like weak traitors. (This is why I said that women's groups and human rights groups fighting for peace and tolerance are fighting with their backs against the wall.)

At the Vienna Congress, the Asian group of countries posited a challenge to the international world. They argued that human rights must be judged in culture specific terms; that human rights as presently conceived are western; that economic and social rights are more important than political and civil

rights; and group rights are more important that individual rights. This argument is particularly lethal when it comes to women's rights, for any emphasis on culture specifically implies also the freedom to develop family law and community practice, which fall far short of the standards set out in the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW). It is therefore important that any documents or positions coming out of international conferences, consultations, etc., reiterate that human rights apply to all peoples regardless of culture or religion.

We may also add that many of these cultures and almost all of the world religions can be interpreted to promote human rights concepts and that if they are used, it must be to further international standards and not to restrict them.

In most Asian societies, there are what I may term "dual lines of legitimacy." The first is political. Regardless of what the Asian governments say, people in Asia cherish the right to vote and the franchise. This is verified by the election fever that hit all parts of Asia and led to massive electoral turnout in Korea, Philippines, Pakistan, Bangladesh, Nepal and now recently in Cambodia. This proves beyond a doubt that the average citizen in these countries has accepted the right to vote as a fundamental right. This right to vote is inextricably linked to a representative democratic system and such a system will only work if it believes in human liberties and equality. So, coming out in large numbers to vote at elections is proof that the people casting their votes accept the indivisibility of human rights at least when it comes to politics and representative democracy. Human rights has political legitimation when it comes to the state.

The question, however, that we in Asia have to face, and face honestly, is whether human rights have the same type of legitimacy when it comes to cultural aspects in community life and in the home. This is the dual line of legitimacy. In this area of culture and community, it is nationalism and fundamentalism which have a greater say. To most women culture, community and family are the most important sphere. This dual and somewhat schizophrenic legacy, one political and the other cultural, which is the core of our problems. On the one hand, human rights has achieved legitimacy in conducting political life,

but culture and religion are more paramount when we refer to the community and the family.

For women, all this comes to a head when we speak about a Uniform Civil Code, or the revision of the personal laws. In countries like South Asia, all women are not equal. Whom you marry, how you conduct your marital life, divorce, or custody of children depend a great deal upon which community you belong to. Important sections of international human rights law which relate to women are therefore not operative in our community and family life. Again, it is culture which is the rallying cry of those who feel that there is an international pull toward a uniform culture being imposed by the western countries.

It is therefore necessary that we deal with these issues in a comprehensive manner. Many women stand with their third world men when the call of culture and uniqueness are being voiced. They do not wish to see the homogeneity of culture which emanates from outside their society. Our task is to understand the pluralist need for an international culture which celebrates diversity. But that diversity has to have a minimum of standards of human life and dignity, particularly when it comes to women. That is the task of third world activists throughout the Asian region--how do we celebrate diversity while enjoying human rights? It is a task that will haunt us for the next few decades. But in so doing, we must remember the words of Madhu Kishwar

Our cultural traditions have tremendous potential within them to combat reactionary and anti-women ideas, if we can identify their points of strength and use them creatively. . . . We must realize that if we fail to acknowledge and help reinvigorate the deeply humane portions of our heritage, none of our efforts are likely to succeed.

Diversity, yes, but only on the firm foundations of universally acknowledged human rights and women's rights.

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Recognition of Violence Against Women as a Violation of Human Rights

Asma Mohamed Abdel Halim

Violence Against Women Under International Law

Since the recognition of violence against women[3] is a major ingredient of women's subordination, different kinds of violence have been dealt with in different ways. Initially, international bodies did not address violence against women because it was considered a "private" matter between individuals that did not fall under the jurisdiction of the international conventions. The international community viewed the problem in the context of state sovereignty, meaning that any intervention by the United Nations or other entity would be seen as an infringement on state sovereignty.

However, using the concept of state responsibility towards citizens stipulated in the conventions (i.e., that states are required to guarantee to all individuals under its jurisdiction the

[3] Schuler, M. "Violence Against Women: An International Perspective," *Freedom From Violence: Women'S Strategies From Around The World*, Ed. Margaret Schuler, OEF International, 1992. (p.1)

rights recognized in the conventions), it was possible to bring violence against women into the "public" sphere. This is extremely important because without freedom from violence, women are stripped of all the human rights accorded them under the broad human rights framework.

The Range of Issues

Presently, the range of violence against women recognized by the international community includes both physical and psychological violence. Battering, rape, mutilation, bride burning, sati, forcible marriages and discrimination against women in all its forms constitute the most well-known forms of violence. These are now being joined by other forms of violence such as female genital mutilation and cosmetic surgery.

Of the more overt examples of human rights abuses, violence perpetrated by the state continues throughout the world particularly under undemocratic regimes. Women in such countries are singled out for specific kinds of torture and punishment (e.g., rape or the threat of rape while in detention). Gender-specific violence should be addressed as such and not treated as a political action against all. The international community should move to recognize this kind of violence as a crime committed by the state regardless of whether the officers who commit the crime do so in their capacity as officers or, as private citizens. The state should be held vicariously liable for the acts of its officials and the international community should take the lead on this matter. For example, redress for the gross human rights abuses of the so-called "comfort women" of Asia ought to be an issue that the UN addresses by requiring the responsible state parties to ensure compensation to the victims or their families. Such an action would establish a precedent that the UN is ready to hold "culprit" states responsible for their acts.

The less visible types of violence are the types that women subject themselves to in order to conform to an ideal and unattainable image of woman. The most prominent example are the surgeries and procedures endured by women in an attempt to perfect their bodies and achieve the highest standard of beauty with the goal of assuring acceptance by society. The now

world-famous operation of female "circumcision" or female genital mutilation in Africa and other parts of the world is a glaring example of how women have internalized their subordination and dependency and acted upon that to at least have a bargaining power for survival. [2]

Many are shocked by the fact that plastic surgery and genital mutilation are recognized as belonging to the same category. The fact that plastic surgery is done in western hospitals and voluntarily submitted to by sophisticated women makes some of us look at it differently than an operation that takes place in Africa. However, both operations are endured by women for the same reason: the pursuance of false ideals of femininity. [3]By removing the bias of racism that makes some view the African woman as "primitive" in comparison to her sister in the west, one can see that despite the fact that the western woman and the African woman live in different social environments, their gender is their common affliction. Although seen as self-inflicted violence and a woman's choice, body mutilation is a means of sexual control.

Female genital mutilation is more visible as a human rights violation when it is performed on children, who do not have a choice, than when it is performed on an adult. "An adult is quite free to submit her or himself to a ritual or tradition, but a child having no formed judgment, does not consent but simply undergoes the operation, which in this case is irrevocable while she is totally vulnerable."[4] The freedom of choice that is seen in the acts of adults, obscures the fact that body mutilation is hardly a choice. It becomes a choice only when women are subjected to subordination in other aspects of their lives, with the result that they only have a choice between being accepted as beautiful females or rejected because they do not conform to that. By a simple legal argument it can be established that the

[2] For an interesting discussion of reproductivity as bargaining power see Janice Boddy, *Wombs and Alien Spirits: Women, Men, and the Zar Cult in Northern Sudan*. The University of Wisconsin Press.

[3] This same idea is expressed by Nahid Toubia in her recent publication *Female Genital Mutilation: A Call for Global Action* distributed during the UN Human Rights Conference in Vienna in June, 1993.

[4] *Female Genital Mutilation: Proposal for Change*, by Efua Dorkenoo and Acilla Elworthy. Minority Rights Group International, London. April, 1992

woman in Mali who gets herself circumcised and the woman in New York having a breast enlargement operation are consenting adults and no violation of their rights took place. At this stage of the argument, the social reasons for the acts of both women should be examined. Namely the violation of the right of the woman to be independent and the pressure that this dependency exerts on her to surrender the right to control her body and her fate. Body mutilation is a direct violation of human rights in the case of children and incidental to other violations of rights in the case of adult women.

Combating Violence

The failure of the international and national communities to treat violence against women as a public issue, was a primary impetus for women to come together to combat gender-specific violence by campaigning for universal recognition of the problem.

Their success thus far, in putting women and particularly violence against women on the international human rights agenda, is such recognition: universally, women are subordinate—only the degree and type of subordination are different. And resulting from this subordination is widespread violence against women.

In order to eradicate violence, women ought to shift most of their efforts towards achieving equality. Only by being equal will women be in a position to eliminate the factors of subordination. If women attain equality, gender based violence will subsequently disappear. However, the international community often views this situation in the opposite way. For example, the recommendation of the 38th Session of the Commission on the Status of Women calls for eradicating violence in order to achieve equality. This should be rephrased to call for achieving equality in order to eradicate violence. Inequality leaves women as dependents and with no power to resist violence.

A recent study on the AIDS epidemic in Uganda revealed that women become AIDS victims because of their inability to demand protected sex or refuse sexual relations with their husbands even though husbands have the right to have as many

sexual partners as they wish. Because women are often seen as property, husbands believe they have the right to do as they wish with their wives including forcing them to have sexual relations.[7]

It will be useful for women from around the world to make use of the strategies developed in different areas of the world to combat gender violence. For example, the shelter system developed in the west exists in the developing world in the form of the extended family. The extended family provides physical and mental protection that cannot be achieved in the shelters created in the western world. Yet to make this system of support work for more women, their needs to be facilitating services such as a place that may serve as contact between the woman and the family member who can provide protection, or a contact to serve as the means of transportation for the woman to the place of protection.

This suggestion may generate the argument that using western ideas may not fit our societies. Or that using the idea may bring us, eventually, to the shelters that we abhor. My answer is that we are struggling for change and any change is going to upset our societies. The answer is not to submit to the resistance lest we should be the very submissive members of society that we are trying not to be. If we cannot exchange ideas and strategies between the different worlds in which we live, the very contention that the problem of violence against women is a universal one and should be treated by the UN as a human rights issue will be defeated.

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[7] *The Fight Against AIDS*, a program broadcast by the BBC on September, 5 1993. (Producer David Roger.)

Women's Economic Rights and the Human Rights Framework

Athaliah Molokomme

Introduction

Equality for women is linked to financial independence, which in turn is a function of women's access to and control of basic economic and human resources. Thus, dialogue on human rights must include the economic rights of women. In virtually all societies, access to these rights is biased against women.

There are many factors which lead to women's inferior status in the economic sphere including culturally ascribed rules about access to resources, and limited access to education, employment and property. In addition, women all over the world continue to carry the double burden of economic production and sexual reproduction, which has negative consequences both for their health and general well-being as well as for society in general.

Women's Rights in the UN System

- **Economic Rights:** Economic rights have generally been accorded a secondary role in the United Nations debates on human rights, with the so-called 'first generation' human rights (civil and political rights) being given more recognition. This is largely attributed to the fact that social, cultural and economic rights are more difficult to pursue than civil and political rights. This is particularly the case in the developing world, where resources are scarce, and struggles for civil and political rights are perceived as having greater urgency.
- **Women's Rights:** Although the core UN human rights instruments (the UN Charter, the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights) accord women the same rights as men, the international debates on human rights have historically eschewed a discussion of women's rights as human rights. In the case of Africa, the African Charter on Human and People's Rights, while guaranteeing African women the same rights as men, contains certain shortcomings which are the subject of another session.
- **The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):** CEDAW represents a step forward for a discussion of women's rights, but it does not inherently incorporate the rights of women into the mainstream human rights debates. However, the Women's Convention, together with other supporting organizations within the UN such as the UN Committee on the Status of Women, and CEDAW have a potential of redressing the situation.

Examples of the Economic Marginalization of Women

- **Access to Land:** In many African societies, economic rights, especially access to productive resources such as land, are determined by gender. Land ownership is granted to males, with women having only rights of land use via men as daughters or wives. Although ownership of land was not so important in pre-capitalist African societies, it is becoming so now with new property laws allowing the individualization of rights to land. In such a situation, women's rights to use family land becomes precarious, with men acquiring title deeds over family land and then preventing women from using it, or selling it and keeping the proceeds for themselves.
- **Inheritance:** The inheritance of land and other property in many African societies is also patrilineal, with the principal heir, the eldest male son, taking over the bulk of the estate. Justified on the basis that property should be kept in the family, girls are denied inheritance rights since it is presumed that they will marry. These discriminatory rules continue to apply because the state is unwilling to interfere in what they consider the "private sphere" of customary law.

At the same time, the social reality has changed to such an extent that many of the assumptions that these rules were originally based upon, no longer apply. For example, in Botswana, research has shown that marriage is no longer the rule for women, and that there has been a dramatic increase in single motherhood. However, customary law, applicable to the majority of the people, continues to deny women access to the same resources granted to males even as the head of a household.

The assumption is that brothers will maintain their unmarried sisters and their children. However, social change has grossly undermined these support obligations. While previously the male heir stepped into his father's shoes and was obliged to maintain his siblings, today, research has shown that such support can no longer be relied upon.

In addition, the commercialization of land makes it possible for men to alienate inherited property to the detriment of those

who have rights to maintenance but not inheritance. The majority of these are girls and women, and it leaves them in a precarious position concerning access to productive resources such as land.

Rights to Own and Control Property Under 'Modern' State Laws

Many countries have retained western-based legal systems implemented during the colonial period and these often do not place women in a better position than the customary laws.

A case in point is the Roman-Dutch law of matrimonial property that was received into the Southern African countries of Botswana, Lesotho, Swaziland and Zimbabwe. Women married in communal property continue to be subjected to their husbands' marital power, which enables them to deal with family property in any way they see fit. Although wives are entitled to half of the family property at the end of the marriage, by that time there may be very little or nothing to divide if the husband has been irresponsible or wasteful. Married women in general continue to be seen as subordinate to their husbands, and their property rights are dependent upon them as heads of the household.

Conclusion

In Botswana, the official reason for denying women their economic rights has been that it is consistent with the beliefs of the majority of people in the country (including women), who are 'traditional and comfortable' with the subordinate role of women. This is a common response on the part of some African states when confronted with demands for women's human rights. The recent rumors that the government of Botswana had been advised by the Ministry of Home Affairs to hold a national referendum on the constitutional status of women is exemplary. The government was responding to a court of appeal ruling which struck down a provision in an Act of Parliament on the basis that it discriminated against women. Instead of reenacting the offending provision in gender-neutral terms, the government allegedly wants to hold a national referendum to

decide whether gender discrimination should be entrenched in the constitution.

In other countries, the law may give women equal rights, but in practice, cultural beliefs and practices militate against their enjoyment of economic rights. This has, in turn, been used by some governments to argue that acceding to international human rights instruments concerning women is useless because the 'ordinary people' are not ready for change. But they have also argued that governments should consider it their responsibility in a democracy to play a leading role in social engineering. International human rights instruments and standards, while having their weaknesses, are a good starting point in this respect.

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Using the Convention on the Elimination of All Forms of Discrimination Against Women to Advance Women's Human Rights[1]

Rebecca Cook

The time has come to recognize that denials of individuals' rights on the ground only that they are women are human rights violations, and that those state practices that expose women to degradation, indignity, and oppression on account of their sex to be independently identified, condemned, compensated, and preferably, prevented. The purpose to change ubiquitous state practice may appear ambitious, but it is not too ambitious for the needs of our times. Egregious and pervasive violations of women's rights often go unrecognized. Moreover, when they are recognized, they go unpunished and unremedied, and are all too often defended as a necessary part of a culture or religion or as a quality of human nature. While violations of women's rights vary in different cultures, victims all share a common risk factor:

[1]A longer version of this paper is forthcoming in *Women's International Human Rights Law* (Philadelphia: University of Pennsylvania Press, 1994)

that of being female.[2]

States are likely to contest not only their legal responsibility for such wrongs, but also their accountability. Legal responsibility denotes liability for the breach of law, but accountability is a wider concept that requires a state to explain an apparent violation and to offer an exculpatory explanation if possible. States may deny that there are binding international obligations, that they have violated binding duties, that particular tribunals have jurisdiction over them or that particular claimants have standing to launch legal claims. States are seldom held responsible for ignoring their international obligations to respect women's human rights, but may more often be called to account for the status of women in their territory. A survey of international human rights jurisprudence shows that international and regional human rights conventions have been applied only sparingly to address violations of women's rights.[3]

State Responsibility Under International Law

State responsibility is a fundamental principle of international law. It provides that a state is legally accountable for breaches of international obligations under customary international or treaty law that are attributable or imputable to the state. The international law of state responsibility for human rights violations has evolved significantly in recent times. It has developed to require governments to take preventive steps to protect the exercise and enjoyment of human rights, to investigate violations that are alleged, to punish violations that are proven and to provide effective remedies, including the provision of compensation to victims. Modern developments in international human rights law have widened the network of international obligations through state adherence to multilateral human rights conventions, and have thereby enhanced prospects of enforcing state responsibility.

The purpose of this paper is to explore how developments in the international law of state accountability and responsibility

[2]Charlotte Bunch, "Women's Rights as Human Rights: Toward a Revision of Human Rights," *Human Rights Quarterly*, 12 (1990): 486

[3]Rebecca Cook, "International Human Rights Law Concerning Women: Case Notes and Comments," *Vand. Journal of Transnational Law*, 23 (1990): 779

can be applied to ensure more effective protection of women's human rights. It will address the potential for enforcement of state accountability and responsibility primarily under the Convention on the Elimination of All Forms of Discrimination against Women (the Women's Convention).[4]

The Nature of the Obligations of State Parties

Determination of which state acts or omissions are breaches of the Women's Convention depends upon the nature of the undertakings to which states pledged themselves when they became states parties. Article 2 of the Women's Convention requires that:

"State parties condemn discrimination against women in all its forms, agree to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women and, to this end, undertake:

a. To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein, and to ensure, through law and other appropriate means, the practical realization of this principle;
b. To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
c. To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
d. To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
e. To take all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise;

[4]18 Dec. 1979, 34 UN GAOR Supp. (no. 21) (A/34/46) at 193, UN Doc. A/RES/34/180 (entry into force 3 Sept. 1981), as of 1 Sept. 1993, 127 countries are state parties.

f. To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
g. To repeal all national penal provisions which constitute discrimination against women."

Article 2 is the general undertaking article that applies with respect to rights recognized in Articles 5-16 of the Women's Convention. It generally requires states parties "to ensure" compliance by their governmental organs with the Convention and "to take all appropriate measures" to effect "the elimination of discrimination in all its forms" by "any person, organization, or enterprise" and "to modify or abolish existing laws, regulation, customs and practices."

Article 2 has not been subject to a General Recommendation by the Committee on the Elimination of Discrimination Against Women (CEDAW), established to monitor compliance by states parties with the Women's Convention. Such a General Recommendation would help to specify the nature of the obligation of the states parties. The Human Rights Committee, established to monitor compliance with the International Covenant on Civil and Political Rights and the Committee on Economic, Social, and Cultural Rights, have issued General Comments on the respective articles that establish the general undertakings of states with regard to that Covenant.

Obligation to Eliminate Discrimination Against Women

"In all its Forms"

By becoming states parties to the Women's Convention, states agree to "condemn discrimination in all its forms." The Preamble to the Women's Convention notes that the UN Charter, the Universal Declaration of Human Rights, the Declaration on the Elimination of Discrimination Against Women (the Woman's Declaration), the two international human rights Covenants and UN and specialized agencies' resolutions, declarations and recommendations promote equality of rights of men and women. However, the drafters expressed concern in the Preamble "that despite these various instruments, extensive discrimination against women continues to exist." The Preamble concludes

with an expression of determination "to adopt the measures required for the elimination of such discrimination in all its forms and manifestation."

In agreeing "to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women", states parties are obligated to address the particular nature of each discrimination. The Women's Convention clearly reinforces sexual nondiscrimination, but its purpose is not simply to achieve gender neutrality. In contrast to previous human rights treaties, the Women's Convention frames the legal norm as the elimination of all forms of discrimination against women, as distinct from opposing sex discrimination per se. That is, it develops the legal norm from a sex neutrality norm that requires equal treatment of men and women, usually measured by how men are treated, to recognize that the distinctive characteristics of women and their vulnerabilities to discrimination merit a specific legal response.

For the purposes of the Women's Convention, a legal definition of "discrimination against women" was required. Article 1 reads:

". . . the term "discrimination against women" shall mean any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

Where a law does make a distinction that has the effect or purpose of impairing women's rights in any way, then it constitutes discrimination under this definition, violates the Convention and must accordingly be remedied by the state party.

Not all laws or practices that place women at a disadvantage constitute "discrimination against women" within the meaning of Article 1. Article 3, however, requires states parties:

"... 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."

In addition to impugning laws and practices that are detrimental in their effect but neutral on their face, Article 3 prohibits practices that are detrimental to women as such, including for instance non-provision of obstetric services. Article 3, therefore, catches those discriminatory practices that do not come within the scope of the Article 1 definition.

The goal of Article 3 is reinforced by Article 4, which specifies that "temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined by the Convention." This allows for determinate, concrete practices to secure "equality of opportunity and treatment."

"By any person, organization, or enterprise"

The Women's Convention in Article 2(e) requires states parties:

"[t]o take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise."

Under this provision, a state may well be obliged to prevent and deter private acts of discrimination, to investigate and negate their harmful consequences and to provide for compensation or sanctions for the performance of such acts, for instance by penalties of a civil or criminal nature. Private discriminators, such as religious organizations, may also be required to forfeit public advantages such as licensure, tax-exempt status and direct or indirect government grants or subsidies.

The responsibility of states is not simply not to engage in human rights violations themselves, but to meet international obligations to deter and condemn such violations initiated by private persons. State responsibility includes taking appropriate action to prevent objectionable private action, to monitor private acts that constitute violations, for instance through human rights monitors and police monitors, and to sanction and remedy acts of violation that are identified.

States are required under Article 16 to "take all appropriate measures to eliminate discrimination against women in all

matters relating to marriage and family relations .... " CEDAW's General Recommendation 19 on Violence Against Women makes clear that "[g]ender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."[5] It explains that:

"[f]amily violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships, women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes...."[6]

The General Recommendation requires states parties to take "appropriate and effective measures to overcome all forms of gender based violence, whether by private or public act." With respect to family violence, the Recommendation obligates states parties to provide criminal penalties and civil remedies, to remove the defense of protection of family honor by legislation and, among other programs, to provide support services for victims of violence including incest."

"Customs and Practices"

The Women's Convention in Article 2(f) requires states parties:

"[t]o take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."

Article 5(a) elaborates on this duty by explaining that states parties agree:

"[t]o modify the 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 the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."

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[5]United Nations, Report of the Committee on the Elimination of Discrimination against Women, UN Doc. A/47/38 (1992) at 5.

[6]Ibid. at 8.

By Article 2(f) taken together with Article 5(a), states parties agree to reform personal laws[7] and to confront practices, for instance of religious institutions, that, while perhaps claiming to regard the sexes as different, but equal, in effect preclude women from senior levels of authority and influence. These Articles strongly reinforce the commitment to eliminate all forms of discrimination, since may pervasive forms of discrimination against women rest not on law as such, but on legally tolerated customs and practices of national institutions. These may hold a revered and privileged status in national life, such as organizations that recognize the sacrifice of military veterans and the sanctity of religious faith.

A willingness to discount religious traditions that subordinate women is evident in Article 4 of the Draft Declaration on the Elimination of Violence against Women proposed by the UN Commission on the Status of Women,[8] which proposed that:

"States should condemn violence against women, and should not invoke any custom, tradition or religion or other consideration to avoid their obligation with respect to its elimination. . . ."

Similar repudiation of customs and practices of particular religions that disadvantage women can be achieved through withholding or withdrawing tax privileges that states give to such religious institutions.

Identifying Other Forms of Discrimination

States are obligated to identify and eliminate "all forms" of discrimination against women. This requires understanding perceptions of women in all walks of life and how they perceive laws, policies and practices as discriminatory. A common theme in feminist discourse is that women's experiences and capacities for distinctive understandings and proposed solutions of their disadvantage , based on sex and gender, be given a voice. Development of feminist scholarship has added dimensions to the

[7]See, Asma Mohamed Abdel Halim, "Challenges to the Application of International Women's Human Rights in the Sudan"; Sara Hossein "Equality in the Home: Women's Rights and Personal Laws in South Asia"; and, Kirti Singh, "Obstacles to Women's Rights in India" forthcoming in *Women's International Human Rights Law* (Philadelphia: University of Pennsylvania Press, 1994.)

[8]E/CN.6/1993/L.9, 22 March 1993

significance of experience, revealing contrasts between, for instance, the social situations of women in diverse racial and other communities. Feminist analysis of law has generated approaches and schools of doctrine of rich diversity.

In feminist legal analysis, a method to determine women's needs has come to be called "asking the woman in question."[9] A consequence of answering "the woman question" in domestic legal systems is the development of new theories that require women's equal access to public sector institutions and the law's remedial involvement in spousal and family relations that exploit the vulnerability and powerlessness of women. Similarly, doctrines of international human rights law can be opened to development through analysis of their historic failure to recognize women's oppression, and through realization of their potential for application to women's experiences.

The Way Forward

Developing international human rights law through treaties such as the Women's Convention, and recognizing international customary law on human rights, are necessary, but in themselves not sufficient steps to the achievement of women's human rights through international law. The legal foundation of rights serves only as a basis on which to build structures that will protect the security and integrity of women and provide women with an equitable opportunity for individual and collective development. Treaties offer an architecture of rights, but the realization of treaty goals requires further construction. Treaties must be followed by an effective method to monitor and police states' observance of the obligations to which they have committed themselves, and national and international mechanisms to maintain treaties in effect and to enforce state responsibility for violations of treaties.

The enormity of the task that the Women's Convention tackles should not be minimized. The Race Convention similarly concerns the way in which some races treat others, but reflects the popular conception that "human rights" concerns the treatment of minorities. The origin of modern human rights law concerns vulnerable individuals at the margins of their societies,

[9]Bartlett, K.T., "Feminist Legal Methods," *Harvard Law Review*, 103:829-888 (1990).

such as ethnic and religious minorities, political activists and, for instance, prisoners. The Women's Convention is designed to change how one half of humanity treats the other half, and to compel the dominant half to elevate the subordinate to have the functional status of equals.

Legal strategies are needed not simply to monitor, but to effect state practice to implement specific provisions of the Women's Convention.[10] The duty to report to CEDAW keeps states parties conscious of their legal accountability for violations of the Women's Convention, and of their legal obligation to eliminate private discriminatory behavior. CEDAW might facilitate the duty of states parties to report by developing a comprehensive General Recommendation on Violence against Women and to the General Comment Developed by the Committee on Economic, Social, and Cultural Rights on Article 2 of the Economic Covenant.

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[10]See, Abdullah Ahmed An-Na'im, State Responsibility under International Law to Change Religious and Customary Law; Andrew Byrnes, "Towards More Effective Enforcement of Women's Human Rights Through the Use of International Human Rights Law and Procedures"; Chaloka Beyani, "Towards a More Effective Guarantee of Women's Rights in the African Human Rights System"; Cecilia Medina "Towards a More Effective of the Enjoyment of Human Rights by Women in the Inter-American System"; and, Anne F. Bayefsky, "General Approaches to Domestic Application of Women's International Human Rights" forthcoming in Women's International Human Rights Law (Philadelphia: University of Pennsylvania Press, 1994) for discussion of such strategies.

Part Two:
International Strategies

Some Strategies for Using International Human Rights Law and Procedures to Advance Women's Human Rights

Andrew Byrnes

The Utility of International Human Rights Law and International Human Rights Mechanisms

The proliferation of human rights guarantees at the international level, ostensibly equally beneficial for women as for men, has been a marked feature of the last forty years. In the last fifteen years the process of standard-setting has been supplemented by the development of a range of new procedures or "mechanisms" at the international and regional level for monitoring the implementation of these standards. These norms include gender-specific guarantees, as well as guarantees which apply to all. The issue is whether (and how) these international standards and mechanisms can be utilized in order to advance the position women by ensuring their full enjoyment of human rights.

International standards and procedures can be used to improve women's position as follows. The first is by "going international," that is taking one's concerns and allegations of rights violations to an international forum in order to place pressure on the state concerned to respond (or even to move international actors to address systemic problems or the situation in individual states). The second is by "bringing the international back home," namely using international standards and case law to bolster one's claims in the national arena, whether in a judicial, legislative or executive context.

Even though international human rights law is very much part of the dominant masculinist discourse, the rights framework and the internationalization of a claim as a human rights claim may provide some assistance in pursuing one's goals. Although it seems unlikely that all the claims which women might wish to advance can be accommodated with the "human rights framework" or even within that of the specialized instruments and bodies dealing with "women's rights," there are nevertheless opportunities for pursuing women's interests by using and participating in the international human rights community.

While resort to international procedures may sometimes have a direct impact at the national level, it is generally not the best means of obtaining prompt and effective redress for a human rights violation, especially in individual cases. Perhaps the most useful way to approach the question of utilization of international human rights mechanisms is to view them as one of a number of ways in which pressure can be exerted on governments or others in order to achieve one's specific goals. The use of international procedures must form part of a broader political strategy.

Going International: Using the International Procedures

There are a number of different types of international procedure that may provide opportunities for women's rights activists to take their claims to international fora:

1. Reporting procedures under the UN human rights treaties and international labor conventions.
2. Individual complaint procedures under human rights treaties, ILO conventions and other similar procedures,

such as the UNESCO procedure (these are sometimes known as complaint-recourse procedures)

3. Complaint-information procedures (such as the communications procedure of the Commission on the Status of Women, the resolution 1503 procedure)
4. Hybrid procedures (such as the Working Group on Disappearances and the thematic special rapporteurs)

◆ **Reporting Procedures**

Under all the major UN human rights treaties (and various regional treaties), states parties are required to report on a regular basis to the responsible supervisory body on the steps which they have taken to implement their obligations and the difficulties they have experienced in doing so. These reports are then examined by the treaty body in the presence of representatives of the state-concerned. All the committees receive information informally from non-governmental organizations which they may use in their questioning of States.

The examination of a state's report under a treaty can provide an occasion for exerting international pressure on the state. If members of a supervisory body are strongly critical of a state or express the view that the state has not carried out its obligations under the treaty, this can serve to put some pressure on a government, particularly if the proceedings receive publicity internationally or nationally.

For more efficacy to be made of reporting procedures, much needs to be done to disseminate knowledge about the process and its potentialities, as well as to ensure that national groups are made aware of the submission by governments of reports and the time when they are to be examined by the relevant treaty body. All of the treaty bodies offer opportunities for a gender perspective to be advanced. While the general human rights treaties (the ICCPR and the ICESCR) in conjunction with the Women's Convention offer the broadest range of substantive rights, issues of discrimination against women belonging to a racial or ethnic minority can be raised under the Racial Discrimination Convention, the Torture Convention and the Convention on the Rights of the Child.

◆ **Complaints Procedures**

In deciding whether to lodge a complaint under an international procedure, at least three factors need to be considered:

1. Does the alleged violation fall within the substantive scope of the procedure concerned, whether under the terms of the treaty or other normative instrument applicable to the procedure?
2. Has the state which is alleged to be responsible for the violation accepted the competence of the body concerned to receive and consider complaints or is it otherwise subject to the procedure (for example, by the fact of membership of a particular organization)?
3. Have the preconditions for consideration of the complaint on the merits (admissibility criteria) been satisfied?

Since the forms of redress available under the different procedures vary and the preconditions for accepting a complaint (admissibility criteria) may differ from procedure to procedure, it is important to seek advice from those with experience in advising on the use of international procedures before deciding whether or not to utilize a particular procedure.

◆ **Individual Complaints**

The purpose of a complaint-recourse procedure is the redress of individual grievances. The body receiving the communication is obliged to take action on an individual communication and the author of the communication is entitled to participate in the consideration procedure to some extent. Examples of such procedures are the individual communications procedures under the First Optional Protocol to the ICCPR, a number of the ILO complaint procedures and the UNESCO communications procedure. Some use of these procedures has been made to raise sex-discrimination issues, though much more could be done in this regard.

Since most of the complaints procedures are voluntary, the most effective procedure may simply not be available if the state concerned has not accepted it. One may have to make do with another procedure which may not be as good a fit for the

substantive claim being advanced or which may provide a less hospitable forum or less effective remedies.

There are obvious dangers in bringing a case before an international body and losing. However, there are also dangers in bringing a case and winning, If the government is found to have violated rights guarantees, it seeks to implement the least generous interpretation of those guarantees consistent with the decision of the international body concerned.

◆ **Other Complaint Procedures**

A complaint information procedure, by contrast, does not provide an avenue for the redress of individual grievances, but is intended to identify general trends of human rights violations or human rights problems in particular countries in order to formulate appropriate remedial strategies. The author of the communication does not generally participate formally in the consideration of the communication after it has been submitted and does not have the right to be informed of the outcome of the consideration of the communication. Although not intended to address individual cases, these procedures may nonetheless be of assistance in that context.

There are a number of procedures of this type which are underutilized. For example, little use has been made of the ILO complaint procedures to address gender issues, although the ILO has adopted a number of conventions dealing with sex discrimination and other matters of particular concern to women. Any workers' group effectively can lodge a complaint with the ILO that the state concerned is not observing the relevant convention. Similarly, the communications procedure of the Commission on the Status of Women, which while rather weak, is also underutilized.

◆ **Policy and Political Bodies**

In addition to the procedures which are either formally designated as complaint procedures or under which allegations of human rights violations may be taken to treaty bodies as part of their of country reports, there are a number of other procedures available. They might be described as the "thematic" and expert bodies, on one hand and political bodies on the other.

One example is the Working Group on Contemporary Forms of Slavery, a body which considers among other issues, the question of trafficking of women and children. Taking a matter to this body essentially only provides a forum for publicity. States referred to in NGO submissions frequently attend and respond to allegations of rights violations.

The "political" organs of the UN, such as the Commission on Human Rights, also provide a forum for airing human rights grievances in public session, although these tend to be highly politicized fora.

Some Problems

- **Conceptual Framework of Human Rights Adjudication**

The limitations of the conceptual framework of the "mainstream" human rights frameworks have often been raised. The mainstream bodies can deal reasonably well with straightforward claims of differential treatment on the basis of sex in law or the practice of public authorities. However, they have considerably more difficulty in responding to claims which challenge the distinction between public and private spheres and which seek to attribute responsibility to a state for violations committed by private individuals acting as such. Since so many of the violations of human dignity are suffered at the hands of private individuals, the question of the responsibility of the state for private violations is of fundamental importance for women's rights.

- **"One Statism"**

In addition to the statist orientation of human rights law, many of the available procedures (and binding treaty obligations) are also "one statist" in nature, focusing on the acts of a state within its physical territory or within its jurisdiction in the extended sense of that term. This means that it may be difficult to use such procedures other than the individual complaint procedures. In such a case resort to one of the political fora or to one of the policy-making bodies that is prepared to receive communications as part of its general work may be the only alternative available.

This "one Statist" orientation also makes it difficult to use many procedures to bring complaints, where the gist of the violation alleged arises from international power imbalances and exploitation. For example, the role of multinational companies in the free economic zones in various countries in Asia.

Some Possibilities

◆ The Challenges: Making One's Jurisprudence

The substantive content of human rights guarantees is malleable in many respects and the struggle over their meaning is a political struggle carried out through legal discourse. Thus, there are opportunities to influence decisively the direction in which international jurisprudence relating to the human rights of women develops and to then take that international jurisprudence back to the national level.

While one can influence the development of case law by bringing appropriate cases and perhaps intervening in others, this process can be somewhat sporadic, though valuable. One way significant contributions could be made in the development of gender-aware international standards is in developing the jurisprudence in a broad sense of the various treaty bodies. The UN treaty bodies have power to make general comments or general recommendations, a power which the Human Rights Committee has seized on to elaborate its understanding of individual articles of the ICCPR. It has been followed in that endeavor by the Committee on Economic, Social and Cultural Rights (CESCE) and also by the Committee on the Elimination of Discrimination against Women (CEDAW).

These detailed general comments can be particularly useful, since they represent a detailed elaboration of the broadly worded obligations binding on states under the various treaties and may be particularly useful for that reason in the domestic, political and even judicial context. With the exception of CEDAW's general recommendations, gender plays a relatively minor role in the general comments of the other committees. The work of all the treaty bodies in this regard provides an important opportunity to help shape human rights jurisprudence in a way which will inure to the benefit of women.

- **Launching a Broadly-Based International Strategy/Campaign**

If changes to the substantive agenda are the goal, it may be that a broad-ranging thematic strategy adopted across a wide range of bodies and procedures is worth considering. Amnesty International, for example, was extremely effective in its campaign against torture, bringing the matter to the center of the international human rights stage by a concerted campaign. Other issues which have been pursued in this way include the question of disappearances. It may be that one or more major issues could be actively brought by women's groups and human rights groups before a number of human rights bodies, ranging from the political bodies to the treaty committees in both their monitoring and adjudicative roles. To put violence against women on the agenda of every major human rights body at the international and regional level, for example, might be one possible strategic goal.

Bringing the International Back Home: Using International Human Rights in the National Context

Another complementary approach is the use of international standards and comparative material at the national level. The benefits of adopting such a strategy will vary from country to country, but international standards can be invoked not just in the courts but also in the legislative and administrative context. For example, use has begun to be made of CEDAW's General Recommendation on violence against women to bolster demands that national governments take steps to address the problem. This strategy requires the collection and dissemination of information about developments at the international level and in other countries, and the provision or resource centers which are available to provide assistance as and when it is needed. Some of this is already happening, both in relation to human rights issues generally and in relation to women's rights in particular.

The Need for Knowledge and Access

A common thread running through the discussion above is the need to spread knowledge about the existence and potential of the various international procedures available and to build better linkages between organizations working at the national level and those working at the international level. There is a clear need for training women's rights groups in gender issues. The preparation of a manual which would present, from a gender-specific perspective, the ways in which international procedures might be utilized as part of the struggle to advance women's position, as well as identifying ways in which international and comparative law developments might be brought back home and relied on within the domestic legal system, may be a useful initiative.

Appendix 1

Using International Procedures--Some Necessary Steps

Any consideration of whether to take a case internationally involves the consideration of a large number of issues.[1] It will normally involve the following steps (the order is not linear):

1. Identifying the violations (and their causes) and conceptualizing them in terms of international human rights instruments at an early stage (even when initiating domestic proceedings.)
2. Identifying the right plaintiff or complainants.
3. Exhausting domestic remedies and ensuring that other admissibility conditions are satisfied (if applicable).
4. Identifying an appropriate body/bodies or procedure--determining whether a complaint may be brought under more than one procedure.
5. Identifying the goals sought to be achieved by taking the issue or case to an international body (Hannum: "publicity, investigation, change in national legislation,

[1]For an extremely helpful checklist on which this list draws, see H. Hannum, *Guide to International Human Rights Practice* (University of Pennsylvania Press, 2nd edition 1992.)

individual redress--protection, release from detention, specific redress.)

6. Accessing time and energy and ensuring that both be spent in a useful and efficient manner on a particular case.
7. Liasing with a local or international NGO with experience in dealing with the body concerned or using the procedure or which has material or intellectual resources which might be made available.
8. Preparing and submitting the complaint or other documentation (including additional research or fact-finding).
9. Presenting the material, lobbying, and follow up.
10. Bringing the international back home (via publicity, etc.)

Appendix 2

Some Cases for Discussion: The (Ir)relevance of International Human Rights Law

- **Situation A: Discrimination Against Women in Private Employment in Hong Kong**

In Hong Kong, there appears to be widespread discrimination against women in employment (as well as in other areas of social life). This discrimination takes various forms and includes the reservation of managerial and higher level positions for men, unequal rates of pay for equal work, pregnancy discrimination, and sexual harassment in employment. In Hong Kong, there is no general legislative protection against discrimination on the basis of sex by private employers, nor are there any informal or administrative structures established to deal with claims of discrimination.

The Hong Kong government's response to the problem has been to deny that any discrimination (or at least sufficiently compelling evidence of its existence) exists, to argue that legislative intervention in this area is either inappropriate or likely to be ineffectual, and to refuse to establish a Human Rights Commission or other similar body to receive and deal with complaints of employment discrimination.

Although the ICCPR and ICESCR apply to Hong Kong, the United Kingdom government has not extended the Women's Convention to Hong Kong, nor do the two major ILO Conventions dealing with discrimination in employment (ILO No. 111) or equal pay for women (ILO No. 100) apply to Hong Kong.

Hong Kong women's groups have been attempting to pressure the government to ratify the Women's Convention (which would require steps to be taken to address discrimination in private employment), to establish a women's commission and to enact anti-discrimination legislation, but have to date been relatively unsuccessful.

- **Situation B: Foreign domestic helpers in Hong Kong and the right of access to court**

In Hong Kong, there are some 70,000 women from other countries (mainly the Philippines) who have come to work in Hong Kong as foreign domestic helpers. While there is a standard form contract guaranteeing a minimum wage and conditions of employment and the process of hiring and entry into Hong Kong is regulated by Philippine and Hong Kong authorities, many abuses of these women by employers and others have been reported. These include from failure to observe the agreed conditions of contract, subjecting helpers to physical violence and sexual harassment in the homes in which they live and work.

One of the issues that has created particular concern is the policy of the Hong Kong immigration authorities regulating departure from Hong Kong when a helper's contract expires or is terminated. Normally, a woman is expected to leave Hong Kong within two weeks of that event. Where a helper has been dismissed unfairly and without the payment of wages due or other benefits, she may well have a claim that can be brought before the Labour Tribunal, the body responsible for dealing with most employment-related claims.

The Hong Kong authorities will permit a woman to remain in Hong Kong during the processing of a claim by the Labour Tribunal. However, she will not be allowed to work during that time, which can be a matter of many months. As a result, many women are forced to abandon their claims before the

Tribunal; the only other choices are to work illegally or to draw upon the hospitality of relatives or friends in Hong Kong.

In many cases, therefore, the effect of the immigration policy is that helpers are effectively denied access to the courts and tribunals of Hong Kong to have their claims litigated. This raises issues under article 14 of the ICCPR, among other instruments.

The two-week rule has been challenged in the courts of Hong Kong and has been the subject of consistent and vigorous opposition by foreign domestic helpers and the organizations which work for and with them. However, the government has refused to change the policy or to permit women who have cases before the Labour Tribunal to work while those cases are proceeding.

It seems unlikely that a challenge under Hong Kong's Bill of Rights would succeed, since that provides an exemption for immigration legislation governing conditions of stay. The only directly relevant ILO Convention on migrant workers that applies to Hong Kong appears to be ILO No. 97, the Convention concerning Migration for Employment (Revised 1949). That Convention provides in article 6 that migrants for employment are to be granted by the host state without discrimination as to nationality, race, religion or sex, "treatment no less favorable than that which nationals of the host state receive in a number of areas, including "legal proceedings relating to the matters referred to in [the] Convention."

- **Situation C: Violence against women in detention and trafficking of women in Pakistan**

A recent report on Pakistan prepared by the Human Rights Project of Human Rights Watch and Asia Watch.[2] considers a number of aspects of the treatment of women by the criminal justice system of Pakistan. It focuses in particular on the detention of women in police custody and the torture and ill treatment which they suffer. The report estimated that some 70% of

[2] *Double Jeopardy: Police Abuse of Women in Pakistan,* Asia Watch, Human Rights Watch

women in police custody in Pakistan are subjected to sexual or other physical abuse.

Quite apart from the discriminatory (in particular, the Hudood Ordinances) which have led to a considerable increase in the number of women in custody, the report found that little or no efforts had been made by the authorities to prosecute or otherwise punish those responsible for such violations.

The report also looks at trafficking in women in Pakistan, which it estimates as involving at least 100 to 150 women being brought into Pakistan each month. Once in Pakistan, they may be forced into prostitution, or be sold as commodities. The persons responsible for running this trade in women have largely gone unpunished; if the women involved complain or escape they may themselves end up in prison for immigration or Hudood offenses. The government of Bangladesh (from where many of the women come) nor the government of Pakistan appear to have done much to alleviate the plight of Bangladeshi women in Pakistani jails.

Pakistan is not a party to either of the International Covenants, the Convention Against Torture or the Convention on the Elimination of All Forms of Discrimination against Women. It is a party to the Racial Discrimination Convention. Both Pakistan and Bangladesh are parties to a number of conventions relating to slavery, trafficking in women and prostitution. These include the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1949.

- **Situation D: Violence against women in Brazil**

In an earlier report, the Women's Rights Project and Americas Watch considered the response of the Brazilian justice system to domestic violence against women. The report concluded that domestic violence against women was a widespread problem in Brazil and that domestic battery and rape were rarely punished. The report also examined the way in which the legal rules that provided for defenses of "honor" or violent emotion helped to legitimate violence against women.

Brazil is a party to the Convention on the Elimination of All Forms of Discrimination Against Women. It is a member of the Organization of American States, but is not a party to the American Convention on Human Rights. It is, however, a part to the Inter-American Convention to Prevent and Punish Torture.

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Regional Enforcement of Women's Human Rights: The European System

Christine Chinkin

European Institutional Frameworks

Europe is currently in a contradictory alien position with respect to the protection of human rights. On the one hand, the collapse of the former Soviet Union and the restoration of democratic regimes in Eastern Europe have led to wider membership of the specialist institutions, while on the other hand, respect for and protection of human rights have broken down in certain areas. The most dramatic example is in former Yugoslavia, but in other countries across Europe political transition, economic dislocation, unemployment, terrorism, and racial and religious hatred have spawned violence and threats to fundamental rights. Many of these have a particular impact upon women. In some countries, for example Poland, political democracy and the commitment to a market economy have diminished adherence to economic and social rights for women, including reproductive rights and access to affordable services such as child care. Trafficking and sexual exploitation of

women and children have greatly increased with large numbers of women from Eastern Europe being lured by the promise of economic prosperity elsewhere. The realities of life in Europe for many women must be remembered when the adequacy of the institutions for the protection of human rights is considered.

There are a number of different governmental institutions within Europe which have developed considerable human rights expertise, and which have been adopted as models within other regions. Strategies for promoting and protecting women's human rights must be considered within the existing frameworks of the Council of Europe, the European Community and the Conference on Security and Cooperation in Europe. While they offer a range of political and legal options, it is important to clarify the points of distinction.

The major legal institutions and the human rights instruments concluded under their auspices are:

1. The Council of Europe

The Council of Europe was formed in 1949 between western democratic European States. Its statutory principles are pluralist democracy, respect for human rights and the rule of law. Since 1989, its membership has increased as members of the former eastern bloc have joined or submitted applications to join.[1] The human rights instruments of the Council of Europe are:

- *The European Convention on Human Rights*, 4 November 1950, and 10 Protocols
- *The European Social Charter*, 18 October 1961, and Additional Protocol of 1988
- *The European Convention on Torture*, 26 November 1987

The European Convention contains a catalogue of the traditional civil and political rights,[2] although it includes family life (Articles 8 and 12). The European Social Charter contains a

[1] On 14 May 1993, Estonia, Lithuania, and Slovenia became members of the Council of Europe bringing its membership from that date to 29 states.

[2] Right to life (Article 2); right to be free from torture (Article 3); right to be free from servitude (Article 4); rights to liberty (Article 5); right to due process (Articles 6 and 7); right to freedom of thought (Article 9); right to freedom of expression (Article 10); right to freedom of association (Article 11).

catalogue of economic, social, and cultural rights. [3]Common Article 14 to these Conventions assert that:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

However, there is no specific provision ensuring the protection of the rights of women and children comparable to Article 18 of the African Charter of Human and People's Rights 1981. In the 1988 the Committee of Ministers adopted a Declaration on Equality of Men and Women which stated that "equality of women and men is a principle of human rights, upheld as a fundamental right in many international instruments" and that "sex related discrimination in the political, economic, social, educational, cultural and any other fields constitutes impediments to the recognition, enjoyment and exercise of human rights and fundamental freedoms."

2. The European Community

The constitutive treaty of the European Community, the Treaty of Rome, 25 March 1957,[4] includes provisions on equality in specific areas, for example equal pay for equal work (Article 119). This is reiterated in the European Union Treaty (Treaty of Maastricht) Article 6. The Treaty of Rome has been supplemented by Directives from the European Council (e.g., Equal Pay Directive 75/117; Equal Treatment Directive 76/207; Social Security Directive 79/7) and by Equality Action Programs.

3. The Final Act of the Conference on Security and Cooperation in Europe, August 1975 (CSCE)

The Final Act, the Helsinki Accords, comprised 35 states, all European states except Albania and the United States and Canada. The Helsinki Accords do not create any binding legal obligations but are an important statement of political intent and

[3]For example, the right to work and associated rights (Article 1-10); the rights to social security (Article 12); the right to social and medical assistance (Article 13). People accorded special protection include mothers and children and migrant workers and their families.

[4]There are currently 12 member states of the European Community.

commitment. Part VII affirms the respect for a wide range of human rights including freedom of thought, conscience and religion "without distinction as to race, sex, language or religion." Follow-up Conferences expanded the commitment to the protection of human rights and the collapse of communism in Eastern Europe led to emphasis on the rule of law, free elections and protection of minorities.

Procedures for the Implementation of Human Rights

The membership of each of these institutions is different, as are the substantive rights, powers, and procedures under each of the instruments. Women living in Europe who wish to use the regional machinery to protect their human rights must therefore first determine which of these instruments apply to them.

Perhaps the most important procedural difference between the instruments is that binding judicial determination is only possible under the European Convention on Human Rights and the Treaty of Rome. Although there are now monitoring procedures under CSCE, the Helsinki Accords is not an enforceable international agreement and there is no comparable enforcement machinery under the European Social Charter.

1. Machinery for the Enforcement of the European Convention on Human Rights

The machinery under the European Convention on Human Rights is the most developed and is applicable to the largest number of member states within Europe. It will therefore be discussed in more detail than the other institutional mechanisms.

The European Convention operates through the European Commission of Human Rights, the Committee of Ministers and the European Court of Human Rights. There is provision for inter-state complaint (Article 24) and for individual application (Article 25), provided the state in question has accepted the rights of individual complaint. Complaints are considered in the first instance by the Commission which undertakes a fact finding inquiry. The Commission also has the function of attempting to bring about a friendly settlement through

conciliation between the individual and the government concerned. If conciliation proves impossible, the Commission prepares a report in which it sets its findings of fact and its own opinion. This report is not binding. The case may be submitted to the European Court on Human Rights, if the state party has accepted the jurisdiction of the Court (Article 46). Only the High Contracting Parties and the Commission have the right to bring the case before the Court. The individual has no right to do so (Article 45). The Court has the power to make a binding decision and if it finds a breach of the Convention has occurred, may order satisfaction (Article 50). If a case is not referred to the Court, the Committee of Ministers decides by a two-thirds majority whether a breach of the Convention has occurred (Article 32).

A considerable jurisprudence has been developed under the European Convention which has given weight to its provisions. There has been a high level of compliance by governments and there have been a number of decisions which have prompted women's rights either directly or which are open to be used by future advocates in ways which would be of benefit to women. These include:

- ***Cyprus v. Turkey*, Application No 6780/74; 6950/75 (10 July 1976)**

The European Commission found that rapes committed by Turkish officers and soldiers could be imputed to the occupying power, Turkey, and constituted inhumane treatment contrary to Article 3. This constitutes an important precedent on the treatment of women during armed conflict. The case also illustrates the advantages of the inter-state procedure, although it is little used. There is no requirement for a named victim of violation of rights as there is with individual applications and it allows a systematic practice of a state to come under scrutiny. However, it does require one state to bring a complaint against another member state, which is rarely done.

- ***Airey v. Ireland*, 32 European Court on Human Rights (Series A) (1979)**

The Court held that respect for family life requires positive steps by the state party, including in this case provision of legal

aid for an indigenous wife seeking judicial separation from her violent husband.

- ***Open Door Counseling, Ltd. and Dublin Well Women Centre, Ltd. v. Ireland*, Series A No 246 (1992)**

The right to freedom of expression required that the Irish government did not prevent women in Ireland from receiving information about abortion services available in England.

- ***Abdulaziz, Cabales and Balkandali v. UK*, 94 European Court on Human Rights (Series A) (1985)**

This was a traditional case of discrimination in the context of immigration. British law demanded that women, but not men, lawfully residing in the United Kingdom meet certain requirements before their foreign spouses could join them. The Court held that this violated privacy rights as well as being discriminatory. Discrimination was only permissible if there were "weighty" reasons justifying it. None existed here.

- ***Marckx v. Belgium*, 31 European Court of Human Rights (Series A) (1979)**

In this case, laws concerning the status of illegitimacy were challenged. The Court held that Article 8 does not define the concept of a family and that single parent families must also be accorded respect. Further, ensuring respect for the family does not merely require the state not to interfere, but may also require positive state action. "This means . . . that when a state determines in its domestic legal system the regime applicable to certain family ties such as those between an unmarried mother and her child, it must act in a manner calculated to allow those concerned to lead a normal family life."

- ***X and Y v. the Netherlands*, 91 European Court on Human Rights (Series A) (1985)**

In this case, the Netherlands was held to be in breach of the Convention through inadequacy of its criminal law. A gap in the law meant that there was no action available to a 16 year old mentally retarded child who had been sexually abused. The Court held that respect for family life includes positive

obligations upon states and may require the adoption of measures designed to secure respect for private life even in the sphere of individual relations. Although this case was not directly about women, the finding of state liability for private actions could be applied, for example, to the failure of a state to apply its criminal law to prosecute private acts of violence against women. It is an extremely important statement that states may be held internationally responsible for private actions.

However, in *Bruggemann and Scheuten v. Germany,* 21 YB 638, the Commission held that the right to privacy does not guarantee a woman's right to abortion.

Despite these advantageous cases, there are also some significant disadvantages to the procedures under the European Convention which weaken their effectiveness.

- **Many applications are found to be inadmissible.** Petitions are not accepted by the Commission if they are anonymous, manifestly ill-founded, or incompatible with the Provisions of the Convention. An application will not be considered if it has already been submitted to another procedure of international investigation or settlement and contains no new information. All domestic remedies must first be exhausted. Legal aid may not be available for the pursuing of domestic remedies; the Commission may grant legal aid in appropriate cases, but this is far from guaranteed. Issues relating to the difficulties of access to justice which apply in domestic jurisdictions are especially applicable to international machinery.
- **A named victim of a violation has to be willing to pursue the case at what may be considerable personal and material cost.** It must be remembered that the procedures include attempted settlement with the government concerned under the auspices of the Commission. This may cause great anxiety for an individual. Even when the Commission finds favor of the application, there is no guarantee that the case will be referred to the Court. The situation may be improved when Optional Protocol Number 9 comes into effect as that will allow a

person, non-governmental organization or group of individuals who have made the complaint to refer it to the Court in certain circumstances. [5]However, this will only apply to states which have accepted the Protocol. The value of an individual judgment is also questionable given the structural and economic disadvantages faced by so many women in Europe.

- **Even when found admissible, the proceedings take an extremely long time** and there is an ever-growing backlog of cases. The current average period from application to a decision of the Court is 5 years. The decision on admissibility takes on average slightly over a year and there may be lengthy domestic proceedings before the application process. There is no provision for interim measures as in the International Court of Justice. With the increased membership of the Council of Europe consequent upon the collapse of socialism in Eastern Europe, it is envisaged that this problem will worsen. While it is important to note that membership of the Council of Europe and of the European Convention on Human Rights provides women from Eastern Europe for the first time with regional machinery for the implementation of their rights, the system may be in danger of collapse. Over 1800 new cases were commenced in 1992. Both the Commission and Court may sit in Chambers of 7, but in cases of importance, the full Court may sit. Procedures before and decisions by a Court comprising a judge from each member state of the Council of Europe are extremely cumbersome. Suggestions for radical procedural reforms have been made and two reform proposals are currently under review. The first is for a single, full-time Court and the second is for a two-tier judicial system with the Commission functioning as a court of first instance, and the Court exercising appellate jurisdiction.
- **The Convention is not directly applicable in all member states** of the Council of Europe (e.g., the United Kingdom). Its application by Courts in such countries is

[5]The Protocol was opened for signature November 1990. It will come into force three months after 10 states have consented to be bound by it.

not required and it does not therefore substitute for a domestic Bill of Rights.

- **The European Convention on Human Rights covers primarily civil and political rights**, not economic, social, and cultural rights which often are more applicable to women. Implementation of the Social Charter relies upon a reporting and supervisory system which involves examination of periodic government reports by an independent Committee of Experts, and a Governmental Committee report to the Committee of Ministers. The latter may "make to each Contracting Party any necessary recommendations." The Parliamentary Assembly also draws up for the Committee of Ministers its opinion on the adequacy of implementation of the Charter by member States. There is no system of full investigation by the Commission and, possibly, judicial determination.
- **The institutions of the Council of Europe remain male-dominated** and the jurisprudence reflects the traditional male-oriented approach. While some of the case law has potentially far-reaching implications for women, it will be necessary for gender aware advocates to make the connections and for the decision-makers to accept these arguments. Gender awareness training which goes beyond the concept of equality is required at all levels.
- **There are gaps within the Conventional provisions.** For example, there is no specific prohibition of violence against women, or trafficking in women. While the Conventions are supplemented by other international instruments it would be desirable for the more effective enforcement mechanisms of the European Convention to be applicable to such rights.

Machinery Available Within the European Community

Only members of the European Community are parties to the Treaty of Rome. The Treaty of Rome human rights provisions are more limited than the catalogue of human rights in the European Convention and are directed towards the political and economic objectives of the European Community. However, directives are directly applicable in member states and

decisions of the European Court of Justice are binding upon European Domestic Courts. Further, the European Court of Justice has concerned itself with questions of human rights and has held that some of the principles of the Convention constitute general principles of European law. European law is superior to domestic legislation and can be used both to supplement its gaps and to challenge directly contrary domestic law. There are four procedures that can be used: petition procedure; European Parliament intervention; infringement procedures (political procedures); and reference to the European Court under Article 177 (judicial procedure). This last rests upon the obligation of conformity between domestic law and Community law. While European law allows for the identification and bringing of test cases before the European Court, the problems of expense, finding a person willing to have her case so used and the uncertainties of judicial interpretation may make this an expensive and unpredictable strategy.

Conference on Security and Cooperation in Europe

In January 1989, a mechanism for monitoring human rights within the CSCE framework was instituted. The so-called CDH mechanism provides participating states with four methods of raising cases and situations:

1. a request for information from other participating states;
2. through provision for bilateral meetings between participating states;
3. through diplomatic channels; and
4. raising situations and cases at meetings of the Conference on the Human Dimension or CSCE follow-up meetings.

In 1990, participating states agreed to provide written responses to written requests for information from participating states in as short a time as possible and always within four weeks, and to ensure that bilateral meetings take place as quickly as possible, as a rule within three weeks of the request.

The effectiveness of these methods depends upon the political willingness of states to take up cases and situations with other participating states, either bilaterally or more widely.

Lobbying of domestic governments therefore remains important.

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The Regional Enforcement of Women's Human Rights: The Inter-American System

Marcela Rodriguez

The Inter-American system presents a dual institutional structure, one having developed from the Charter of the Organization of American States and the other composed of mechanisms set forth in the American Convention on Human Rights. This system recognizes the existence and defines the fundamental rights, institutes obligatory standards of behavior in order to promote and protect these rights, and creates the means to supervise the observance of human rights.

The bodies in charge of carrying out the enforcement of human rights in the Inter-American system are: the Inter-American Commission for Human Rights, the Inter-American Court of Human Rights, and the General Assembly of the Organization of American States. The legal sources of the rights to be protected and the pertinent procedures can be found in: the Charter of the OAS, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, and the Statutes and Regulation of the Court and Commission.

Background

The Inter-American system for the promotion of human rights was first organized under the Organization of American States. The Ninth International Conference of American States, held in Bogota in 1948, created the Charter of the Organization of American States as well as the Inter-American Declaration of the Rights and Duties of Man. The original OAS Charter called for the American States to "proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex," as one of the principles on which the organization is based. With the adoption of the Protocol of Buenos Aires in 1967, the Charter's human rights protections were amended to include some important human rights features, including the formal acceptance of the Inter-American Commission for Human Rights as an OAS charter organ.

The American Declaration of the Rights and Duties of Man consists of a Preamble and 38 articles which define the rights protected and correlative duties. It also states the "the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality," meaning that they are independent of its recognition by the state.

The institutional structure of the Inter-American system for the promotion and protection of human rights, embraced a significant transformation with the adoption of the American Convention on Human Rights in San Jose, Costa Rica in 1969. Its Preamble expresses that the purpose of the Convention is to "consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man." Part I of the Convention establishes the obligations of the state to respect the rights and freedoms recognized therein, and its duty to adopt the necessary measures to ensure the free and full exercise of those rights and freedoms, without any discrimination for the reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

There is a definition of the rights and freedoms protected, particularly the civil and political ones. In Article 26, it establishes that the states themselves undertake only to "adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving, progressively, by legislature or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States." Part II of the Convention organizes the means of protection--the Inter-American Commission of Human Rights, the organs that have "competence with respect to matters relating to the fulfillment of the commitment made by the states parties to this Convention."

To apply these mechanisms to expand the women's human rights framework, it is necessary to analyze the structure and functions of these organs, the range of procedures establishing the rules of the standing, process and adjudication, and also some relevant cases.

The Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights has a dual status:

- it is an organ of the Organization of American States, created to promote the observance and defense of human rights and to serve as consultative organ of the Organization in this matter and
- it is also an organ of the American Convention on Human Rights.

The Inter-American Commission on Human Rights is composed of seven members, who shall be persons of high moral character and recognized competence in the field of human rights. They are elected by secret ballot of the General Assembly of the Organization from a list of candidates proposed by the governments of the member states. No two members of the Commission can be nationals of the same state. Each state can nominate up to three candidates for the Assembly election. A state may nominate its own nationals, and if a state chooses to submit three names to the Assembly, at least one must be a non-

national of that state. They are elected for a term of four years. The Commission shall represent all the member countries of the Organization of American States.

The Commission shall meet for a period not to exceed a total of eight weeks, divided into however many regular meetings the Commission may decide. It may also convene special sessions. The sessions of the Commission shall be held at its headquarters, however, the Commission may decide to meet elsewhere. An absolute majority of the members of the Commission constitutes a quorum.

The main task of the Commission is to promote respect for and the defense of human rights. The Commission's functions are:

1. to protect and promote human rights in all OAS member states;
2. to advise OAS member states with regards to the adoption of progressive measures in favor of human rights in the framework of their legislation, constitutional provisions and international commitments, as well as appropriate measures to further the observance of those rights;
3. to assist in the outline of human rights documents;
4. to intervene in serious human rights conflicts;
5. to elaborate country reports on human rights situations;
6. to carry out on-site investigations with the consent or at the invitation of the government in question;
7. to handle complaints related to human rights violations and to introduce individual cases by itself;
8. to participate in the handling of cases and advisory opinions before the Court;
9. to request the Inter-American Court of Human Rights to take such provisional measures as it considers appropriate in serious and urgent cases which have not yet been submitted to it for consideration, whenever this becomes necessary to prevent irreparable injury to persons;
10. to request the governments of the member states to supply it with information about human rights issues;

11. to request advisory opinions from the Court concerning the interpretation of the American Convention or other treaties related to human rights;
12. to submit an annual report to the General Assembly of the Organization of American States.

With respect to those member states of the Organization that are not parties to the American Convention on Human Rights, the Commission has the following powers:

1. to supervise the observance of the human rights referred to in the American Declaration of the Rights and Duties of Man;
2. to examine communications and any other information submitted to it, to address the government of any member state for information deemed pertinent by this Commission and to make recommendations to it, in order to bring about more effective observance of fundamental human rights, provided that the domestic legal procedures and remedies have been duly applied and exhausted.

Communications and Individual Petitions

The Convention establishes that "[a]ny person or group of persons, or any non-governmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission, on one's behalf or on the behalf of third persons, containing denunciations or complaints or violations of human rights recognized in this Convention by a state party or in the Declaration of the Rights and Duties of Man.

The Commission shall receive and examine any petition that contains a denunciation of alleged violations of the human rights set forth in the American Declaration of the Rights and Duties of Man, concerning the member states of the Organization that are not parties to the American Convention on Human Rights.

A state party may present a communication against another state party. Any state party may, when it deposits its instrument of ratification of or adherence to the Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a

state party alleges that another state party has committed a violation of a human rights set forth in the Convention. These communications may be admitted and examined only if they are presented by a state party that has made a declaration recognizing the competence of the Commission.

The Convention establishes the following requirements for the petitions:

1. the name, nationality, profession or occupation, postal address or domicile, and signature of the person or persons making the denunciation; or in a case where the petitioner is a non-governmental entity, its legal domicile or postal address, and the name and signature of its legal representative or representatives;
2. an account of the act or situation that is denounced specifying the place and date of the alleged violations and if possible, the name of the victims of such violations as well as that of any official that might have been appraised of the act or situation that was denounced;
3. an indication of the state in question which the petitioner considers responsible, by commission or omission, for the violation of a human right recognized in the American Convention on Human Rights in the case of state parties, even if no specific reference is made to the article alleged to have been violated;
4. information on whether the remedies under domestic laws have been exhausted or whether it has been impossible to do so.

The petition shall be lodged in writing. The petitioner may appoint, in the petition itself, or in another written petition, an attorney or other person to represent him before the Commission.

The Commission will consider the petition or communication admissible if:

1. the petition or communication is lodged within a period of six months from the date on which the party alleging violations of his/her rights was notified of the final judgment;

2. the statements of the petitioner or of the state indicate that the petition or communication is not manifestly groundless or obviously out of order;
3. the subject of the petition or communication is not pending in another international proceeding for settlement or it does not duplicate a petition pending or already examined and settled by the Commission or by another international governmental organization of which the state concerned is a member; and
4. the remedies under domestic law that have been pursued and exhausted in accordance with generally recognizing principles of international law.

This last requirement is not demanded when:

1. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
2. the party alleging violation of his/her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
3. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

When the petitioner contends that he is unable to prove exhaustion as indicated, it shall be up to the government against which this petition has been lodged to demonstrate to the Commission that the remedies under domestic law have not been previously been exhausted, unless it is clearly evident from the background information contained in the petition.

When the Commission considers that the petition is inadmissible or incomplete, it shall notify the petitioner, whom it shall ask to complete the requirements omitted in the petition.

The Commission may, at its own initiative, or at the request of a party, take any action it considers necessary to carry out its functions. It may also consider that provisional measures should be taken in urgent cases in order to avoid irreparable damage to persons.

If the Commission considers the petition or communication admissible, it shall send the government of the state indicated as being responsible for the alleged violations a transcript of the

petition or communication and request the pertinent information. The Commission shall request the government to provide the information within ninety days. The Commission may also request the promptest reply from the government in serious and urgent cases, or when it is believed that the life, personal integrity, or health of a person is in immediate danger. The government of the state in question may, with justifiable cause, request a thirty day extension, but in no case shall extensions be granted for more than one hundred and eighty days after the date on which the first communication is sent to the government of the state concerned.

The facts reported in the petition transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

The pertinent parts of the reply and the documents provided by the government shall be made known to the petitioner who shall be asked to submit his/her observations and any available evidence to the contrary within thirty days. These observations and documents shall be transmitted to the government, which shall be allowed to submit its final observations within thirty days.

At this stage, the Commission shall determine whether the grounds for petition or communication still exist. If they do not, the Commission shall order the record to be closed. If the record is not closed, the Commission shall examine the matter in order to verify the facts. When the Commission considers that it is necessary, the Commission may carry out an on-site investigation for which the state should provide all necessary facilities. The on-site investigation is important in the Inter-American system since it helps to face practical and political impediments. The economic situation sometimes makes it impossible for poorer victims to access legal assistance and the Commission. In addition, there is certain information that can only be gathered on-site.

Finally, the presence of the Commission may prevent retribution against victims or witnesses and sometimes can prevent

further violations of human rights. The Commission may also request further relevant information and, it may also hear oral statements or receive written statements from the parties.

In such cases where a state's alleged practice may involve massive violations which may be hard to document on an individual basis, the Commission has instituted a type of "class action" method for fact-finding. It uses a lesser burden of proof for cases of difficult investigation, for example, the practice of "disappearances" carried out in Latin American countries over the last thirty years. A staff member of the Commission expresses that:

"Since 1965, the Commission has received about 9,000 individual cases . . . . [In the Inter-American system], we do not have, at least not as of yet, a two-stage procedure which, first, considers the admissibility of a complaint, and second, considers the merits. Many of our cases are very similar in that they deal with fact situations which tend to establish a certain modus operandi on the part of the authorities. These cases are not proven in the way you would have to try a case in a domestic criminal court. For example, some 4,000 new cases were opened as a result of the Commission's on-site investigation in 1979 in Argentina. And, most of these cases, which were individually filed, dealt with the phenomenon of disappearances. The Commission did not consider each case individually to determine whether all of the elements of a disappearance had been met; rather, it interpreted its function as using the cases as evidence of the practice of disappearances in the preparation of a country study on the situation of human rights in Argentina."[8]

In many ways, by expediting determinations of fact, to the benefit of the petitioner, in cases difficult to verify on an individual basis, the Commission accepts cases which it might otherwise reject. Strict rules of admissibility and fact determination might bar most of these cases if they were considered individually.

At any stage of the proceeding, the Commission shall place itself at the disposal of the parties concerned, at the request of any of the parties, or on its own initiative, with a view to

[8]Cerna, 2. Conn. at 314

reaching an amicable settlement of the matter on the basis of respect for the human rights recognized in the Convention. The nature of the matter must be susceptible to the use of the friendly settlement procedure. If the Commission considers that the nature of the case is not susceptible to a friendly settlement; or, that one of the parties does not consent to the application of this procedure; or does not evidence goodwill in reaching a friendly settlement based on respect for human rights, the Commission, at any stage of the procedure shall terminate its role as organ of conciliation.

When a friendly settlement has been reached, the Commission shall draw up a report containing a brief statement of the facts and of the solution reached or, at the request of any party, a more extensive report. The report shall be transmitted to the petitioner and to the states parties to this Convention, and to the Secretary-General of the OAS for publication.

When a friendly settlement is not reached, or the case is not susceptible to this procedure, the Commission shall examine the evidence provided by the government in question and the petitioner, evidence taken from documents, records, official publications, or information gathered from an on-site investigation. After this examination, the Commission shall prepare a report setting forth the facts and conclusions regarding the case and make the proposals and recommendations it considers pertinent within a period of one hundred and eighty days. The Commission may prescribe a period within which the government in question must take the necessary measures to redress the situation. The written and oral statements made by the parties shall also be attached to the report which shall be transmitted to the states concerned who are not at liberty to publish it.

When the prescribed period (usually three months) has expired, the Commission shall decide by the vote of an absolute majority of its members whether the state has taken adequate measures and whether to publish its report. The report may be published by including it in the Annual Report to be presented by the Commission to the General Assembly of the Organization or in any other way the Commission may consider suitable.

Any government of a state party to the American Convention on Human Rights, which has accepted the competence of the Commission to receive and examine communications against other state parties, may present one of these communications. The communication shall be transmitted to the state party in question, whether or not it has accepted the competence of the Commission. In the last case, the state concerned may exercise its option to recognize the Commission's competence in the specific case. Once the state has accepted the competence of the Commission, the corresponding procedure shall be governed by the provisions of Chapter II of the Convention.

The Commission may decide to refer a case to the Inter-American Court of Human Rights if a state party to the Convention has accepted the Court's jurisdiction. The executive Secretary of the Commission shall immediately notify the Court, the government of the state in question and the petitioner and offer her the opportunity of making observations in writing on the request submitted to the Court. If the state party has not accepted the Court's jurisdiction, the Commission may call upon that state to make use of the option to recognize the Court's jurisdiction in the specific case.

To refer a case to the Court, the Commission shall submit a request specifying:

1. the parties who will be intervening in the proceedings before the Court;
2. the date on which the Commission approved its report;
3. the names and addresses of its delegates;
4. a summary of the case; and
5. the grounds for requesting a ruling by the Court.

The Commission shall also transmit to the Court at its request, any other petition, evidence, document, or information related to the case.

The Inter-American Court of Human Rights

The American Convention establishes the Inter-American Court of Human Rights as an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights.

The Inter-American Court is presided by seven judges, nationals of the member states, elected in an individual capacity from among jurists of recognized competence in the field of human rights. They are elected by secret ballot by absolute majority vote of the states parties to the Convention, in the General Assembly of the Organization, for a term of six years. No two judges can be nationals of the same country. The states members may submit up to three nominations who can be their own national or nationals of any other OAS member state. If a state submits three nominees, at least one must be a non-national of that state. If a judge is a national of a state which is party to a case, the judge may hear the case. If there is a judge who is national of one of the states involved in a case, "any other state party in the case may appoint a person of its choice to serve on the Court as an ad hoc judge."" Furthermore, if there are no nationals on the Court from any of the states involved in a dispute each has the right to appoint an ad hoc judge.

The Court shall meet in two regular sessions each year , but special sessions may be convened by the President or at the request of the judges. Five judges constitute a quorum for the transaction of business by the Court. The hearings are public, unless the Court in exceptional circumstances decides otherwise. The Court deliberates in private.

The Inter-American Court has adjudicatory or contentious and advisory jurisdiction. In the first case, the Court handles individual or state complaints about human rights violations committed by the states parties to the American Convention interpreting and applying the provisions of the Convention, after the procedures before the Commission have been exhausted. In order to bring a case against a state, the state party must have recognized the jurisdiction of the Court. With respect to advisory jurisdiction, the Court may give its opinion with respect to the content and scope of the rights recognized by the Convention, to the interpretation of the Convention or other treaties related to the human rights protection or to the compatibility of domestic laws and the American Convention or other human rights treaties. This right of consultation also extends to the organs listed in Chapter X of the OAS Charter, within their sphere of action.

The Commission shall appear in all cases before the Court. Only states parties and the Commission have the rights to submit a case to the Court. The parties shall be represented by agents who may have the assistance of advocates, advisors, or any other person of their choice. The Commission shall be represented by the delegates whom it designates. When a state party or the Commission intend to bring a case before the Court, they shall file with the Secretary an application, the human rights involved, and the name and address of its agent or delegates. If two cases which have common elements are brought before the Court, it shall decide whether to join the cases.

A preliminary objection may be raised, in twenty copies, no later than the expiration of the time fixed for the beginning of the written proceedings, setting out the facts and the law on which the party may wish to produce. The Court shall fix the time-limit within which another party may present a written statement of its observation and submissions. After receiving them, the Court shall give its decision on the objection.

In cases of extreme gravity and urgency, the Court may, *motu propio*, or at the request of the parties, take any provisional measure it considers necessary to avoid irreparable damage to persons, at any stage of the proceedings.

The proceedings before the Court shall consist of a written and oral part. The written part includes a Memorial and a Counter-Memorial and, in special circumstances, the Court may admit additional written submissions such as a Reply and a Rejoinder. A Memorial shall include a statement of the relevant facts, a statement of law and the submissions. A Counter-Memorial shall contain an admission or denial of the facts stated in the Memorial, any additional facts, observations related to the statement of law in the Memorial, and a statement of law in answer to that, and the submissions.

When the case is ready for the hearing, the President shall fix the date for the oral proceedings, after consulting the agents of the parties and the delegates of the Commission. At the request of the parties or *motu propio*, the Court may decide to hear

witnesses, experts, or any other person whose testimony could be relevant for the case.

As the court is an international tribunal, it has its own specialized procedures and the principles of domestic legal procedures are not automatically applicable. The international protection of human rights should not be confused with criminal justice. Therefore, direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered. The Court may utilize circumstantial evidence, *indicia*, and presumptions consistent with the facts. The state cannot argue that the petitioner has failed to present evidence when it cannot be obtained without the state's cooperation. The objective of international human rights law is not to punish but to protect the victims of human rights violations and to repair the damages resulting of the action or omission of the states responsible.

The Convention establishes that "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his rights or freedoms that were violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

The judgments of the Court are final and are not subject to appeal. The judgment must contain:

1. the names of the judges and the Secretary;
2. the date on which it was delivered at a hearing in public;
3. a description of the party or parties;
4. the names of agents, advocates, or advisors of the party or parties;
5. the names of the delegates of the Commission;
6. the facts of the case;
7. the legal arguments;
8. the operative provisions of the judgment;
9. the allocation, if any, of compensation;
10. the decision, if any, in regard to costs;
11. the number of judges constituting the majority; and,

12. a statement as to which text is authentic.

Within ninety days of the notification of the judgment, the parties may request the Court to interpret it with regards to the meaning or scope of the judgment. The states parties to the Convention undertake to comply with the judgment of the Court. The compensatory damages may be executed in the country concerned in accordance with domestic procedure governing in the execution of judgments against the state.

The request for an advisory opinion on an interpretation of the Convention shall indicate the provisions to be interpreted, the considerations giving rise to the consultation, and the name and address of the agent of the applicant. If the request concerns an interpretation of other treaties related to the protection of human rights in the American states, it shall indicate the name of, and parties to, the treaty, the specific questions on which the opinion of the Court is sought, and the considerations giving rise to the consultation. When the request for an advisory opinion refers to domestic laws, it shall identify:

1. the domestic laws, the provisions of the Convention and/or international treaties forming the subject of the consultation;
2. the specific questions on which the opinion of the Court is sought;
3. the name and address of the applicant's agent.

The Inter-American System and Women's Rights

Concentrating on the employment of the Inter-American system in order to promote and protect women's rights, both the American Declaration of the rights and Duties of Man and the American Convention on Human Rights have an "equal protection clause." The American Declaration in Article 2 establishes that "[a]ll persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed, or any other factor." In the terms of Article 1 of the American Convention, the states parties undertake to respect the rights and freedoms recognized by the Convention, and to ensure their free and full exercise without any discrimination for reason of sex. Further, in Article 24, it states that "[a]ll persons are equal before the law.

Consequently, they are entitled, without discrimination, to equal protection of the law.

Examples

I will refer to one case decided by the Inter-American Court, the *Velazquez Rodriguez* case. Although it is not related to women's rights, it may be of the utmost importance for the defense and promotion of our rights.

Angel Manfredo Velazquez Rodriguez was a student who was detained and tortured by the armed forces of Honduras. The government denied that he was being held. His case was one of more than a hundred disappearances in Honduras. The Commission concluded that Honduras had seriously violated Article 4 and 7 of the Convention, which protect the right to life and personal liberty and referred the case to the Court.

The Inter-American Court has considered in the *Velazquez Rodriguez* case (judgment of August 17, 1990) that any impairment of the rights recognized by the Convention which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable by the state, which assumes responsibility in the terms provided by the Convention. For this reason, the Court decided that Honduras had violated Articles 1(1), 4, 7, and 51 of the Convention and that fair compensation had to be paid to the relatives of Mr. Velazquez. On July 21, 1989, the Court determined appropriate compensation to be approximately US$375,000. The Court also asserted that Honduras was obliged to investigate the disappearance of Mr. Velazquez, and to punish the perpetrators of the human rights violations as well as to prevent future disappearances.

I will concentrate on some grounds of this decision. In the first place, Article 1(1) of the Convention expresses that the state parties "undertake to respect the rights and freedoms" recognized by the Convention. This implies that the exercise of public authority has certain limits and that the human rights constitute definite domains that are beyond the reach of the state. But Article 1 also establishes the obligation of the states parties to "ensure" the free and full exercise of the rights

recognized by the Convention to every person subject to its jurisdiction, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. As a consequence, the states parties have the duty to organize the governmental structures in order to make them able to accomplish this obligation of ensuring the free and full enjoyment of human rights.

In addition, Article 2 of the Convention establishes that "[w]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the states parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights and freedoms." For this reason, the obligation to ensure the free and full exercise of human rights is not fulfilled by the mere existence of a legal system, but it also demands that the government take affirmative measures and provide the means necessary for full realization of human rights.

In the *Velazquez Rodriguez* case, the Court clarified the conditions under which the violation of the rights recognized by the Convention can be imputed to a state party thereby establishing its international responsibility. In the first place, a state is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority. But the state is also responsible when it does not prevent, investigate and punish human rights violations and allows private persons or groups to act freely and with immunity to the detriment of the rights recognized by the Convention. The Court expressed that "[a]n illegal act which violates human rights and which is initially not directly imputable to a state (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the state, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention."

The states parties have the obligation to take the adequate measures to prevent human rights violations, to investigate them, and to punish the persons found responsible and, if possible attempt to restore the rights violated and provide compensation for damages resulting from the violation. These measures include those of a legal, political, social, administrative and cultural nature which are necessary for the protection and promotion of human rights.

This judgment is of the utmost usefulness to expand current ideas of state responsibility. A broadened concept of state responsibility will permit the inclusion of violations of women's rights perpetrated directly by the state, as well as the failures of the states to protect these rights from abuses committed by non-state actors, an the decline of the states to provide the basic resources or essential means for a free and full enjoyment of these rights.

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Regional Enforcement of Women's Human Rights: The African System

Akua Kuenyehia

Background of the African Commission on Human and People's Rights (ACHPR)

The African Commission on Human and People's Rights was established in 1987 after the coming into force of the African Charter on Human and People's Rights on October 21, 1986. The Charter was adopted by the Assembly of Heads of State and Government of the Organization of African Unity (OAU) in 1981.

ACHPR consists of eleven members of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights (Article 31). The members of the Commission are to serve in their personal capacity and solemnly declare to discharge their duties impartially and faithfully. They are elected by the Assembly of Heads of State and Government for a term of six years. The ACHPR presently meets twice in a year and its primary task is

to promote human and peoples' rights and to ensure their protection in Africa (Articles 30 and 45).

The African Charter and the Rights of Women

The African Charter reaffirms faith in fundamental human rights, in the dignity and worth of the human person and proclaims the equal rights of men and women and of nations large and small. The charter provides in Article 18(3):

"The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions."

Thus, the charter provides a deliberate linkage between it and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The article also makes applicable other declarations such as the Universal Declaration of Human Rights. Such declarations are made legally binding on the states since the Charter establishes binding obligations for states parties.

In addition to Article 18, Article 1 of the Charter provides:

"The member states of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in their Charter and shall undertake to adopt legislative or other measures to give effect to them."

The Goals and Procedures of the ACHPR in Promoting and Protecting Human Rights

The mandate of the Commission extends to formulating and laying down principles and rules aimed at solving legal problems relating to human and people's rights and fundamental freedoms upon which African governments may base their legislation. The Commission may also receive communicantions from states, individuals and NGOs.

The Commission will receive a case for consideration only after local remedies have been exhausted. Exhaustion of local remedies in most cases means that the complaint must be

brought before the highest Court of Law competent to deal with the matter and making use of the available remedies and respecting time limits.

On considering a complaint, the Commission cannot grant a remedy against a state party, neither can it bind a state party to any decision. The Commission's power is limited to submitting a report of its finding to the Assembly of Heads of State and Government which has the power to determine the course of action to be taken, if any.

Under Article 57 of the Charter, all communications have to be brought to the attention of the state concerned. In the past, the Commission interpreted this provision rather restrictively and deferred cases over a long period of time. The Comission would not take action until the state concerned responded, which did not occur in most cases. However, at its 12th Session in October 1992, the Commission agreed on a new procedure to expedite the complaints. Presently, it will consider a complaint if the state concerned does not respond in writing within 5 months from the date of notification of the text of the communication.

ACPHR and the Prospect for Women's Rights: A Case for Improvement

The African Commission is mandated to interpret the African Charter on Human and People's Rights, as well as undertake studies and research on African problems in the field of human and people's rights, and make recommendations to governments among other things. The issue of women's human rights in Africa is a priority issue and would be an appropriate issue for the Commission to undertake to investigate. The Commission could undertake the necessary studies and research that will lead to a proper confrontation of the problem of women's human rights in Africa. There are, however, certain structural weaknesses in the African Commission which for the present, will hamper the effective implementations of its mandate. For example, the Secretariat of the Commission is at the moment in no position to undertake any studies due to lack of resources. Additionally, even the Commission can receive

communications from individuals as well as NGOs on violations of human rights by state parties, Article 59 provides that:

"All measures taken within the provisions of the present Chapter (on the procedure of the ACPHR) shall remain confidential until such time as the Assembly of Heads of State and Government shall otherwise decide."

This has been interpreted by the Commission to mean that it cannot mention the cases nor the countries against which a complaint is made. This lack of publicity has served to erode confidence in the Commission. Potential petitioners do not feel that is worth taking their complaints to the Commission. It is a well known fact, that it is publicity which provides protection to the victim in individual cases. Even though Article 59 (2) provides that the Chairman of the Commission shall publish its reports on individual cases upon the decision of the Assembly of Heads of State and Government, presently no communication has reached that stage, thus far no decision has been taken by the AHSG.

Thus, even though the Commission is theoretically a tool for the promotion and protection of human rights in Africa, especially the human rights of women, there are certain weaknesses highlighted above in the Charter which ought to be seriously considered by the OAU if the Commission is to serve its purpose.

It can however be said that the Commission is still in its formative stages and some of these problems can be resolved to make it more effective. Indeed, at its 12th Session the Commission addressed this issue of confidentiality and agreed in principle to publish some basic information on the cases before it, such as the names of petitioners and states complained against and some indications of the substance of the complaints.

As far as studies and research on human rights issues are concerned, as already mentioned, the Charter gives the Commission a wide mandate. However, to respond to this comprehensive mandate, the Commission needs proper secretarial assistance, which has so far not materialized, given the financial crisis within the OAU. The Commission is at the moment grappling with the problem of accepting external assistance for its

promotional activities and it remains to be seen whether the Commission can meet its obligations in the field of promotion or whether this will be done by NGOs.

Cooperation with NGOs

The Commission has paid particular attention to cooperation with both African and International NGOs and has accorded observer status to over 90 NGOs. Since the 10th Session, the International Commission of Jurists, jointly with the Commission and local NGOs, and with the help of donors, organizes regular workshops on NGO Participation in the Work of the African Commission over three days preceding the Commission's session. The third workshop focused on exhaustion of local remedies, the right to development, and the reflection and strategizing on matters of promotion and protection. The recommendations of these workshops are officially presented to the Session of the Commission and distributed widely. The Commission has shown itself quite receptive to NGO concerns. It provides an opportunity for NGOs to familiarize themselves with the work of the Commission as well as making recommendations on areas of human rights which need to be improved, for example, by liberal interpretation of the Charter provisions.

Conclusion

In spite of the obvious weaknesses in the African system, it still holds the best prospect for the promotion and protection of human rights especially women's human rights. The African Charter, by creating a link between its provisions on the human rights of women and the Convention on the Elimination of All Forms of Discrimination Against Women has provided a basis which can be used within the Commission for a more effective promotion and protection of women's rights.

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The Asian Situation: Does Asia Need a Regional Human Rights System?

Neelan Tiruchelvam

There is no regional human rights instrument for Asia, while similar arrangements exist for Europe, the Americas, and Africa. Twenty five members of the Council of Europe are parties to the European Convention on Human Rights, while fifty three countries have, within the framework of the Conference on Security and Cooperation in Europe (CSCE), also taken several steps in relation to human rights and minority protection including the establishment of mechanisms for conflict prevention and conflict resolution.

Several previous attempts both at the intergovernmental level and at the non-governmental level to take meaningful steps towards establishment of a regional instrument and a regional commission for human rights in Asia, have hitherto made little progress. However, there has been some renewed interest in such a proposal as a result of the declaration made in Bangkok at the Asian Regional meeting on the UN World Conference on Human Rights from March 29-April 22, 1993. In this declaration, the governments which participated at this meeting

reiterated the need "to explore the possibilities of establishing regional arrangements for the promotion of human rights in Asia." Even at the nongovernmental meeting, the Bangkok NGO declaration dated 27th March 1993 provided cautious support for this view.

The NGOs however qualified their support by reiterating that such measures should not derogate from the obligation to implement without reservation existing international instruments, and should not preclude the right of the individual and non-governmental organizations to petition against human rights abuses to existing international mechanisms. The NGOs also expressed concern with regard to the composition of a proposed regional commission and the role NGOs should play in determining the membership of such a commission. They further recommended that a regional commission of human rights should have investigative and adjudicative powers including powers to investigate the conduct of the military and security forces.

Those who argue in favor of a regional arrangement in respect to human rights see such arrangements as being linked to a process of political, economic and legal integration. No such process has taken place within the Asian region as a whole. The most successful process of trade and economic integration has been at the ASEAN level. SAARC has been a more recent process, which has had several setbacks due to bilateral disputes.

The second argument is that it would lead to more effective enforcement. It is contended that regional arrangements could provide more accessible and less costly redress than international arrangements. They could provide independence and integrity which domestic arrangements sometime lack, and could overcome procedural and institutional weaknesses and shortcomings. For example, countries like Nepal have adopted new constitutions, but they often lack the judicial expertise and experience to interpret constitutional provisions relating to fundamental rights.

But is the expectation realistic? Will the nominees to such a regional body command greater confidence than their domestic

counterparts? Will Asian governments who are adopting such a negative and defensive position on human rights make the effort to empower a regional body with effective powers, and man it with persons with integrity and commitment?

If regional initiatives are required to strengthen the human rights movement, they are more likely to be effective at a civil society level with regard to documentation, teaching and education, and advocacy. We have expressed similar concerns with regard to the establishment of national institutions such as the National Human Rights Commission within the South Asian context. When such institutions have been proposed by governments, as an alternative to international accountability and international scrutiny, these institution's jurisdictions have been limited and their investigatory and adjudicatory powers so circumscribed that there is genuine skepticism within the human rights movement as to the sincerity of such initiatives.

The proposal to adopt a regional instrument also reflects efforts to conceptualize the region as one committed to a common core of values such as democracy, pluralism, human rights, and gender equality and to establish institutions and processes which would uphold that conception. Civil society institutions have made several incipient efforts to reconceptualize the South Asian region. The commonalties in Europe, Africa, and North and South America far outstrip the differences. This may be less true of the Asian region which is one characterized by extraordinary geographical, political, ideological and economic diversity. There are commonalties at the sub-regional level, such as the South Asian region, and within the ASEAN region. More clearly there is the absence of a common legal culture shaped partly to be a shared legal history. The traditions of legal thought and of interpretation are very different in countries as diverse as Nepal, Burma, Thailand and Indonesia. These differences are sharper than the differences between civil and common law tradition within Europe, for example.

It is also argued that the Asian region is presented with the opportunity of taking note of four decades of developments in the international human rights arena, and the human rights jurisprudence developed within Europe and elsewhere. It would also enable the region to draw on the concepts and values

which are integral to the intellectual and cultural traditions of Asia which are supportive of human rights. The argument is that a regional arrangement would present us with the opportunity of expanding the frontiers of human rights while clothing the instrument with the moral legitimacy of a document crafted by scholars, lawyers and governmental representatives within the region. Critics however dispute this view. They believe that given the climate of confrontation within the global community, and the public positions and the domestic record of several Asian countries, that it is more likely that such a regional instrument would be a setback to the human rights movement. From this point of view of human rights groups, they would need to devote a great deal of energy and effort into a complex and protracted negotiating process. The efforts could be more constructively utilized towards the strengthening of domestic mechanisms.

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Part Three:
NGO Strategies

Diversity in Character and Role of Human Rights NGOs

Hina Jilani

The Human Rights Movement

All movements for social and political change develop and evolve from a particular environment in response to particular circumstances. Movements for the protection and promotion of human rights are movements for such change. However, these movements draw their inspiration from a set of values which have become universal and as such, contributions of these movements transcend natural boundaries.

Multidimensional Character of Human Rights Movements

Before beginning to assess the role of human rights movements and the organizations and individuals involved in these movements, it is necessary to understand that they are multidimensional in character.

- **Human rights movements are political movements** because the issues they address are essentially political in

nature. Yet the objective of human rights activists is neither to achieve or influence power, but to challenge the spheres of power responsible for violations of human rights. Although mass support is an objective, it is not always the source of validity for such movements. Human rights is not always a popular issue and the fight for these rights is often a struggle against the majority.

- **Human rights movements have both national and international characteristics.** Human rights movements are based in a national context, but owing to the universal nature of the principles for which it is waged, they acquire an *international character.* National human rights movements have, therefore, often derived support and strength from international organizations. The main objective of international linkages is to *arouse international public opinion on a human rights situation in a specific country or region.* The linkage has also been important in the context of *establishing the principle of universality of human rights norms.*
- **Human rights movements are based on principles, but deal with situations and issues** as they arise. Human rights NGOs involved in the movement may not be dealing with all situations and all issues. Their mandates may be restricted to different sectors or particular areas of violation. However, the struggle of every disadvantaged sector contributes to the making of a movement. If these struggles are waged in isolation, they not only become marginalized, but also cause the fragmentation of the wider movement for human rights.

The Pakistan Human Rights Movement: A Case Study

This paper takes the study for women's rights as part of the human rights movement and examines it in the light of the various aspects and dimensions outlined above. Pakistan is taken as a case study, not because it is representative of all situations, but as an example of an isolated movement which emerged to take a leadership role in the human rights movement. The focus of the presentation is not on specific issues of the women's rights movement or its substantive content, but rather its

relationship with the broader human rights movement, both at the national and international levels. An attempt has been made on the one hand to expose the tensions in these relationships, and on the other to show how the movement has developed and matured owing to these linkages despite these tensions which are admittedly present.

Development of the Movement

1. **The Early Stages.** *The struggle for women's rights took the shape of a serious movement only in the 1980s.* It was the first time that the issues of equality and gender-based discrimination were seen in the context of the sociopolitical culture and the prevalent conditions. Women realized that the issues for their movement are issues of human rights, and their rights could only be advanced in an environment which is conducive to the promotion of human rights in general.
2. **The Movement Matures.** As *the women's movement broadened their sphere of concern to issues such as democracy, development,* etc., the movement emerged from isolation and at the same time triggered the larger movement for human rights in which women's rights retained a position of priority. Another reason for this position in the human rights movement was the nature of the women's struggle. They were the only nonpartisan political force which questioned the nature of the state institutions and challenged the legitimacy of the state under marital law. They therefore brought the political discourse out of the politics of power, and made a space for the discussion of norms, values and principles. The traditional barriers against debate on religious and other controversial issues were broken, and prompted other groups to enter the debate.
3. **Human Rights Takes Precedence.** As the human rights movement developed, women's rights issues were in danger of losing their status within the human rights movement. It is true that women are present in all situations of human rights violations, be it as minorities, indigenous populations or other marginalized or oppressed groups. Yet it was necessary to keep a focus

on gender specific issues and the presence of distinct groups for promoting women's interests. At the same time, it was important for women to remain active in the human rights movement to make the movement more gender conscious to ensure that position taken on various human rights issues reflected the women's rights perspective.

4. **Issues between Women's and Human Rights Movements.** The alliance of the women's movement with the human rights movement was not without its problems and tensions. These tensions surfaced particularly on issues of cultural rights, rights of religious minorities, and the use of indigenous institutions for human rights promotion. The women's rights movement had a distinct position on the roles culture, tradition, and religion play in undermining women's social status and legal rights. Women were not willing to promote the cause of cultural or religious identities without bringing the realization that the cultures which are sought to be preserved by the movement (or through its support) contain practices which discriminate and oppress women. They were also hesitant in giving validity to institutions which were inherently biased against women, and which they had always viewed as protectors of *status quo*.

Despite the tensions, global networking on human rights has continued and its effects are apparent from the more or less uniform positions presented by human rights NGOs at international forums. It is, however, recognized that human rights work at national levels must influence human rights activity on both the regional and international level. Women's rights groups have maintained a sensitivity to national and domestic struggles and most international programs do not reflect that sensitivity. Nevertheless, the North-South gap does effect the relations between these groups especially in the representation in international fora. The gap is expected to be bridged automatically with an increase in the international role in addressing human rights violations. Increased participation of national NGOs at the international level can decrease dependence and also reduce the complaint of "the helping hand strikes again"

syndrome. At the same time, this partnership can be further developed in areas like planning of programs, involvement of national NGOs in INGO missions, and, above all, defense of human rights activists.

The National/International Relationship in Action

The interaction between women's groups and the human rights movement is best illustrated in the cases of violence against women. The human rights movement joined the campaign and added dimensions to the issue hitherto not highlighted by the women's groups. The joint campaign demanded that rape be considered a form of torture and in armed conflict to be dealt with as a war crime. The national struggle was taken to the international level by Amnesty International who took up this case and focused on it, not only in the context of the treatment of political prisoners, but also highlighting the aspects of rape as a specific mode of torture.

Where a consistent pattern in individual cases indicates a larger problem to the legal aid and human rights group monitoring a particular situation, strategies for activism are collectively devised to gain the maximum support. Depending on the issue, international support is solicited by inviting credited international organizations to plan fact-finding missions and prepare reports.

One example of a positive experience of collaboration between national and international NGOs was on the issue of violence against women in custody. AGHS Legal Aid Cell, a Pakistani NGO, in its experience of working with women in prisons, saw this as a consistent violation. It was raised as a national issue of human rights. Work at the national level, aroused the concern of Human Rights Watch, who planned a mission to Pakistan. The local NGOs were able to place the issue in the proper perspective, provide the facilities, recommend the modalities of investigation and provide documented case studies. An independent investigation by an INGO lent the report objectivity on the one hand, and on the other emphasized the issue as that of international concern. This added to the pressure on the state authorities to respond and measures were announced for dealing with this form of violation.

Contribution of the Movement

1. **Shaping the Movement Nationally.** Although the tensions were of a serious nature and it was not easy to influence the thinking and attitudes within the movement, it was a sign of the maturity of the women's movement that they did not go back into isolation. Instead they persisted in their effort to influence the movement and succeeded in bringing a significant change, at least within the activist groups. Thus the human rights struggles became more uniform in their positions and approach.
2. **Internationalizing "local" Human Rights Issues.** Another significant contribution of the women's rights movement to the human rights movement in Pakistan was the internationalization of human rights issues. As a deliberate strategy, these issues were projected as a concern for the international community, rather than of domestic or local relevance only. In Pakistan, the 1980's was a period of political repression. The state was directly responsible for some of the very serious violations of women's rights. Pakistan held a special significance in terms of global interests in the region. International public opinion was therefore, a crucial factor in influencing the behavior of the state. Women's groups developed linkages not only with women's rights organizations outside the country, but also with international human rights organizations. Over the years, this developed into a strong support system especially during times when mobilization or the dissemination of information from within the country was not possible. The human rights movements as it developed, followed the same approach.

Relations between National and International NGOs: Tensions and Solutions

However, relations between national NGOs and international NGOs are not free of tensions. A couple of sources for these tensions stand out.

- **Uneven Purposes.** There are differences with regard to what is accepted as valid human rights activity. Most third world human rights NGOs see themselves not only as monitors and objective investigators of violations, but as activists engaged in bringing about structural change. The scope of their activity is therefore, much broader. The mandates of INGOs on the other hand are restricted. These differences have been more apparent with respect to issues surrounding economic, social, and cultural rights.[1]
- **Different Perceptions of Roles.** Although NGOs have played a major role in generating international support for national movements, NGOs would like to perceive their role as that of equal partners in the global struggle. An element of paternalism which has seeped into the relationship has caused some resentment amongst the national NGOs. The North-South gap affects the relations between these groups especially in the representation in international fora.

These differences do not necessarily have to be obstacles, especially if the work of the INGOs and cooperation with them within the scope of their mandates does not affect the position of the national NGOs on these issues. NGOs, however, maintain that these issues have inadvertently discouraged the development of INGOs with different goals and methods. It is recognized that human rights work at national levels must influence human rights activity on both the regional and international levels.

Yet, despite the tensions, global networking on human rights has continued and its effects are apparent from the more or less uniform positions presented by human rights NGOs at international forums. The North-South gap is expected to be bridged automatically with increased participation of national NGOs at the international level. This can decrease dependence and also reduce the complaint of "the helping hand strikes again" syndrome. At the same time, this partnership can be further developed in areas like planning of programs, involvement

[1] Women's rights groups have maintained a sensitivity to national and domestic struggles while most international programs do not reflect that sensitivity.

of national NGOs in INGO missions, and, above all, defense of human rights.

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Strategies of a Regional NGO: The Inter-American Institute of Human Rights

Laura Guzman Stein

Mission of the Inter-American Institute of Human Rights

The Inter-American Institute of Human Rights (IIHR) is an international human rights institution, created in 1980 as a joint effort of the Inter-American Court of Human Rights and the government of Costa Rica. As an academic institution, the IIHR promotes human rights and educates different populations in formal and informal settings, provides technical assistance and training to NGOs working in the field, governments, election committees, and special populations, among others, and puts forth studies addressing human rights issues relevant to the different target populations and regions in the Americas. The Institute is inhibited by mandate, from analyzing the behavior of governments with regards to human rights or investigate violations in this area.

The Women and Human Rights Program of IIHR

The program began its activities in 1991, as the culmination of several efforts undertaken by the IIHR to address gender discrimination and women's rights in the Americas. The program advocates for the recognition of violations of women's rights as a human rights issue at different levels: institutional, within IIHR policies, among NGOs, governmental, international and regional agencies, women's organizations and special populations concerned with gender and human rights issues. Initial assessments showed that women's rights were not being considered nor classified as human rights. In response to these concerns and goasl, research projects being implemented by the program are particularly concerned with assessing, documenting and analyzing advancements in the status of women, as well as the structural obstacles impinging on their access to these rights. Understanding the influence of gender in women's and men's identity as subjects of rights and responsibilities, for example, is of major significance when designing educational programs seeking to empower women or the elimination of sexism and gender bias in policies and laws.

The issue of human rights violations against women is addressed at two levels which are intimately interrelated in their lives. The first one is the position women have within the domestic realm, the influence of this domestic position in their relationships with the public world, for example, remunerated work, politics or with the police. This subordinate role restricts their liberty and security at home, in the community and other levels of social functioning, restraining access to opportunities, resources and rights.

The program is also concerned with the reconstruction of paradigms that include women's experiences and gender into human rights research and advocacy. Critical readings of international instruments and mechanisms indicate that very few rights concerning women have been included, and that there are many areas which still subordinate women's interests to those of men and to the social or "common good." On one hand, activities in this area evaluate the effectiveness of instruments and mechanisms developed for the protection of human rights, as well as strategies being implemented by human rights

NGOs, women's organizations, human rights activists and special populations. Action-research, working groups, conferences, seminars and workshops are the instrumental means by which the program implements goals of this nature. Women's concerns and perspectives are integrated through participatory methodologies that use daily life and the personal as the main resources. These assessments provide the environment to put forth proposals concerned with creation, redefinition or strengthening of gender-sensitive instruments and strategies.

Meetings, workshops and specialized courses are used to educate governmental and non-governmental agencies, women's organizations and special populations on the adequate use of human rights instruments, mechanisms and strategies for the protection of women's human rights.

Network building and the dissemination of experiences, data, gender-sensitive methodologies and educational materials are two central tasks that provide a structure for monitoring the impact of research and educational activities. Networking consists of interaction among international agencies and traditional human rights NGOs working on the protection of human rights and women's rights national and regional networks, parliaments and national organizations seeking the advancements of women.

Building Strategies to Gain Recognition of Women's Human Rights: On Route to the World Conference

One of the most difficult tasks encountered by the program has been demarcating its role with the women's movement, human rights NGOs and agencies operating in the region and government agencies addressing gender and human rights issues. The preparatory process for the United Nations World Conference on Human Rights provided the opportunity to work on a collective plan where the IIHR played an instrumental role in facilitating resources, leadership and networking within the regional setting.

In January of 1992, the IIHR convened a meeting with program officers in women's human rights from several

international organizations. The meeting was held to put forth strategies to mobilize the women's movement, NGOs and other concerned sectors around a platform to be negotiated with the Latin American and Caribbean governments during the U.N. Regional Preparatory Conference on Human rights (Latin America and the Caribbean.) This became the central project for the Women and Human Rights Program during 1992, since it provided the setting for network development among women's organizations, human rights NGOs, government agencies and international and regional institutions. These networks were extremely useful for training and strategy development.

The Strategy

The IIHR's Women and Human Rights Program and the Latin American Institute for the Prevention of Crime's (ILANUD) Women and Justice Project convened a series of meetings with regional and subregonal human rights organizations, development agencies, national human rights and women's NGOs, government agencies advocating for women's rights and women's grassroots organizations. These meetings provided the groundwork that was central in the consolidation of a strategy that would lead to the recognition of women's rights as human rights within the UN Regional Preparatory Conference for Latin America. Underlying premises for the movement were established and a plan of action was developed for the months following. This plan relied on three types of activities, those that were part of global campaigns, such as the signature campaign initiated by Rutgers University Global Center; those responding to regional priorities; and those leading to the development of national platforms. The strategy followed three steps:

1. A signature campaign seeking support from the UN to include the issue on the agenda of the World Conference, and from the OAS to approve the Convention for the Prevention, Elimination and Sanctioning of Violence against Women;
2. National conferences to assess the status of women's human rights and prepare lobbying strategies with government delegates, mass media and human rights NGO's.;

3. Working group meetings convened by IIHR with regional women's and human rights NGOs, United Nations agencies, Inter-American Commission of Women and international NGOs with ECOSOC status working in the field. These meetings were held before the Women's Satellite Conference and U.N. Human Rights Conference to provide specified training in advance in strategy development; and
4. A Latin American and Caribbean Satellite Conference on Women's Human Rights held in December of 1992.

A Coordinating Committee (Comite de Enlace) was integrated to facilitate organizational arrangements, communicate decisions and search for funding. The IIHR proposed an organizational strategy based on "informal" mechanisms, where members of this Committee would participate, not as representatives of these organizations, but as individuals, although support from their institutions was central with infrastructure and other resources needed for the implementation of the plan. "Informality" was the basis for eliminating competition among NGOs and personal antagonisms, which many times weaken networks and unity among the women's movement.

The Outcomes

- **Network building** was accomplished on a continental basis, including traditional human rights and "discriminated groups" NGOs (handicapped, indigenous populations, children), contributing to skill development in communications and lobbying techniques. Creative communication strategies were developed by the participating agencies and organizations, such as a "fax-trees", videos, collective memos, etc.
- **Advocacy and specialized training** among women's human rights regional networks, women's NGOs and traditional regional human rights organizations on gender and human rights issues, the international and inter-American system regarding women's human rights and strategies for the protection and advocacy of these rights. Two working group meetings were held with these purposes, with representatives advancing the preparation of the women's platform for the PrepCom

to be discussed during the Satellite Conference, exchanging experiences among these organizations, and contributing to their training via international and regional instruments, mechanisms and systems. This meeting provided the groundwork for the Satellite Conference. The second was held before the World Conference and it was instrumental in assessing outcomes, organizing a lobbying plan at the national level with official delegations, adjusting strategies to be implemented during the Conference and providing information on the preparatory activities for the U.N. Women's Conference to be held in Beijing in 1995.

- **A 19-point platform was approved** during the Satellite Conference *"La Nuestra."* This platform was successfully negotiated during the PrepCom with human rights NGOs, who included women's demands on their specific platforms, and several government delegations. Women's issues were included on the official Declaration of San Jose as point 14. Both documents were officially included in the Vienna World Conference. This process was taken further during the Latin American and Caribbean NGO Preparatory Conference held in Quito. However, women learned that most human rights NGOs still have a long way to go in generating creative approaches and strengthening linkages with human rights organizations.

Issues to be addressed in future strategies

As a result of this process, the Latin American and Caribbean Women's Platform was successfully incorporated at all levels, and those organizations that participated throughout the preparatory process gained an invaluable experience and expertise. Working as partners with such a diversity of agencies and organizations proved to be effective and rewarding, since the institution was able to contribute at different levels to close existing gaps, open new paths of knowledge and expertise, and build bridges among different institutions, organizations and programs that had not worked together before. However, the experience also left some lessons as to what needs to be addressed in the future.

- **Strategies** to include women's human rights on the agenda of traditional human rights NGOs need to be developed, monitored and disseminated among other NGOs not involved in the process. Both sectors have accumulated expertise in different areas which should be shared. International organizations, such as the IIHR can and should stimulate processes seeking goals of this nature.
- **Documentation of violations** to women's human rights needs to be a priority in future strategies, since these are invisible to most NGOs doing advocacy and protection work. Theoretical work is also required to demonstrate how many violations in this field are human rights violations.
- **Training in the art of lobbying** at different levels for women's NGOs, as well as in the use of human rights instruments and mechanisms at the national, regional and international level. Literacy programs in this area should include traditional NGOs and international organizations that have accumulated different experiences so information, methodologies, strategies and concerns can be shared, thus providing a joint development of effective advocacy strategies.
- There is a **need to identify violations of women's rights** that could supply complaint cases using international human rights procedures. A coalition of regional organizations and national NGOs and government agencies addressing violations of women's human rights, should undertake this project to gain experience that can be used in training programs.
- Issues concerning **leadership among women and organizations** need to be seriously discussed. The women's movement suffers when organizations compete among themselves for leadership and recognition, or manipulate collective consensus, since such behaviors lead to conflict, divide the movement and generate distrust. Problems of this nature emerged during the preparatory process and the World Conference. Women were able to deal successfully with these behaviors sometimes, leaving behind a significant dose of frustration and concern. Discussion and analysis will aid to

heal the wounds as well as contribute to understanding of the structural factors influencing such behaviors and the resources available to empower women.

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International NGOs and Women's Human Rights: Human Rights Watch

Dorothy Q. Thomas

Level and Nature of Development of Women's Rights Within International Human rights NGOs

The international women's human rights movement as represented within international human rights organizations is fairly young. Most of the major international organizations did not establish women's human rights programs until 1990 or later, and some still have not.

Of those international human rights organizations who do focus on women's rights, the nature of their work varies. Amnesty International, for example, focuses on a narrower range of issues than Human Rights Watch (HRW); HRW focuses more on field work than does the Women in the Law Project of the International Human Rights Law group . . . and so on. Thus, as at the local and regional levels, different international organizations take on different—often complementary and occasionally overlapping — aspects of work on women's human rights.

How International Human Rights NGOs Function

The work on women's rights within these international institutions attempts in different ways, and with varying degrees of success, to use existing institutional mandates and strategies to raise the visibility of and accountability for women's human rights abuse. To some extent, work on women's human rights has also worked to expand mandates and evolve new strategies.

In general, international human rights organizations operate within clearly proscribed limits: most focus exclusively on state and armed insurgent responsibility under international human rights and humanitarian law and some, although not nearly all, concentrate solely on civil and political rights. The overriding objective of most human rights work by these organizations is

1. to stigmatize abusive governments through international exposure; and
2. to increase pressure for accountability and social change.

In this regard, some international organizations focus more on the documentation, exposure and accountability, others on legal reform and strengthening civil society. Again, the various organizational strategies are often complementary or overlapping.

For the most part, the methods used by international human rights organizations to achieve these ends are similar. They rely heavily on public exposure, in particular the press, to fuel public outrage and increase pressure on abusive governments. They then work to use public concern to promote specific policy change, whether by, for example, the US government, the United Nations, the European Community, the OAU, the OAS or other regional, international or national entities, including the abusive government itself. This use of third party governments and institutions to pressure abusive states is particularly characteristic of Human Rights Watch's work. Increasingly international human rights organizations are also turning their attention to the multilateral banks, trade relations and arms transfers as appropriate human rights pressure points. U.S. human rights law prohibits non-basic human needs aid (i.e..

security assistance) to governments that engage in a consistent pattern of gross violations of human rights. Similar language is contained in agreements governing U.S. trade relations and votes at international financial institutions.

How International Human Rights NGOs Approach Women's Human Rights

At first, international human rights NGOs took up women's human rights reluctantly, if at all. They were prompted by pressure from local women's rights activists around the world, from within their own organizations and, as women's projects were established within human rights institutions and the issue began to draw international attention, by peer pressure. It is important to note that the decision to take up women's human rights work, at least initially, emanated as much out of general political exigencies as it did out of a commitment to the issues themselves. Thus, it is a long road from forming a women's rights project to actually developing thorough institutional backing and really being able to use the given institution's mandate and strategies fully and effectively to promote women's human rights. Nonetheless a voice for women's human rights clearly is beginning to emerge from within these international institutions.

Human Rights Watch: A Case Study

Human Rights Watch's Women's Rights Project was formed in 1990 to document violence against women and sex discrimination committed or tolerated by governments world wide. Until early 1993, the staff consisted of two people, a director and an administrative assistant. During its initial two and one half year period, the project published six reports on violence against women and sex discrimination, two of which were subsequently released in the local language.

The failure of human rights activists and institutions, among many others, to grasp the substantive nature of violations of women's human rights persists, although considerable progress has been made with regard to sexual abuse, particularly in custodial or conflict situations. A great deal of work remains to be done to demonstrate the abusive character of

gender discrimination. Moreover, while violations of women's rights are increasingly visible in international human rights work, the manner in which they should be integrated into human rights discourse and practice (or fall entirely outside of that framework) remains unclear. As a result, human rights institutions and reports increasingly make reference to gender-specific violations, but the treatment of such abuse is often artificially segregated. Finally, the concept of gender, as used both by women's human rights activists and by mainstream human rights organizations urgently needs to be analyzed and better defined.

Functional difficulties confront international women's human rights work in terms both of promoting the women's human rights message, and advancing the movement's development.

The functional difficulties relating to the promotion of the women's human rights message revolve around two primary issues:

1. the tension involved in attempting to "mainstream" women's human rights issues, while simultaneously maintaining a focus on the distinct sex-specific character of women's human rights violations and the concomitant remedies; and
2. the difficulties involved in reconciling a political or rhetorical women's human rights agenda (i.e. one that "uses" the human language to advance women's rights issues that are broader in scope) with the need actually to be technically skilled in the use the human rights laws and mechanisms.

The functional difficulties arising from advancing the women's human rights movement stem from two limitsations:

1. the past failure of international and local human rights organizations to address women's rights and the resulting (and persistent) tensions that affect the ability of women's rights and human rights organizations to work together to this day, despite the fact that we have an unprecedented opportunity to do so; and

2. the paucity of accurate documentary evidence and absence of reliable methods of communication between local and international groups.

Forging a New Relationship: International/Regional/ Local Cooperation

Three basic premises underlie the work of the Women's Rights Project:

- as a US-based organization we can give particular attention to US foreign policy and its impact on women's enjoyment of civil and political rights;
- our effectiveness depends on accurate and timely descriptions of events on the ground and rigorous analysis, both of which require a strong emphasis on field research; and
- domestic women's human rights monitors are the frontline in protecting and promoting rights in each country.

Our missions are conducted in close cooperation with local women's rights activists, communicating in advance to discuss concerns, identify prevalent abuses and clarify the mission's parameters. This cooperation between international and national groups at its best complements local strategies for denouncing women's human rights abuse and helps bring additional pressure to bear on recalcitrant governments. It also enables all parties to exchange information and skills.

In July 1992 we conducted a mission to Peru to investigate rape and murder of women by both parties to the conflict. Prior to the actual mission, we visited Peru and consulted thoroughly with local women's rights and human rights activists about the nature and scope of the abuse and the usefulness of an international human rights report addressing these issues and the possible risks to local activists or international monitors of engaging in such a mission.

This represented one of the first times that an international human rights organization expressed interest in investigating violations of women's human rights in Peru. At the close of the consultative process we agreed to proceed and conducted the mission in July 1992. The involvement of state agents and/or

armed insurgents in the abuses meant that the overlap between Human Rights Watch's mandate and the concerns of local women's rights was fairly clear, but this is not always the case. Prior consultation often involves weeding out issues that do not fit within HRW's limited mandate or are not central concerns of local activists. This can often be a thorny process but it is an absolute requirement of successful collaboration to iron out the parameters from the outset.

As we conducted the mission, we faced two primary concerns: danger to local activists and to international staff and the dirth of reliable documentary information. We grappled with security issues in close cooperation with and under the guidance of local monitors. The second problem was (and is in almost every women's human rights mission we undertake) profound. The lack of resources devoted to funding local women's rights groups to document abuses of women's human rights coupled with the reluctance or inability of local human rights institutions to conduct such research, profoundly hampers the collection of accurate data and therefore the demonstration of state (or armed insurgent) accountability under international human rights or humanitarian law. Peru was no exception to this rule. Although the relevant information existed, it was not available in a form or even at locations that could be easily accessed by the international monitor. Thus, while working closely with local activists, she was required to conducted an enormous amount of primary research which consumed a large amount of her limited time in the field. Ultimately, the mission was very successful, but at the present stage of the women's human rights movement's development, the drain on the resources of both international and local parties is considerable.

The mission report, entitled *Untold Terror: Violence Against Women in Peru's Armed Conflict*, was released in January 1993 and a Spanish language version was released soon after. The report, coupled with the work of local monitors, gained a lot of attention in both the local and international press. Follow-up work at the international level prompted a letter from 29 U.S. Senators to President Fujimori urging him to prevent and prosecute rape by security force personnel. At a March press

conference in Peru, Fujimori was asked by local journalists about the Senate letter and publicly vowed to prosecute such abuse.

The Peru mission had many elements of a successful cooperation between local and international institutions. It involved close prior consultation, a clear identification of issues of mutual concern, on-ground cooperation in confronting a range of obstacles, release and wide circulation of a well publicized report in both English and the local language, and preliminary follow-up pressure on the relevant government. However, ongoing follow-up remains an area that needs considerable work at both the local and international level. The small size of women's rights programs within human rights institutions and the manifold responsibilities of local activists makes consistent follow up, the key to any fundamental change, difficult to sustain. Reliable modes of ongoing communication need to be put in place or better use must be made of those that already exist in the human rights movement more generally.

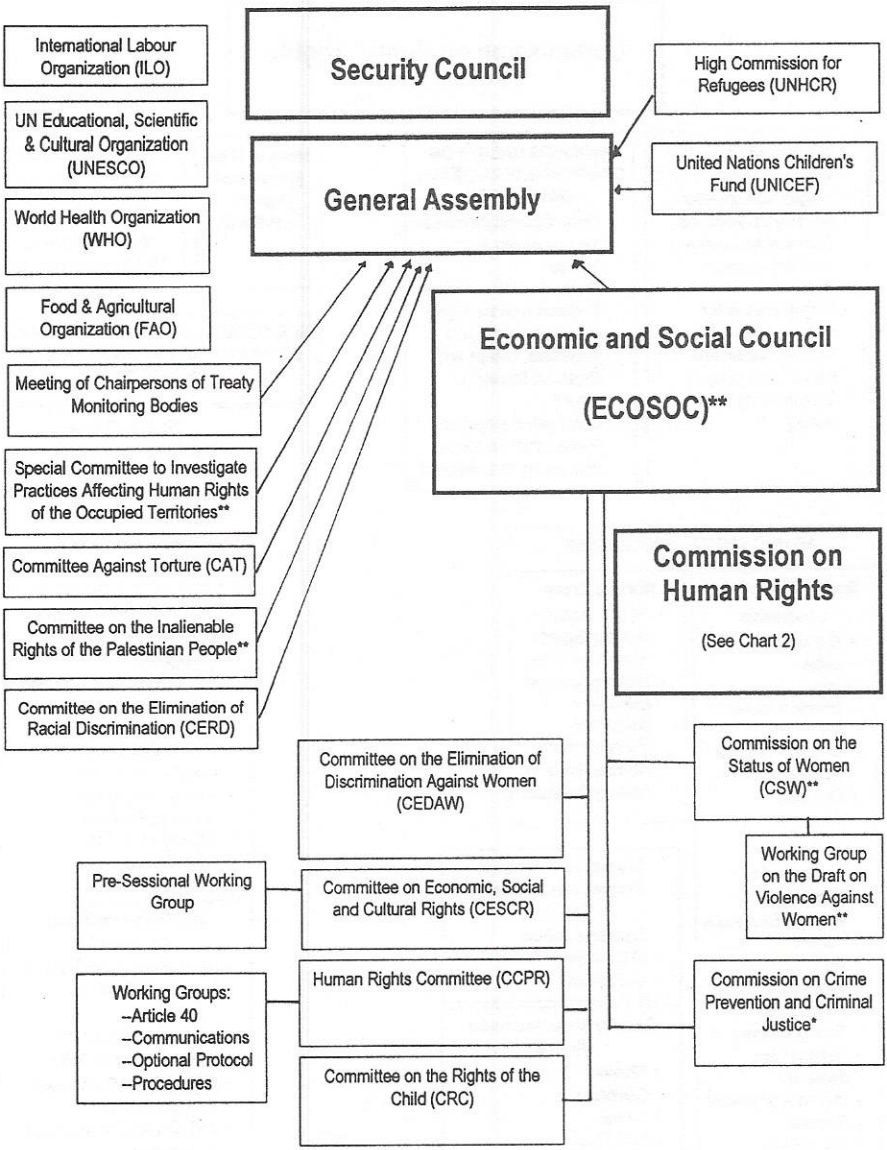
Challenges

Among the greatest challenges to the international women's human rights movement is the need to forge new relationships built on a shared commitment to protecting and promoting women's human rights world wide and on mutual respect for each others differences (in terms of both experience and institutional roles). The need to mainstream the women's rights agenda and while at the same time counteracting the dilution of women's human rights issues that can accompany integration also need to be addressed. And finally, we must meet the challenge of moving beyond increased visibility of violations of women's human rights to greater accountability for such abuse.

Dorothy Q. Thomas is Director of the Women Rights Project of Human Rights Watch in Washington D.C.

Appendix

Chart 1: HUMAN RIGHTS BODIES OF THE UNITED NATIONS



* Bodies serviced by UN Vienna Office **Bodies serviced from New York.
All other bodies serviced by UN Centre for Human Rights in Geneva

Source: Human Rights Tribune: June 1993

Chart 2: UN HUMAN RIGHTS COMMISSION & SUB-COMMISSION

Commission on Human Rights

VOLUNTARY FUNDS
- Victims of Torture
- Indigenous Populations
- Advisory Services and Technical Assistance in the Field of Human Rights
- Programmes of the Decade of Action to Combat Racism and Racial Discrimination
- Contemporary forms of slavery

WORKING GROUPS ON DRAFTING INTERNATIONAL INSTRUMENTS
- On an Optional Protocol to the Convention Against Torture
- On the Question of a Draft Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Protect Universally-Recognized Fundamental Freedoms [Human Rights Defenders]

Group of Three (Convention Against Apartheid)

Working Group to Examine Situations Which Appear to Reveal a Consistent Pattern of Gross Violations of Human

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION & PROTECTION OF MINORITIES

Working Groups
- Communications (1503 Procedure)
- Contemporary Forms of Slavery
- Indigenous Populations
- Detention

Rapporteurs on Studies
- Human rights & States of Emergency
- Transition to Democracy in South Africa
- Indigenous Treaties
- Cultural Property of Indigenous Peoples
- Solutions to problems Involving Minorities
- Right to a Fair Trial
- Other Studies

Drafting International Instruments
- Declaration on the Rights of Indigenous Peoples

Programmes of Action
- Elimination of Child Labour
- Sale of Children
- Child Prostitution and Child Pornography

AD-HOC SPECIAL PROCEDURES

Special Rapporteurs

Geographic
- Afghanistan
- Cuba
- Iraq
- Islamic Republic of Iran
- Myanmar (Burma)
- Former Yugoslavia
- Occupied Territories

Thematic
- Summary or Arbitrary Executions
- Torture
- Religious Intolerance
- Mercenaries
- Sale of Children
- Right to Own Property
- Internally Displaced Persons
- Racism and

Working Groups
- Ad Hoc Working Group of Experts on Southern Africa
- Working Group on Enforced or Involuntary Disappearances
- Working Group on Arbitrary Detention

Experts on Assistance Programmes/Advisory Services
- Equatorial Guinea
- El Salvador
- Guatemala

Country Situations Under Review
- Albania
- Cambodia
- Cyprus
- East Timor
- Romania

Put Our World To Rights[2]

International Procedures for Complaints of Human Rights Violations

There is a wide variety of procedures at the international level which may be used for pursuing complaints of violations of human rights. The available procedures within the United Nations system can broadly be classified into two categories:

1. complaint-recourse; and
2. complaint-information procedures, which may be either (i) general or (ii) "situation" mechanisms

The purpose of a complaint-recourse procedure is the redress of individual grievances. The body receiving the communication is obliged to take action on an individual communication and the author of the communication is entitled to participate in the consideration of the communication procedure to some extent. Examples of such procedures are the individual communications procedures outlined in section A below.

A complaint-information procedure, by contrast, does not provide an avenue for the redress of individual grievances, but

[2]Towards a Commonwealth Human Rights Policy, a report by a non-governmental Advisory Group chaired by the Hon. Flora MacDonald

is intended to identify general trends of human rights violations or human rights problems in particular countries in order to formulate appropriate remedial strategies. The author of the communication does not generally participate formally in the consideration of the communication after it has been submitted and does not have the right to be informed of the outcome of the consideration of the communication. Although not intended to address individual cases, these procedures may nonetheless be of assistance in that context. Examples of such procedures are outlined in section C below.

This broad classification does not reflect the full diversity of existing human rights procedures. For example, even a complaint-information system may go some way towards providing a remedy for an individual as an incidental result of the fact that the matter is considered at the international level. Furthermore, the work of the United Nations Commission on Human Rights has a recourse function, as well as addressing country situations and more general issues within the Rapporteurs' mandates (see section B below).

Which Procedure?

In deciding whether to lodge a complaint under an international procedure, at least three factors need to be considered:

1. Does the alleged violation fall within the substantive scope of the procedure concerned, whether under terms of the treaty or other normative instruments applicable to the problem?
2. Has the state which is alleged to be responsible for the violation accepted the competence of the body concerned to receive and consider complaints or is it otherwise subject to the procedure (for example, by the fact of membership of a particular organization?)
3. Have the preconditions for consideration of the complaint on the merits (admissibility criteria) been satisfied?

There will frequently be one or more procedures under which a complaint can be pursued. In some instances, it may be possible to submit a complaint under more than one procedure simultaneously or consecutively. A number of procedures may

provide opportunities for oral hearings, although in many of them the complainants' input is confined to written submissions. It is important to recall that redress under international procedures, if it comes at all, often comes only after a considerable lapse of time.

Since the forms of redress available under the different procedures vary and the preconditions for accepting a complaint (admissibility criteria) may differ from procedure to procedure, it is important to seek advice from those with experience in advising on the use of international procedures before deciding whether or not to utilize a particular procedure.

Individual Complaints Procedures

1 United Nations Treaty Bodies

A number of the human rights treaties adopted under the auspices of the United Nations establish procedures which permit individuals to lodge complaints (known as "communications" in UN parlance) against States parties to those treaties alleging that the rights guaranteed to them by one of those treaties have been violated by a state party to that treaty. Communications submitted under each of these procedures are examined by the body of independent experts established by the relevant treaty. After consideration of the communications, the committee expresses its views or opinion as to whether there has been a violation of the relevant rights. These determinations, are to, however, formally binding judicial determinations, although inmost cases the state party concerned will abide by them.

All the individual complaints procedures under the UN human rights treaties are optional, so that a state may become a party to the treaties without accepting the competence of the supervisory committee to consider complaints against it.

In order for a communication to be considered on the merits, it must satisfy the admissibility criteria laid down in the individual treaties and the rules of procedure adopted by each committee. Although they differ in some respects, they are similar in important respects. Among the important conditions which must be satisfied is the requirement that

local remedies must have been exhausted. The exhaustion of the local remedies rule obliges a person to seek to remedy an alleged violation within the national system before bringing it to an international forum. Local remedies do not have to be exhausted if resort to them would be futile or if it would involve unreasonable delay.

Furthermore, if a communication is already being examined under another international procedure (and, in some instances, if it has already been examined), it will not generally be admissible. Other common admissibility criteria are that communications not be anonymous, that they not be an abuse of the right of submission of communications, and that they not be incompatible with the provision of the relevant treaty. If one is considering submitting a communication under a particular procedure, it is obviously important to examine the specific criteria which apply to that procedure and the practice of the body concerned.

In each case the procedure is a written one, both the individual complainant (the "author of the communication") and the state party are given the opportunity to make their submissions and to respond to the submissions made by the other party. Both the individual and the state party concerned are informed of the determination of the committee, which is subsequently published.

Individual communications procedure have been established under the International Convention on the Elimination of All Forms of Racial Discrimination 1966, the First Optional Protocol to the International Convention on Civil and Political Rights 1966, the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment 1984, and the International Convention on the Rights of All Migrant Workers and Their Families 1990 (not yet in force). There is presently no individual communication procedure provided for under the International covenant on Economic, Social and Cultural rights 1966, the Convention on the Elimination of All Forms of Discrimination against Women 1979, or on the Convention on the Rights of the Child 1989.

2 Convention on the Elimination of All Forms of Racial Discrimination

Article 14 of the Racial Discrimination Convention provides that a state party may recognize the competence of the Committee on the Elimination of Racial Discrimination (CERD) "to receive and consider communications from individual within its jurisdiction claiming to be victims of a violation by that state party of any of the rights set forth in this Convention." The Convention provides a wide range of guarantees against discrimination of the grounds of races, color, descent, or national or ethnic origin and obliges States Parties to take steps to prevent and punish discrimination by public authorities, as well as by private individuals in any field of public life.

As of 1 January 1991, only 14 of the 128 states parties to the Convention had recognized the competence of CERD to receive communications. As of April 1991, CERD had only adopted opinions in two cases under Article 14.

3 First Optional Protocol to the International Covenant on Civil and Political Rights

Article 1 of the First Optional Protocol to the International covenant on civil and Political rights provides that a state party to the covenant that becomes a party to the Optional Protocol recognizes the competence of the Human Rights Committee "to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that state party of any of the rights set forth in the Covenant." The Covenant guarantees the enjoyment of a wide range of civil and political rights.

As of mid-1991, 54 of the 95 states to the ICCPR had accepted the competence of the Human Rights Committee to consider individual communications. The Committee has considered several hundred cases submitted under this procedure.

4 Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment

Article 22 of the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment of Punishment provides that a state party to the Convention may recognize the competence of the Committee Against Torture

> "to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a state party of the provisions of the Convention".

The Convention imposes an obligation on a state party to take appropriate legal, administrative and educational steps to prevent and punish torture and to prevent cruel, inhuman and degrading treatment or punishment in any territory under its jurisdiction who claim to be victims of a violation by a state party of the provisions of the Convention. Article 1 of the Convention provides that torture means:

> "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other persons acting in an official capacity."

As of 1 January 1991, 25 of the 55 States parties to the Convention had made declarations accepting the competence of the Committee to examine individual complaints. As of April 1991, the committee had considered 5 cases under article 22, all of which it had dismissed on inadmissibility grounds.

Where to Send Communications

Communications alleging a violation of the rights guaranteed by one of the above treaties should be sent to:

Centre for Human Rights
United Nations Office at Geneva,
8-14 Avenue de la paix,
CH-1211 Geneva 10
SWITZERLAND

Depending on whether the state concerned is a party to a particular treaty and has accepted the competence of the relevant committee to consider individual communications, it may be appropriate to ask that the communication be directed at a specified committee for consideration, rather than leaving it to the Centre for Human Rights to direct the communication to the procedure which it considers to be most appropriate. For example, the substantive coverage of the ICCPR overlaps with that of both the Racial Discrimination Convention and the Torture Convention. If the state party concerned has submitted to more than one of the procedure, then choice of the right procedure may determine the outcome of the complaint.

Regional Systems of Human Rights Protection

1 Council of Europe

The European Convention on Human Rights also establishes procedures for the consideration of complaints by individuals that States Parties to the Convention have violated the rights guaranteed by the Convention (or its Protocols). The European Convention is only open to ratification by members of the Council of Europe.

Under article 25 of the Convention, a state party to the Convention may recognize the competence of the European Commission of Human Rights to receive petitions "from any person, non-governmental organization or group of individuals claiming to be the victim of a violation...of the rights set forth in this Convention" by it. Individual complaints can also be lodged against such a state where the

complainant alleges that the applicant is a victim of a violation of the rights guaranteed by a Protocol to the Convention to which the state concerned is party.

The Commission can only consider the merits of a complaint (known as a "petition" or an "application") if it satisfies the admissibility criteria conditions laid down by the Convention. These criteria are similar to those applicable to the United Nations treaty committees. They include the requirement that local remedies must have been exhausted and that the petition is substantially the same as a matter which has already been submitted to another procedure of international investigation or settlement, as well as a number of other criteria.

If the Commission decides that a communication is admissible, it proceeds to an examination of the petition together with the representatives of the parties and places itself at their disposal "with a view to securing a friendly settlement of the matter." If a solution is not reached, the Commission draws up a report on the facts and states its (non-binding) opinion on whether there has been a breach of the Convention. That report is forwarded to the Committee of Ministers of the Council of Europe.

Within three months either the Commission or the state party concerned (or other states parties under certain circumstances) may refer the case to the European Court of Human Rights, provided that the state(s) concerned have accepted the compulsory jurisdiction of the Court or agree to the reference. The applicant cannot refer the matter before the Court, although the applicant may participate in the proceedings before the Court. (Protocol No. 9 to the Convention, which is not yet in force, will permit the applicant to refer these case to the Court.)

The judgment of the Court is binding on the parties to the case and execution of the judgment is supervised by the Committee of Ministers. If a case is not referred to the Court, the Committee of Ministers decides whether there has been a breach of the Convention, a decision which is binding on member States.

Of the 23 States Parties to the Convention as of 1 January 1991, all had accepted both the right of the individual petition under article 25 of the Convention and the jurisdiction of the European Court of Human Rights under article 46 of the Convention.

Where to Send Communications

Communications alleging a violation of the rights guaranteed by the European Convention on Human Rights by a state party to the Convention should be sent to:

European Commission of Human Rights
Council of Europe,
BP 431 R6
67006 Strasbourg Cedex
FRANCE

2 Inter-American System

Complaints by individuals that they are the victims of violations of their human rights by member States of the Organization of American States (OAS) may be brought before the Inter-American Commission of Human Rights by one of two routes.

Complaints against states parties to the American Convention on Human Rights 1969 may be lodged with the Inter-American Commission by any person or group of persons or any non-governmental entity recognized in a state of the OAS. In contrast to the other procedures mentioned above, by ratifying the Convention, states parties accept *ipso facto* the jurisdiction of the Commission to receive complaints.

The procedure before the Commission is similar to that of the European Commission of Human Rights. A decision on admissibility is followed by an attempt to secure a friendly settlement; if that cannot be achieved, the Commission draws up a report stating the facts and its conclusions. That report is sent to the States concerned.

The case may then be referred to the Inter-American Court of Human Rights by the Commission (if the state has accepted the compulsory jurisdiction of the Court) or by the

state concerned. The judgments of the Court are final and binding on parties to the case before the Court.

Under article 20 (b) of the state f the Inter-American Commission on Human Rights to Commission is given the competence to examine communications submitted to it concerning alleging violations of States which are not parties to the Convention. The normative instrument, applied under this procedure is the American Declaration of the Rights and Duties of Man 1948. The admissibility requirements for consideration of such communications and the procedures followed in examination of the complaints can be lodged with the Commission. Of these, 14 had accepted the compulsory jurisdiction of the Inter-American Court.

Where to Send Communications

Communications alleging a violation of the rights guaranteed by the American Convention on Human Rights by a state party to the Convention or of the American Declaration of the Rights and Duties of Man may be sent to:

Chairman
Inter-American Commission on Human Rights
Organization of American States
Washington, D.C. 20006 USA

3 United Nations Educational, Scientific and Cultural Organization

Individuals may lodge complaints against member states of the United Nations Educational, Scientific and Cultural Organization (UNESCO) alleging violations "of human rights falling within UNESCO's competence in the fields of education, science, culture and information," if these violations are "individual and specific." Under the procedure, established in 1978 by the Executive Board of UNESCO in its decision 104 EX/Decision 3.3, the UNESCO Committee on Conventions and Recommendations is assigned the responsibility of considering communications received by UNESCO.

The Committee on Convention and Recommendations is a committee of the Executive Board of UNESCO which meets twice a year. It is composed of 18 members of the Executive Board, who are elected to serve as individuals representing their Government. The aim of the communications procedure is to achieve an amicable solution wherever possible and the proceedings of the Committee are confidential during and after the consideration of communications. However, the author of a communication is given the opportunity to respond to the information supplied by the state concerned. If the matter cannot be resolved amicably, the Committee takes a decision on the case. Both the Executive Board and the Government concerned are informed of the committee's proceedings and the decision and are provided with a copy of them. The author of the communication is informed of the substance of the proceedings and of any decision taken by the Committee, but is not provided with a copy of them.

For communications to be considered under this procedure they must satisfy detailed admissibility criteria, one of which is that "the communication must concern violations of human rights falling under UNESCO's competence in the fields of education, science, culture and information".

The following rights have been identified by UNESCO as falling within its field of competence for this purpose:

- the right to education (article 26 of the Universal Declaration of Human Rights);
- the right to share in scientific advancement (article 27);
- the right to participate freely in cultural life (article 27);
- the right to information, including freedom of opinion and expression (article 19).

In addition these rights may imply the exercise of others, including:

- the right to freedom of thought, conscience and religion (article 18);
- the right to seek, receive and impart information and ideas through any media and regardless of frontiers (article 19);

- the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production (article 27); and
- the right to freedom of assembly and association (article 20) for the purposes of activities connected with education, science, culture and information.

Where to Send Communications

Communications alleging a violation of the rights which fall within the competence of UNESCO may be sent to:

UNESCO
7, place Fontenoy,
75700 Paris FRANCE

4 Procedures of the International Labour Organization

The International Labour Organization has a number of procedures for dealing with communications alleging violations of human rights within the areas of the work of the ILO. Although potentially applicable to individual cases, on the whole they have tended to be utilised in cases in which there is an alleged widespread violation of relevant rights.

The complaint procedures of the ILO can only be initiated be a member state of the ILO, an employers' or a workers' organization or the Governing Body of the ILO. Thus, individuals do not have direct access to the procedures of the ILO but must persuade one of the entities with standing to submit a communication to do so on her or his behalf.

Article 24 of the ILO Constitution provides that an industrial association of employers or workers may make a representation to the International Labour Organization that member state of the ILO "has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party." There are a number of ILO Conventions which guarantee basic human rights including freedom of association and nondiscrimination in employment. The matter is brought before the Governing Body of the ILO, which is composed of Government, employer and worker representatives. If the Governing Body considers that the representative is receivable, it is required to appoint

a Committee of the Governing Body, composed of equal numbers of government, employer and worker representatives, to examine the complaint. The Committee reports to the Governing body, which may then publish the representative and response of the government in accordance with article 25 of the Constitution.

Articles 26 to 34 of the ILO Constitution provide another means for dealing with complaints that a Member is not securing the effective observance of a Convention which the member has ratified. This procedure may be initiated by a Member of the ILO which has also ratified the Convention in question, the Governing Body on its own initiative or on the receipt of a complaint from a delegate to the International Labour Conference. This procedure may, if the Governing Body considers this appropriate, lead to the appointment by the Governing Body of a Commission of Inquiry to consider the complaint and to report thereon.

The ILO has also established social procedures for dealing with alleged violations of trade union rights which can be invoked against any Member of the ILO, regardless of whether that Member has ratified any of the conventions dealing with trade union rights. Such complaints are referred in the first instance by the Governing Body to its Committee on Freedom of Association (a tripartite body, with members serving in their personal capacity). That Committee reports to the Governing Body, its view as to whether the matter requires further consideration, in which case it will be referred to either the committee of Experts on the Application of Conventions and Recommendations (in the case of ratified conventions) or, with the consent of the Member concerned, to a fact-finding and conciliation Commission for examination (in the Case of unratified conventions).

Where to Send Communications

Communications alleging a violation of the fights which are covered by the ILO procedures must be submitted by one of the bodies with standing to make complaints. Further information may be obtained from:

Director-General
International Labour Office
4, route des Morillons,
CH-1211 Geneva 22 SWITZERLAND

Hybrid Procedures

There are a number of other procedures under which individuals may submit allegations of human rights violations. While some of these may have an indirect impact on individual cases, they are not individual complaint procedures like those mentioned above, under which the body receiving the complaint must take action on the complaint and reach some determination.

1 Thematic Special Rapporteurs of the Commission on Human Rights

One of the most important mechanism developed in the last ten years by the Commission on Human Rights is that of the thematic rapporteur. The Commission has appointed a number of independent experts to act as rapporteurs on particular themes. There are now four thematic rapporteurs with mandates covering summary and arbitrary execution, religious intolerance and trafficking in children.

The functions of the individual rapporteurs vary according to the different mandates granted to them by the Commission. They include the collection of information about the observance or violation of specific rights, the receipt and forwarding to governments of communications received from individuals or organizations alleging violation of the rights which fall within the relevant mandate (in some cases as a matter of urgent action), reporting on the extent and practice of the violations of the relevant rights, formulating policy recommendations and, in some cases, visiting individual countries at the invitation of those countries.

The report of each rapporteur to the Commission is a public document which contains summaries of communications and government replies, as well as more general material. The rapporteurs do not adjudicate on the accuracy of the allegations contained in material which they receive from individuals and organizations or from the Government in reply.

Allegations of violations of rights which fall within the mandate of a Special Rapporteur may be submitted against any state which is a member of the United Nations. Thus, if a state has not accepted the competence of a treaty committee or regional body to consider individual complaints, this may be one of the few available procedures. Furthermore, it is not necessary to exhaust local remedies before the allegation can be received and acted on by the Rapporteur. It does not appear that submission of a complaint to a Special rapporteur prevents an individual from submitting the complaint under one of the individual complaint procedures.

Where to Send Communications

Further information about the mandates of the Special Rapporteurs can be obtained from and communications alleging a violation of the rights covered by the Rapporteurs' mandates may be sent to:

Centre for Human Rights
United Nations Office at Geneva,
8-14 Avenue de la paix,
CH-1211 Geneva 10
SWITZERLAND

2 Working Groups of the United Nations Commission on Human Rights

Another type of mechanism established by the United Nations under which individual cases can be examined is that of the thematic working group. The UN commission on Human Rights has established two thematic working groups, the Working Group on Enforced or Involuntary Disappearances (established in 1979) and newly established Working Group on Arbitrary Detention (established in 1991).

The mandate of the disappearances Working Group is "to examine questions of enforced and involuntary disappearances," and it is composed of five members of the Commission on Human Rights who serve as experts on their personal capacity.

In contrast to the resolution 1503 procedure (see below), the Working Group holds public sessions, receives material from non-governmental organizations and permits them to comment on Government replies (and vice versa). It has also visited countries on a number of occasions at the invitation of the countries concerned. Its work includes consideration of individual cases, particular country situations and the phenomenon of "disappearances" in general.

The main focus of its work has involved individual cases, in which it tries to assist persons to ascertain the whereabouts and fate of their relatives by opening channels of communication between individuals and Governments. The working Group has stressed its humanitarian function and "does not engage in the attribution of responsibility of individual officers or agents of the state for individual cases of disappearances".

The Working Group on Arbitrary Detention is modeled on the Working Group on Disappearances. It has the competence to receive and examine allegations relating to arbitrary detention form victims, family members, non-governmental organizations and other sources.

Where to Send Communications

Further information about the procedures of the tow Working Groups can be obtained from and communications concerning enforced or involuntary disappearances or arbitrary detention may be sent to:

Centre for Human Rights
United Nations Office at Geneva,
8-14 Avenue de las paix,
CH-1211 Geneva 10 SWITZERLAND

3 Article 20 of the Convention Against Torture

Article 20 of the Torture Convention provides an additional procedure for responding to situations in states where there is a widespread pattern of torture. While it is not as such an individual complaint procedure, individual complaints can provide the information which is sufficient to trigger the procedure.

The procedure is triggered by the receipt by the Committee of "reliable information which appears to it to contain well-founded indications that torture is being systematically practiced in the territory of a state party." It does not appear that local remedies must be exhausted before the procedure can be invoked. What follows is a four-stage procedure involving the participation of the state concerned, the details of which remain confidential until it is concluded, at which time the Committee may decide to publish a summary of its findings.

State parties to the Convention are bound by the procedure unless they opt out of it at the time of the ratification. As of 1 January 1991, 47 of the 55 States Parties to the convention had accepted the procedure.

4 Regional Conventions Against Torture

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment 1987 and the Inter-American Convention to Prevent and Punish Torture 1986 establishes a procedure which, while not an individual complaint procedure, may nonetheless assist in redressing individual grievances. The Convention establishes the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The functions of the committee (whose members are independent experts) are to carry out regular and ad hoc visits to States parties to the convention in order to contribute to the prevention of torture and other ill treatment of persons deprived of their liberty.

The Committee has no adjudicative powers, but may carry out fact-finding visits and make recommendations for the strengthening of protections for persons deprived of their liberty from torture or other ill treatments.

While the Committee does not have the function of investigating individual complaints, it may take those into account in deciding whether to visit a state party and in the recommendation it makes.

Petition Information Procedures

United Nations Procedures

1 United Nations Commission on Human Rights: the procedure established by the Economic and Social Council resolution 1502 (XL VIII)

In addition to the thematic mechanism referred to above, Resolution 1503 (XL VIII) establishes a procedure for the receipt and examination of allegations of human rights violations made against a member state of the United Nations. The procedure is designed to identify particular situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and to devise appropriate responses to them. The primary normative instrument applied in the procedure is the Universal Declaration of Human Rights.

The procedure does not provide redress for individual grievances. The procedure treats admissible communications as a source of information in regard to a particular situation which reveals a consistent pattern of gross violations of human rights. Thus, the Secretary-General ceases practically to have any contact with the author of a communication from the time it sends an acknowledgment of receipt to the person concerned.

Resolution 1503 lays down a three-stage procedure involving consideration of complaints by three bodies: a special working group of the Sub-Commisson on Prevention of Discrimination and Protection of Minorities; the Sub-Commission itself; and the Commission on Human Rights.

A working group of the Sub-Commission in those communications which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms, in order to bring them to the attention of the Sub-Commission. In deciding whether to consider communications, the working group applies the admissibility criteria similar to those which apply to individual communications under the various United nations human rights treaties.

The full Sub-Commission then determines if particular situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights should be referred to the Committee on Human Rights.

The Commission must then decide whether a situation which has been referred to it by the Sub-Commission requires a thorough study by the Commission and followed by a report to ECOSOC or whether it should be the subject of an investigation by an ad hoc committee. The procedure is confidential until the Commission reports to ECOSOC.

Where to Send Communications

Communications alleging a violation of human rights which are submitted for consideration under the Resolution 1503 procedure may be sent to:

Centre for Human Rights
United Nations Office at Geneva
8-14 Avenue de la paix,
CH-1211 Geneva 10
SWITZERLAND

2 Commission on the Status of Women

The United Nations Commission on the Status of Women also has a limited mandate to receive communications on the status of women. However, the procedure provides the Commission with little authority to respond effectively to such communications. Governments are requested to respond to communications concerning them. The communications are first considered by sessional Working Groups of the Commission, which reports to the Commission on the categories of

communications most commonly received and identifies trends and patterns. The commission may then make recommendations to the Economic and Social Council as to the appropriate action the Council may wish to adopt. The Commission has not power to take any other action in regard to communications concerning the status of women.

Where to Send Communications

Communications on the status of women for consideration under the communications procedure of the Commission on the Status of Women may be sent to:

Division for the Advancement of Women
2 United Nations Plaza
New Yorkn NY 10017
USA

Regional Procedures

1 Inter-American Commission

The Inter-American Commission on Human Rights also has the jurisdiction to investigate on its oun initiative situations in which there are widespread patterns of violations of human rights in a particular country. It has exercised this competence on many occasions, often combined with on-site investigation in the country concerned, and regularly publishes reports on the human rights situations in individual countries.

2 African Charter

The African Charter on Human And People's Rights 1981 ("the Banjul Charter") established the African Commission on Human and Peoples' Rights. Articles 55-59 provide for consideration be the Commission of communications relating to human and peoples' rights subject to the satisfaction of fairly standard admissibility criteria.

Under article 58 of the Charter, the Commission may take further steps in relation to "one or more communications [which] relate to special cases [and] which reveal the existence of a series of serious or massive violations of human and

peoples' rights." The Commission may draw the case to the attention of the Assembly of Heads of State and Government of the Organization of African Unity, which may request the Commission to make an in-depth study and to prepare a factual report and recommendations to the Assembly.

Where to send communications

Communications alleging a violation of human rights which are submitted for consideration under the procedure established under the African Charter procedure may be sent to:

African Commission on Human and Peoples' Rights
P.O. box 673,
Banjul,
The Gambia

Acceptance and Performance of obligations under human rights instruments

Major international and regional instruments

1. International Covenant on Economic Social and Cultural Rights, (1966) GA Res. 2200 A(XXI) 21 UN GAOR, Supp. 16 and 49 UN Doc. A/6316. Entered into force on 3 January1976.

2. International Covenant on Civil and Political Rights, (1966) GA Res. 2200 A(XXI) 21 UN GAOR, Supp. 16 and 49 UN Doc. A/6316. Entered into force on 23 March 1976. AND Optional Protocol to the International Covenant on Civil and Political Rights. (1966) GA Res. 2200 A (XXI) 21 UN GAOR, Supp. 16 and 49 UN Doc. A/6316. Entered into force on 23 March 1976.

3. International Covenant on the Elimination of All Forms of Racial Discrimination, (1965) United Nations, Treaty Series, Vol. 660, p. 195. Entered into force on 4 January 1969.

4. International Convention on the Suppression and Punishment of the Crime of Apartheid, (1973) United Nations, Treaty Series, Vol. 1015. Entered into force on 18 July 1976.

5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (1984) United Nations, Treaty Series, 1985. Entered into force on 26 June 1987.

6. Convention relating to the Status of Refugees, (1951) United Nations, Treaty Series, Vol. 189, p. 137. Entered into force on 22 April 1954.

7. Convention on the Elimination of All Forms of Discrimination against Women, (1979) GA Res. 34/180. Entered into force on 3 September 1981.

8. Convention on the Prevention and Punishment of the Crime of Genocide, (1948) United Nations, Treaty Series, Vol. 78, p. 277. Entered into force on 12 Jan. 1951.

9. Convention on the Rights of the Child, adopted by the General Assembly of the UN 20 November 1989.

10. ILO Convention No. 87 on Freedom or Association and Protection or the Right to Organize.

- ILO Convention No. 98 concerning the Application of the Right to Organize and to Bargain Collectively.
- Slavery Convention, (1976)(Amended 1953) United Nations Treat Series Vol. 212 p. 17. Entered into force on 7 July 1955.
- ILO Convention (No. 105) Concerning the Abolition of Force Labour, (1957) United Nations Treaty Series vol 320 p. 291. Entered into force on 17 Jan. 1959 Convention relating to the Status of Stateless Persons.
- Convention relating to the Status of Stateless persons(1954) United Nations Treaty Series Vol. 360 p. 117 Entered into force on 6 June 1960.
- Convention on the Reduction of Statelessness, (1961) UN Doc.A/CONF.9/15 Entered into force on 13 Dec. 1975.
- Convention on the Nationality of Married Women, (1957) United Nations Treaty Series Vol. 309 p. 65. Entered into force on 11 Aug. 1958 Geneva.
- Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, (1949) United Nations Treaty Series Vol. 75 p. 31. Entered into force 21 October 1950.
- Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed forces at Sea, (1949) United Nations Treaty Series Vol. 75 p. 85. Entered into force on 21 Oct. 1950 Geneva.
- Convention relative to the Treatment of Prisoners of War,. (1949) United Nations Treaty Series Vol. 75. p. 135. Entered in to force 21 Oct. 1950.
- Geneva Convention relative to the Protection of Civilian persons in Time of War (1949) United nations Treaty Series Vol. 75 p. 287. Entered into force 21 Oct. 1950.
- Protocol Additional to the Geneva conventions OF 12 August 1949 and Relating to the Protection of the Victims of International Armed Conflicts, (1977) Entered into force 7 Dec. 1978.

- Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of the victims of Non-International Armed Conflicts, (1977) Entered into force on 7 Dec. 1978.

Regional Instruments

- European Convention on Human Rights - Convention for the Protection of Human rights and Fundamental Freedoms, Council of Europe European Treaty Series, No. 5, entered into force on 3 Sept. 1953.
- European Social Charter, (1961) Council of Europe European Treaty Series, No. 35, entree in to force on 26 Feb. 1965.
- American Convention on Human and Peoples' Rights, (1981) Organization of African Unity, entered into force 21 Oct.. 1986.

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The Institute for Women, Law and Development

The Institute for Women, Law and Development (IWLD) is an international organization committed to the defense and promotion of women's rights globally. IWLD links individuals from activist groups, research institutions, advocacy and human rights organizations throughout the world in order to:

- contribute to a global consensus (conceptual and strategic) among men and women about the gender dimensions of rights, especially fundamental rights;
- hone the legal and political skills women need to transform this consensus into concrete action for change at all levels;
- advocate directly at the international level for favorable UN and governmental policies affecting the definition and exercise of women's rights; and
- expand and strengthen the women's rights network around the world to make it a truly international force.

To this purpose, the Institute's programs are geared toward:

- training in strategies that effectively use or challenge legal and political processes to women's benefit;
- developing and disseminating approaches to changing negative social attitudes toward women and articulating new and empowering forms of behavior;
- linking with organizations and individuals globally to advocate for women's interests at governmental and UN levels; and
- clarifying emerging issues and strategies needed to overcome barriers to women's advancement and respect for women's rights.

Some Strategies for Using International Human Rights Law and Procedures to Advance Women's Human Rights

Andrew Byrnes

The Utility of International Human Rights Law and International Human Rights Mechanisms

The proliferation of human rights guarantees at the international level, ostensibly equally beneficial for women as for men, has been a marked feature of the last forty years. In the last fifteen years the process of standard-setting has been supplemented by the development of a range of new procedures or "mechanisms" at the international and regional level for monitoring the implementation of these standards. These norms include gender-specific guarantees, as well as guarantees which apply to all. The issue is whether (and how) these international standards and mechanisms can be utilized in order to advance the position women by ensuring their full enjoyment of human rights.

International standards and procedures can be used to improve women's position as follows. The first is by "going international," that is taking one's concerns and allegations of rights violations to an international forum in order to place pressure on the state concerned to respond (or even to move international actors to address systemic problems or the situation in individual states). The second is by "bringing the international back home," namely using international standards and case law to bolster one's claims in the national arena, whether in a judicial, legislative or executive context.

Even though international human rights law is very much part of the dominant masculinist discourse, the rights framework and the internationalization of a claim as a human rights claim may provide some assistance in pursuing one's goals. Although it seems unlikely that all the claims which women might wish to advance can be accommodated with the "human rights framework" or even within that of the specialized instruments and bodies dealing with "women's rights," there are nevertheless opportunities for pursuing women's interests by using and participating in the international human rights community.

While resort to international procedures may sometimes have a direct impact at the national level, it is generally not the best means of obtaining prompt and effective redress for a human rights violation, especially in individual cases. Perhaps the most useful way to approach the question of utilization of international human rights mechanisms is to view them as one of a number of ways in which pressure can be exerted on governments or others in order to achieve one's specific goals. The use of international procedures must form part of a broader political strategy.

Going International: Using the International Procedures

There are a number of different types of international procedure that may provide opportunities for women's rights activists to take their claims to international fora:

1. Reporting procedures under the UN human rights treaties and international labor conventions.
2. Individual complaint procedures under human rights treaties, ILO conventions and other similar procedures,

such as the UNESCO procedure (these are sometimes known as complaint-recourse procedures)

3. Complaint-information procedures (such as the communications procedure of the Commission on the Status of Women, the resolution 1503 procedure)
4. Hybrid procedures (such as the Working Group on Disappearances and the thematic special rapporteurs)

◆ **Reporting Procedures**

Under all the major UN human rights treaties (and various regional treaties), states parties are required to report on a regular basis to the responsible supervisory body on the steps which they have taken to implement their obligations and the difficulties they have experienced in doing so. These reports are then examined by the treaty body in the presence of representatives of the state-concerned. All the committees receive information informally from non-governmental organizations which they may use in their questioning of States.

The examination of a state's report under a treaty can provide an occasion for exerting international pressure on the state. If members of a supervisory body are strongly critical of a state or express the view that the state has not carried out its obligations under the treaty, this can serve to put some pressure on a government, particularly if the proceedings receive publicity internationally or nationally.

For more efficacy to be made of reporting procedures, much needs to be done to disseminate knowledge about the process and its potentialities, as well as to ensure that national groups are made aware of the submission by governments of reports and the time when they are to be examined by the relevant treaty body. All of the treaty bodies offer opportunities for a gender perspective to be advanced. While the general human rights treaties (the ICCPR and the ICESCR) in conjunction with the Women's Convention offer the broadest range of substantive rights, issues of discrimination against women belonging to a racial or ethnic minority can be raised under the Racial Discrimination Convention, the Torture Convention and the Convention on the Rights of the Child.

◆ Complaints Procedures

In deciding whether to lodge a complaint under an international procedure, at least three factors need to be considered:

1. Does the alleged violation fall within the substantive scope of the procedure concerned, whether under the terms of the treaty or other normative instrument applicable to the procedure?
2. Has the state which is alleged to be responsible for the violation accepted the competence of the body concerned to receive and consider complaints or is it otherwise subject to the procedure (for example, by the fact of membership of a particular organization)?
3. Have the preconditions for consideration of the complaint on the merits (admissibility criteria) been satisfied?

Since the forms of redress available under the different procedures vary and the preconditions for accepting a complaint (admissibility criteria) may differ from procedure to procedure, it is important to seek advice from those with experience in advising on the use of international procedures before deciding whether or not to utilize a particular procedure.

◆ Individual Complaints

The purpose of a complaint-recourse procedure is the redress of individual grievances. The body receiving the communication is obliged to take action on an individual communication and the author of the communication is entitled to participate in the consideration procedure to some extent. Examples of such procedures are the individual communications procedures under the First Optional Protocol to the ICCPR, a number of the ILO complaint procedures and the UNESCO communications procedure. Some use of these procedures has been made to raise sex-discrimination issues, though much more could be done in this regard.

Since most of the complaints procedures are voluntary, the most effective procedure may simply not be available if the state concerned has not accepted it. One may have to make do with another procedure which may not be as good a fit for the

substantive claim being advanced or which may provide a less hospitable forum or less effective remedies.

There are obvious dangers in bringing a case before an international body and losing. However, there are also dangers in bringing a case and winning, If the government is found to have violated rights guarantees, it seeks to implement the least generous interpretation of those guarantees consistent with the decision of the international body concerned.

◆ **Other Complaint Procedures**

A complaint information procedure, by contrast, does not provide an avenue for the redress of individual grievances, but is intended to identify general trends of human rights violations or human rights problems in particular countries in order to formulate appropriate remedial strategies. The author of the communication does not generally participate formally in the consideration of the communication after it has been submitted and does not have the right to be informed of the outcome of the consideration of the communication. Although not intended to address individual cases, these procedures may nonetheless be of assistance in that context.

There are a number of procedures of this type which are underutilized. For example, little use has been made of the ILO complaint procedures to address gender issues, although the ILO has adopted a number of conventions dealing with sex discrimination and other matters of particular concern to women. Any workers' group effectively can lodge a complaint with the ILO that the state concerned is not observing the relevant convention. Similarly, the communications procedure of the Commission on the Status of Women, which while rather weak, is also underutilized.

◆ **Policy and Political Bodies**

In addition to the procedures which are either formally designated as complaint procedures or under which allegations of human rights violations may be taken to treaty bodies as part of their of country reports, there are a number of other procedures available. They might be described as the "thematic" and expert bodies, on one hand and political bodies on the other.

One example is the Working Group on Contemporary Forms of Slavery, a body which considers among other issues, the question of trafficking of women and children. Taking a matter to this body essentially only provides a forum for publicity. States referred to in NGO submissions frequently attend and respond to allegations of rights violations.

The "political" organs of the UN, such as the Commission on Human Rights, also provide a forum for airing human rights grievances in public session, although these tend to be highly politicized fora.

Some Problems

◆ Conceptual Framework of Human Rights Adjudication

The limitations of the conceptual framework of the "mainstream" human rights frameworks have often been raised. The mainstream bodies can deal reasonably well with straightforward claims of differential treatment on the basis of sex in law or the practice of public authorities. However, they have considerably more difficulty in responding to claims which challenge the distinction between public and private spheres and which seek to attribute responsibility to a state for violations committed by private individuals acting as such. Since so many of the violations of human dignity are suffered at the hands of private individuals, the question of the responsibility of the state for private violations is of fundamental importance for women's rights.

◆ "One Statism"

In addition to the statist orientation of human rights law, many of the available procedures (and binding treaty obligations) are also "one statist" in nature, focusing on the acts of a state within its physical territory or within its jurisdiction in the extended sense of that term. This means that it may be difficult to use such procedures other than the individual complaint procedures. In such a case resort to one of the political fora or to one of the policy-making bodies that is prepared to receive communications as part of its general work may be the only alternative available.

This "one Statist" orientation also makes it difficult to use many procedures to bring complaints, where the gist of the violation alleged arises from international power imbalances and exploitation. For example, the role of multinational companies in the free economic zones in various countries in Asia.

Some Possibilities

◆ The Challenges: Making One's Jurisprudence

The substantive content of human rights guarantees is malleable in many respects and the struggle over their meaning is a political struggle carried out through legal discourse. Thus, there are opportunities to influence decisively the direction in which international jurisprudence relating to the human rights of women develops and to then take that international jurisprudence back to the national level.

While one can influence the development of case law by bringing appropriate cases and perhaps intervening in others, this process can be somewhat sporadic, though valuable. One way significant contributions could be made in the development of gender-aware international standards is in developing the jurisprudence in a broad sense of the various treaty bodies. The UN treaty bodies have power to make general comments or general recommendations, a power which the Human Rights Committee has seized on to elaborate its understanding of individual articles of the ICCPR. It has been followed in that endeavor by the Committee on Economic, Social and Cultural Rights (CESCE) and also by the Committee on the Elimination of Discrimination against Women (CEDAW).

These detailed general comments can be particularly useful, since they represent a detailed elaboration of the broadly worded obligations binding on states under the various treaties and may be particularly useful for that reason in the domestic, political and even judicial context. With the exception of CEDAW's general recommendations, gender plays a relatively minor role in the general comments of the other committees. The work of all the treaty bodies in this regard provides an important opportunity to help shape human rights jurisprudence in a way which will inure to the benefit of women.

- **Launching a Broadly-Based International Strategy/Campaign**

If changes to the substantive agenda are the goal, it may be that a broad-ranging thematic strategy adopted across a wide range of bodies and procedures is worth considering. Amnesty International, for example, was extremely effective in its campaign against torture, bringing the matter to the center of the international human rights stage by a concerted campaign. Other issues which have been pursued in this way include the question of disappearances. It may be that one or more major issues could be actively brought by women's groups and human rights groups before a number of human rights bodies, ranging from the political bodies to the treaty committees in both their monitoring and adjudicative roles. To put violence against women on the agenda of every major human rights body at the international and regional level, for example, might be one possible strategic goal.

Bringing the International Back Home: Using International Human Rights in the National Context

Another complementary approach is the use of international standards and comparative material at the national level. The benefits of adopting such a strategy will vary from country to country, but international standards can be invoked not just in the courts but also in the legislative and administrative context. For example, use has begun to be made of CEDAW's General Recommendation on violence against women to bolster demands that national governments take steps to address the problem. This strategy requires the collection and dissemination of information about developments at the international level and in other countries, and the provision or resource centers which are available to provide assistance as and when it is needed. Some of this is already happening, both in relation to human rights issues generally and in relation to women's rights in particular.

The Need for Knowledge and Access

A common thread running through the discussion above is the need to spread knowledge about the existence and potential of the various international procedures available and to build better linkages between organizations working at the national level and those working at the international level. There is a clear need for training women's rights groups in gender issues. The preparation of a manual which would present, from a gender-specific perspective, the ways in which international procedures might be utilized as part of the struggle to advance women's position, as well as identifying ways in which international and comparative law developments might be brought back home and relied on within the domestic legal system, may be a useful initiative.

Appendix 1

Using International Procedures--Some Necessary Steps

Any consideration of whether to take a case internationally involves the consideration of a large number of issues.[1] It will normally involve the following steps (the order is not linear):

1. Identifying the violations (and their causes) and conceptualizing them in terms of international human rights instruments at an early stage (even when initiating domestic proceedings.)
2. Identifying the right plaintiff or complainants.
3. Exhausting domestic remedies and ensuring that other admissibility conditions are satisfied (if applicable).
4. Identifying an appropriate body/bodies or procedure--determining whether a complaint may be brought under more than one procedure.
5. Identifying the goals sought to be achieved by taking the issue or case to an international body (Hannum: "publicity, investigation, change in national legislation,

[1]For an extremely helpful checklist on which this list draws, see H. Hannum, *Guide to International Human Rights Practice* (University of Pennsylvania Press, 2nd edition 1992.)

individual redress--protection, release from detention, specific redress.)

6. Accessing time and energy and ensuring that both be spent in a useful and efficient manner on a particular case.
7. Liasing with a local or international NGO with experience in dealing with the body concerned or using the procedure or which has material or intellectual resources which might be made available.
8. Preparing and submitting the complaint or other documentation (including additional research or fact-finding).
9. Presenting the material, lobbying, and follow up.
10. Bringing the international back home (via publicity, etc.)

Appendix 2

Some Cases for Discussion: The (Ir)relevance of International Human Rights Law

- **Situation A: Discrimination Against Women in Private Employment in Hong Kong**

In Hong Kong, there appears to be widespread discrimination against women in employment (as well as in other areas of social life). This discrimination takes various forms and includes the reservation of managerial and higher level positions for men, unequal rates of pay for equal work, pregnancy discrimination, and sexual harassment in employment. In Hong Kong, there is no general legislative protection against discrimination on the basis of sex by private employers, nor are there any informal or administrative structures established to deal with claims of discrimination.

The Hong Kong government's response to the problem has been to deny that any discrimination (or at least sufficiently compelling evidence of its existence) exists, to argue that legislative intervention in this area is either inappropriate or likely to be ineffectual, and to refuse to establish a Human Rights Commission or other similar body to receive and deal with complaints of employment discrimination.

Although the ICCPR and ICESCR apply to Hong Kong, the United Kingdom government has not extended the Women's Convention to Hong Kong, nor do the two major ILO Conventions dealing with discrimination in employment (ILO No. 111) or equal pay for women (ILO No. 100) apply to Hong Kong.

Hong Kong women's groups have been attempting to pressure the government to ratify the Women's Convention (which would require steps to be taken to address discrimination in private employment), to establish a women's commission and to enact anti-discrimination legislation, but have to date been relatively unsuccessful.

- **Situation B: Foreign domestic helpers in Hong Kong and the right of access to court**

In Hong Kong, there are some 70,000 women from other countries (mainly the Philippines) who have come to work in Hong Kong as foreign domestic helpers. While there is a standard form contract guaranteeing a minimum wage and conditions of employment and the process of hiring and entry into Hong Kong is regulated by Philippine and Hong Kong authorities, many abuses of these women by employers and others have been reported. These include from failure to observe the agreed conditions of contract, subjecting helpers to physical violence and sexual harassment in the homes in which they live and work.

One of the issues that has created particular concern is the policy of the Hong Kong immigration authorities regulating departure from Hong Kong when a helper's contract expires or is terminated. Normally, a woman is expected to leave Hong Kong within two weeks of that event. Where a helper has been dismissed unfairly and without the payment of wages due or other benefits, she may well have a claim that can be brought before the Labour Tribunal, the body responsible for dealing with most employment-related claims.

The Hong Kong authorities will permit a woman to remain in Hong Kong during the processing of a claim by the Labour Tribunal. However, she will not be allowed to work during that time, which can be a matter of many months. As a result, many women are forced to abandon their claims before the

Tribunal; the only other choices are to work illegally or to draw upon the hospitality of relatives or friends in Hong Kong.

In many cases, therefore, the effect of the immigration policy is that helpers are effectively denied access to the courts and tribunals of Hong Kong to have their claims litigated. This raises issues under article 14 of the ICCPR, among other instruments.

The two-week rule has been challenged in the courts of Hong Kong and has been the subject of consistent and vigorous opposition by foreign domestic helpers and the organizations which work for and with them. However, the government has refused to change the policy or to permit women who have cases before the Labour Tribunal to work while those cases are proceeding.

It seems unlikely that a challenge under Hong Kong's Bill of Rights would succeed, since that provides an exemption for immigration legislation governing conditions of stay. The only directly relevant ILO Convention on migrant workers that applies to Hong Kong appears to be ILO No. 97, the Convention concerning Migration for Employment (Revised 1949). That Convention provides in article 6 that migrants for employment are to be granted by the host state without discrimination as to nationality, race, religion or sex, "treatment no less favorable than that which nationals of the host state receive in a number of areas, including "legal proceedings relating to the matters referred to in [the] Convention."

- **Situation C: Violence against women in detention and trafficking of women in Pakistan**

A recent report on Pakistan prepared by the Human Rights Project of Human Rights Watch and Asia Watch.[2] considers a number of aspects of the treatment of women by the criminal justice system of Pakistan. It focuses in particular on the detention of women in police custody and the torture and ill treatment which they suffer. The report estimated that some 70% of

[2] *Double Jeopardy: Police Abuse of Women in Pakistan,* Asia Watch, Human Rights Watch

women in police custody in Pakistan are subjected to sexual or other physical abuse.

Quite apart from the discriminatory (in particular, the Hudood Ordinances) which have led to a considerable increase in the number of women in custody, the report found that little or no efforts had been made by the authorities to prosecute or otherwise punish those responsible for such violations.

The report also looks at trafficking in women in Pakistan, which it estimates as involving at least 100 to 150 women being brought into Pakistan each month. Once in Pakistan, they may be forced into prostitution, or be sold as commodities. The persons responsible for running this trade in women have largely gone unpunished; if the women involved complain or escape they may themselves end up in prison for immigration or Hudood offenses. The government of Bangladesh (from where many of the women come) nor the government of Pakistan appear to have done much to alleviate the plight of Bangladeshi women in Pakistani jails.

Pakistan is not a party to either of the International Covenants, the Convention Against Torture or the Convention on the Elimination of All Forms of Discrimination against Women. It is a party to the Racial Discrimination Convention. Both Pakistan and Bangladesh are parties to a number of conventions relating to slavery, trafficking in women and prostitution. These include the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1949.

- **Situation D: Violence against women in Brazil**

In an earlier report, the Women's Rights Project and Americas Watch considered the response of the Brazilian justice system to domestic violence against women. The report concluded that domestic violence against women was a widespread problem in Brazil and that domestic battery and rape were rarely punished. The report also examined the way in which the legal rules that provided for defenses of "honor" or violent emotion helped to legitimate violence against women.

Brazil is a party to the Convention on the Elimination of All Forms of Discrimination Against Women. It is a member of the Organization of American States, but is not a party to the American Convention on Human Rights. It is, however, a part to the Inter-American Convention to Prevent and Punish Torture.

Andrew Byrnes is Professor of Law at the University of Hong Kong.

Regional Enforcement of Women's Human Rights: The European System

Christine Chinkin

European Institutional Frameworks

Europe is currently in a contradictory alien position with respect to the protection of human rights. On the one hand, the collapse of the former Soviet Union and the restoration of democratic regimes in Eastern Europe have led to wider membership of the specialist institutions, while on the other hand, respect for and protection of human rights have broken down in certain areas. The most dramatic example is in former Yugoslavia, but in other countries across Europe political transition, economic dislocation, unemployment, terrorism, and racial and religious hatred have spawned violence and threats to fundamental rights. Many of these have a particular impact upon women. In some countries, for example Poland, political democracy and the commitment to a market economy have diminished adherence to economic and social rights for women, including reproductive rights and access to affordable services such as child care. Trafficking and sexual exploitation of

women and children have greatly increased with large numbers of women from Eastern Europe being lured by the promise of economic prosperity elsewhere. The realities of life in Europe for many women must be remembered when the adequacy of the institutions for the protection of human rights is considered.

There are a number of different governmental institutions within Europe which have developed considerable human rights expertise, and which have been adopted as models within other regions. Strategies for promoting and protecting women's human rights must be considered within the existing frameworks of the Council of Europe, the European Community and the Conference on Security and Cooperation in Europe. While they offer a range of political and legal options, it is important to clarify the points of distinction.

The major legal institutions and the human rights instruments concluded under their auspices are:

1. The Council of Europe

The Council of Europe was formed in 1949 between western democratic European States. Its statutory principles are pluralist democracy, respect for human rights and the rule of law. Since 1989, its membership has increased as members of the former eastern bloc have joined or submitted applications to join.[1] The human rights instruments of the Council of Europe are:

- *The European Convention on Human Rights*, 4 November 1950, and 10 Protocols
- *The European Social Charter*, 18 October 1961, and Additional Protocol of 1988
- *The European Convention on Torture*, 26 November 1987

The European Convention contains a catalogue of the traditional civil and political rights,[2] although it includes family life (Articles 8 and 12). The European Social Charter contains a

[1] On 14 May 1993, Estonia, Lithuania, and Slovenia became members of the Council of Europe bringing its membership from that date to 29 states.

[2] Right to life (Article 2); right to be free from torture (Article 3); right to be free from servitude (Article 4); rights to liberty (Article 5); right to due process (Articles 6 and 7); right to freedom of thought (Article 9); right to freedom of expression (Article 10); right to freedom of association (Article 11).

catalogue of economic, social, and cultural rights. [3]Common Article 14 to these Conventions assert that:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

However, there is no specific provision ensuring the protection of the rights of women and children comparable to Article 18 of the African Charter of Human and People's Rights 1981. In the 1988 the Committee of Ministers adopted a Declaration on Equality of Men and Women which stated that "equality of women and men is a principle of human rights, upheld as a fundamental right in many international instruments" and that "sex related discrimination in the political, economic, social, educational, cultural and any other fields constitutes impediments to the recognition, enjoyment and exercise of human rights and fundamental freedoms."

2. The European Community

The constitutive treaty of the European Community, the Treaty of Rome, 25 March 1957,[4] includes provisions on equality in specific areas, for example equal pay for equal work (Article 119). This is reiterated in the European Union Treaty (Treaty of Maastricht) Article 6. The Treaty of Rome has been supplemented by Directives from the European Council (e.g., Equal Pay Directive 75/117; Equal Treatment Directive 76/207; Social Security Directive 79/7) and by Equality Action Programs.

3. The Final Act of the Conference on Security and Cooperation in Europe, August 1975 (CSCE)

The Final Act, the Helsinki Accords, comprised 35 states, all European states except Albania and the United States and Canada. The Helsinki Accords do not create any binding legal obligations but are an important statement of political intent and

[3]For example, the right to work and associated rights (Article 1-10); the rights to social security (Article 12); the right to social and medical assistance (Article 13). People accorded special protection include mothers and children and migrant workers and their families.

[4]There are currently 12 member states of the European Community.

commitment. Part VII affirms the respect for a wide range of human rights including freedom of thought, conscience and religion "without distinction as to race, sex, language or religion." Follow-up Conferences expanded the commitment to the protection of human rights and the collapse of communism in Eastern Europe led to emphasis on the rule of law, free elections and protection of minorities.

Procedures for the Implementation of Human Rights

The membership of each of these institutions is different, as are the substantive rights, powers, and procedures under each of the instruments. Women living in Europe who wish to use the regional machinery to protect their human rights must therefore first determine which of these instruments apply to them.

Perhaps the most important procedural difference between the instruments is that binding judicial determination is only possible under the European Convention on Human Rights and the Treaty of Rome. Although there are now monitoring procedures under CSCE, the Helsinki Accords is not an enforceable international agreement and there is no comparable enforcement machinery under the European Social Charter.

1. Machinery for the Enforcement of the European Convention on Human Rights

The machinery under the European Convention on Human Rights is the most developed and is applicable to the largest number of member states within Europe. It will therefore be discussed in more detail than the other institutional mechanisms.

The European Convention operates through the European Commission of Human Rights, the Committee of Ministers and the European Court of Human Rights. There is provision for inter-state complaint (Article 24) and for individual application (Article 25), provided the state in question has accepted the rights of individual complaint. Complaints are considered in the first instance by the Commission which undertakes a fact finding inquiry. The Commission also has the function of attempting to bring about a friendly settlement through

conciliation between the individual and the government concerned. If conciliation proves impossible, the Commission prepares a report in which it sets its findings of fact and its own opinion. This report is not binding. The case may be submitted to the European Court on Human Rights, if the state party has accepted the jurisdiction of the Court (Article 46). Only the High Contracting Parties and the Commission have the right to bring the case before the Court. The individual has no right to do so (Article 45). The Court has the power to make a binding decision and if it finds a breach of the Convention has occurred, may order satisfaction (Article 50). If a case is not referred to the Court, the Committee of Ministers decides by a two-thirds majority whether a breach of the Convention has occurred (Article 32).

A considerable jurisprudence has been developed under the European Convention which has given weight to its provisions. There has been a high level of compliance by governments and there have been a number of decisions which have prompted women's rights either directly or which are open to be used by future advocates in ways which would be of benefit to women. These include:

- ***Cyprus v. Turkey*, Application No 6780/74; 6950/75 (10 July 1976)**

The European Commission found that rapes committed by Turkish officers and soldiers could be imputed to the occupying power, Turkey, and constituted inhumane treatment contrary to Article 3. This constitutes an important precedent on the treatment of women during armed conflict. The case also illustrates the advantages of the inter-state procedure, although it is little used. There is no requirement for a named victim of violation of rights as there is with individual applications and it allows a systematic practice of a state to come under scrutiny. However, it does require one state to bring a complaint against another member state, which is rarely done.

- ***Airey v. Ireland*, 32 European Court on Human Rights (Series A) (1979)**

The Court held that respect for family life requires positive steps by the state party, including in this case provision of legal

aid for an indigenous wife seeking judicial separation from her violent husband.

- ***Open Door Counseling, Ltd. and Dublin Well Women Centre, Ltd. v. Ireland*, Series A No 246 (1992)**

The right to freedom of expression required that the Irish government did not prevent women in Ireland from receiving information about abortion services available in England.

- ***Abdulaziz, Cabales and Balkandali v. UK*, 94 European Court on Human Rights (Series A) (1985)**

This was a traditional case of discrimination in the context of immigration. British law demanded that women, but not men, lawfully residing in the United Kingdom meet certain requirements before their foreign spouses could join them. The Court held that this violated privacy rights as well as being discriminatory. Discrimination was only permissible if there were "weighty" reasons justifying it. None existed here.

- ***Marckx v. Belgium*, 31 European Court of Human Rights (Series A) (1979)**

In this case, laws concerning the status of illegitimacy were challenged. The Court held that Article 8 does not define the concept of a family and that single parent families must also be accorded respect. Further, ensuring respect for the family does not merely require the state not to interfere, but may also require positive state action. "This means . . . that when a state determines in its domestic legal system the regime applicable to certain family ties such as those between an unmarried mother and her child, it must act in a manner calculated to allow those concerned to lead a normal family life."

- ***X and Y v. the Netherlands*, 91 European Court on Human Rights (Series A) (1985)**

In this case, the Netherlands was held to be in breach of the Convention through inadequacy of its criminal law. A gap in the law meant that there was no action available to a 16 year old mentally retarded child who had been sexually abused. The Court held that respect for family life includes positive

obligations upon states and may require the adoption of measures designed to secure respect for private life even in the sphere of individual relations. Although this case was not directly about women, the finding of state liability for private actions could be applied, for example, to the failure of a state to apply its criminal law to prosecute private acts of violence against women. It is an extremely important statement that states may be held internationally responsible for private actions.

However, in *Bruggemann and Scheuten v. Germany*, 21 YB 638, the Commission held that the right to privacy does not guarantee a woman's right to abortion.

Despite these advantageous cases, there are also some significant disadvantages to the procedures under the European Convention which weaken their effectiveness.

- **Many applications are found to be inadmissible.** Petitions are not accepted by the Commission if they are anonymous, manifestly ill-founded, or incompatible with the Provisions of the Convention. An application will not be considered if it has already been submitted to another procedure of international investigation or settlement and contains no new information. All domestic remedies must first be exhausted. Legal aid may not be available for the pursuing of domestic remedies; the Commission may grant legal aid in appropriate cases, but this is far from guaranteed. Issues relating to the difficulties of access to justice which apply in domestic jurisdictions are especially applicable to international machinery.
- **A named victim of a violation has to be willing to pursue the case at what may be considerable personal and material cost.** It must be remembered that the procedures include attempted settlement with the government concerned under the auspices of the Commission. This may cause great anxiety for an individual. Even when the Commission finds favor of the application, there is no guarantee that the case will be referred to the Court. The situation may be improved when Optional Protocol Number 9 comes into effect as that will allow a

person, non-governmental organization or group of individuals who have made the complaint to refer it to the Court in certain circumstances. [5]However, this will only apply to states which have accepted the Protocol. The value of an individual judgment is also questionable given the structural and economic disadvantages faced by so many women in Europe.

- **Even when found admissible, the proceedings take an extremely long time** and there is an ever-growing backlog of cases. The current average period from application to a decision of the Court is 5 years. The decision on admissibility takes on average slightly over a year and there may be lengthy domestic proceedings before the application process. There is no provision for interim measures as in the International Court of Justice. With the increased membership of the Council of Europe consequent upon the collapse of socialism in Eastern Europe, it is envisaged that this problem will worsen. While it is important to note that membership of the Council of Europe and of the European Convention on Human Rights provides women from Eastern Europe for the first time with regional machinery for the implementation of their rights, the system may be in danger of collapse. Over 1800 new cases were commenced in 1992. Both the Commission and Court may sit in Chambers of 7, but in cases of importance, the full Court may sit. Procedures before and decisions by a Court comprising a judge from each member state of the Council of Europe are extremely cumbersome. Suggestions for radical procedural reforms have been made and two reform proposals are currently under review. The first is for a single, full-time Court and the second is for a two-tier judicial system with the Commission functioning as a court of first instance, and the Court exercising appellate jurisdiction.
- **The Convention is not directly applicable in all member states** of the Council of Europe (e.g., the United Kingdom). Its application by Courts in such countries is

[5]The Protocol was opened for signature November 1990. It will come into force three months after 10 states have consented to be bound by it.

not required and it does not therefore substitute for a domestic Bill of Rights.

- **The European Convention on Human Rights covers primarily civil and political rights**, not economic, social, and cultural rights which often are more applicable to women. Implementation of the Social Charter relies upon a reporting and supervisory system which involves examination of periodic government reports by an independent Committee of Experts, and a Governmental Committee report to the Committee of Ministers. The latter may "make to each Contracting Party any necessary recommendations." The Parliamentary Assembly also draws up for the Committee of Ministers its opinion on the adequacy of implementation of the Charter by member States. There is no system of full investigation by the Commission and, possibly, judicial determination.
- **The institutions of the Council of Europe remain male-dominated** and the jurisprudence reflects the traditional male-oriented approach. While some of the case law has potentially far-reaching implications for women, it will be necessary for gender aware advocates to make the connections and for the decision-makers to accept these arguments. Gender awareness training which goes beyond the concept of equality is required at all levels.
- **There are gaps within the Conventional provisions.** For example, there is no specific prohibition of violence against women, or trafficking in women. While the Conventions are supplemented by other international instruments it would be desirable for the more effective enforcement mechanisms of the European Convention to be applicable to such rights.

Machinery Available Within the European Community

Only members of the European Community are parties to the Treaty of Rome. The Treaty of Rome human rights provisions are more limited than the catalogue of human rights in the European Convention and are directed towards the political and economic objectives of the European Community. However, directives are directly applicable in member states and

decisions of the European Court of Justice are binding upon European Domestic Courts. Further, the European Court of Justice has concerned itself with questions of human rights and has held that some of the principles of the Convention constitute general principles of European law. European law is superior to domestic legislation and can be used both to supplement its gaps and to challenge directly contrary domestic law. There are four procedures that can be used: petition procedure; European Parliament intervention; infringement procedures (political procedures); and reference to the European Court under Article 177 (judicial procedure). This last rests upon the obligation of conformity between domestic law and Community law. While European law allows for the identification and bringing of test cases before the European Court, the problems of expense, finding a person willing to have her case so used and the uncertainties of judicial interpretation may make this an expensive and unpredictable strategy.

Conference on Security and Cooperation in Europe

In January 1989, a mechanism for monitoring human rights within the CSCE framework was instituted. The so-called CDH mechanism provides participating states with four methods of raising cases and situations:

1. a request for information from other participating states;
2. through provision for bilateral meetings between participating states;
3. through diplomatic channels; and
4. raising situations and cases at meetings of the Conference on the Human Dimension or CSCE follow-up meetings.

In 1990, participating states agreed to provide written responses to written requests for information from participating states in as short a time as possible and always within four weeks, and to ensure that bilateral meetings take place as quickly as possible, as a rule within three weeks of the request.

The effectiveness of these methods depends upon the political willingness of states to take up cases and situations with other participating states, either bilaterally or more widely.

Lobbying of domestic governments therefore remains important.

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The Regional Enforcement of Women's Human Rights: The Inter-American System

Marcela Rodriguez

The Inter-American system presents a dual institutional structure, one having developed from the Charter of the Organization of American States and the other composed of mechanisms set forth in the American Convention on Human Rights. This system recognizes the existence and defines the fundamental rights, institutes obligatory standards of behavior in order to promote and protect these rights, and creates the means to supervise the observance of human rights.

The bodies in charge of carrying out the enforcement of human rights in the Inter-American system are: the Inter-American Commission for Human Rights, the Inter-American Court of Human Rights, and the General Assembly of the Organization of American States. The legal sources of the rights to be protected and the pertinent procedures can be found in: the Charter of the OAS, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, and the Statutes and Regulation of the Court and Commission.

Background

The Inter-American system for the promotion of human rights was first organized under the Organization of American States. The Ninth International Conference of American States, held in Bogota in 1948, created the Charter of the Organization of American States as well as the Inter-American Declaration of the Rights and Duties of Man. The original OAS Charter called for the American States to "proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex," as one of the principles on which the organization is based. With the adoption of the Protocol of Buenos Aires in 1967, the Charter's human rights protections were amended to include some important human rights features, including the formal acceptance of the Inter-American Commission for Human Rights as an OAS charter organ.

The American Declaration of the Rights and Duties of Man consists of a Preamble and 38 articles which define the rights protected and correlative duties. It also states the "the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality," meaning that they are independent of its recognition by the state.

The institutional structure of the Inter-American system for the promotion and protection of human rights, embraced a significant transformation with the adoption of the American Convention on Human Rights in San Jose, Costa Rica in 1969. Its Preamble expresses that the purpose of the Convention is to "consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man." Part I of the Convention establishes the obligations of the state to respect the rights and freedoms recognized therein, and its duty to adopt the necessary measures to ensure the free and full exercise of those rights and freedoms, without any discrimination for the reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

There is a definition of the rights and freedoms protected, particularly the civil and political ones. In Article 26, it establishes that the states themselves undertake only to "adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving, progressively, by legislature or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States." Part II of the Convention organizes the means of protection--the Inter-American Commission of Human Rights, the organs that have "competence with respect to matters relating to the fulfillment of the commitment made by the states parties to this Convention."

To apply these mechanisms to expand the women's human rights framework, it is necessary to analyze the structure and functions of these organs, the range of procedures establishing the rules of the standing, process and adjudication, and also some relevant cases.

The Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights has a dual status:

- it is an organ of the Organization of American States, created to promote the observance and defense of human rights and to serve as consultative organ of the Organization in this matter and
- it is also an organ of the American Convention on Human Rights.

The Inter-American Commission on Human Rights is composed of seven members, who shall be persons of high moral character and recognized competence in the field of human rights. They are elected by secret ballot of the General Assembly of the Organization from a list of candidates proposed by the governments of the member states. No two members of the Commission can be nationals of the same state. Each state can nominate up to three candidates for the Assembly election. A state may nominate its own nationals, and if a state chooses to submit three names to the Assembly, at least one must be a non-

national of that state. They are elected for a term of four years. The Commission shall represent all the member countries of the Organization of American States.

The Commission shall meet for a period not to exceed a total of eight weeks, divided into however many regular meetings the Commission may decide. It may also convene special sessions. The sessions of the Commission shall be held at its headquarters, however, the Commission may decide to meet elsewhere. An absolute majority of the members of the Commission constitutes a quorum.

The main task of the Commission is to promote respect for and the defense of human rights. The Commission's functions are:

1. to protect and promote human rights in all OAS member states;
2. to advise OAS member states with regards to the adoption of progressive measures in favor of human rights in the framework of their legislation, constitutional provisions and international commitments, as well as appropriate measures to further the observance of those rights;
3. to assist in the outline of human rights documents;
4. to intervene in serious human rights conflicts;
5. to elaborate country reports on human rights situations;
6. to carry out on-site investigations with the consent or at the invitation of the government in question;
7. to handle complaints related to human rights violations and to introduce individual cases by itself;
8. to participate in the handling of cases and advisory opinions before the Court;
9. to request the Inter-American Court of Human Rights to take such provisional measures as it considers appropriate in serious and urgent cases which have not yet been submitted to it for consideration, whenever this becomes necessary to prevent irreparable injury to persons;
10. to request the governments of the member states to supply it with information about human rights issues;

11. to request advisory opinions from the Court concerning the interpretation of the American Convention or other treaties related to human rights;
12. to submit an annual report to the General Assembly of the Organization of American States.

With respect to those member states of the Organization that are not parties to the American Convention on Human Rights, the Commission has the following powers:

1. to supervise the observance of the human rights referred to in the American Declaration of the Rights and Duties of Man;
2. to examine communications and any other information submitted to it, to address the government of any member state for information deemed pertinent by this Commission and to make recommendations to it, in order to bring about more effective observance of fundamental human rights, provided that the domestic legal procedures and remedies have been duly applied and exhausted.

Communications and Individual Petitions

The Convention establishes that "[a]ny person or group of persons, or any non-governmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission, on one's behalf or on the behalf of third persons, containing denunciations or complaints or violations of human rights recognized in this Convention by a state party or in the Declaration of the Rights and Duties of Man.

The Commission shall receive and examine any petition that contains a denunciation of alleged violations of the human rights set forth in the American Declaration of the Rights and Duties of Man, concerning the member states of the Organization that are not parties to the American Convention on Human Rights.

A state party may present a communication against another state party. Any state party may, when it deposits its instrument of ratification of or adherence to the Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a

state party alleges that another state party has committed a violation of a human rights set forth in the Convention. These communications may be admitted and examined only if they are presented by a state party that has made a declaration recognizing the competence of the Commission.

The Convention establishes the following requirements for the petitions:

1. the name, nationality, profession or occupation, postal address or domicile, and signature of the person or persons making the denunciation; or in a case where the petitioner is a non-governmental entity, its legal domicile or postal address, and the name and signature of its legal representative or representatives;
2. an account of the act or situation that is denounced specifying the place and date of the alleged violations and if possible, the name of the victims of such violations as well as that of any official that might have been appraised of the act or situation that was denounced;
3. an indication of the state in question which the petitioner considers responsible, by commission or omission, for the violation of a human right recognized in the American Convention on Human Rights in the case of state parties, even if no specific reference is made to the article alleged to have been violated;
4. information on whether the remedies under domestic laws have been exhausted or whether it has been impossible to do so.

The petition shall be lodged in writing. The petitioner may appoint, in the petition itself, or in another written petition, an attorney or other person to represent him before the Commission.

The Commission will consider the petition or communication admissible if:

1. the petition or communication is lodged within a period of six months from the date on which the party alleging violations of his/her rights was notified of the final judgment;

2. the statements of the petitioner or of the state indicate that the petition or communication is not manifestly groundless or obviously out of order;
3. the subject of the petition or communication is not pending in another international proceeding for settlement or it does not duplicate a petition pending or already examined and settled by the Commission or by another international governmental organization of which the state concerned is a member; and
4. the remedies under domestic law that have been pursued and exhausted in accordance with generally recognizing principles of international law.

This last requirement is not demanded when:

1. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
2. the party alleging violation of his/her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
3. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

When the petitioner contends that he is unable to prove exhaustion as indicated, it shall be up to the government against which this petition has been lodged to demonstrate to the Commission that the remedies under domestic law have not been previously been exhausted, unless it is clearly evident from the background information contained in the petition.

When the Commission considers that the petition is inadmissible or incomplete, it shall notify the petitioner, whom it shall ask to complete the requirements omitted in the petition.

The Commission may, at its own initiative, or at the request of a party, take any action it considers necessary to carry out its functions. It may also consider that provisional measures should be taken in urgent cases in order to avoid irreparable damage to persons.

If the Commission considers the petition or communication admissible, it shall send the government of the state indicated as being responsible for the alleged violations a transcript of the

petition or communication and request the pertinent information. The Commission shall request the government to provide the information within ninety days. The Commission may also request the promptest reply from the government in serious and urgent cases, or when it is believed that the life, personal integrity, or health of a person is in immediate danger. The government of the state in question may, with justifiable cause, request a thirty day extension, but in no case shall extensions be granted for more than one hundred and eighty days after the date on which the first communication is sent to the government of the state concerned.

The facts reported in the petition transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

The pertinent parts of the reply and the documents provided by the government shall be made known to the petitioner who shall be asked to submit his/her observations and any available evidence to the contrary within thirty days. These observations and documents shall be transmitted to the government, which shall be allowed to submit its final observations within thirty days.

At this stage, the Commission shall determine whether the grounds for petition or communication still exist. If they do not, the Commission shall order the record to be closed. If the record is not closed, the Commission shall examine the matter in order to verify the facts. When the Commission considers that it is necessary, the Commission may carry out an on-site investigation for which the state should provide all necessary facilities. The on-site investigation is important in the Inter-American system since it helps to face practical and political impediments. The economic situation sometimes makes it impossible for poorer victims to access legal assistance and the Commission. In addition, there is certain information that can only be gathered on-site.

Finally, the presence of the Commission may prevent retribution against victims or witnesses and sometimes can prevent

further violations of human rights. The Commission may also request further relevant information and, it may also hear oral statements or receive written statements from the parties.

In such cases where a state's alleged practice may involve massive violations which may be hard to document on an individual basis, the Commission has instituted a type of "class action" method for fact-finding. It uses a lesser burden of proof for cases of difficult investigation, for example, the practice of "disappearances" carried out in Latin American countries over the last thirty years. A staff member of the Commission expresses that:

"Since 1965, the Commission has received about 9,000 individual cases . . . . [In the Inter-American system], we do not have, at least not as of yet, a two-stage procedure which, first, considers the admissibility of a complaint, and second, considers the merits. Many of our cases are very similar in that they deal with fact situations which tend to establish a certain modus operandi on the part of the authorities. These cases are not proven in the way you would have to try a case in a domestic criminal court. For example, some 4,000 new cases were opened as a result of the Commission's on-site investigation in 1979 in Argentina. And, most of these cases, which were individually filed, dealt with the phenomenon of disappearances. The Commission did not consider each case individually to determine whether all of the elements of a disappearance had been met; rather, it interpreted its function as using the cases as evidence of the practice of disappearances in the preparation of a country study on the situation of human rights in Argentina."[8]

In many ways, by expediting determinations of fact, to the benefit of the petitioner, in cases difficult to verify on an individual basis, the Commission accepts cases which it might otherwise reject. Strict rules of admissibility and fact determination might bar most of these cases if they were considered individually.

At any stage of the proceeding, the Commission shall place itself at the disposal of the parties concerned, at the request of any of the parties, or on its own initiative, with a view to

[8]Cerna, 2. Conn. at 314

reaching an amicable settlement of the matter on the basis of respect for the human rights recognized in the Convention. The nature of the matter must be susceptible to the use of the friendly settlement procedure. If the Commission considers that the nature of the case is not susceptible to a friendly settlement; or, that one of the parties does not consent to the application of this procedure; or does not evidence goodwill in reaching a friendly settlement based on respect for human rights, the Commission, at any stage of the procedure shall terminate its role as organ of conciliation.

When a friendly settlement has been reached, the Commission shall draw up a report containing a brief statement of the facts and of the solution reached or, at the request of any party, a more extensive report. The report shall be transmitted to the petitioner and to the states parties to this Convention, and to the Secretary-General of the OAS for publication.

When a friendly settlement is not reached, or the case is not susceptible to this procedure, the Commission shall examine the evidence provided by the government in question and the petitioner, evidence taken from documents, records, official publications, or information gathered from an on-site investigation. After this examination, the Commission shall prepare a report setting forth the facts and conclusions regarding the case and make the proposals and recommendations it considers pertinent within a period of one hundred and eighty days. The Commission may prescribe a period within which the government in question must take the necessary measures to redress the situation. The written and oral statements made by the parties shall also be attached to the report which shall be transmitted to the states concerned who are not at liberty to publish it.

When the prescribed period (usually three months) has expired, the Commission shall decide by the vote of an absolute majority of its members whether the state has taken adequate measures and whether to publish its report. The report may be published by including it in the Annual Report to be presented by the Commission to the General Assembly of the Organization or in any other way the Commission may consider suitable.

Any government of a state party to the American Convention on Human Rights, which has accepted the competence of the Commission to receive and examine communications against other state parties, may present one of these communications. The communication shall be transmitted to the state party in question, whether or not it has accepted the competence of the Commission. In the last case, the state concerned may exercise its option to recognize the Commission's competence in the specific case. Once the state has accepted the competence of the Commission, the corresponding procedure shall be governed by the provisions of Chapter II of the Convention.

The Commission may decide to refer a case to the Inter-American Court of Human Rights if a state party to the Convention has accepted the Court's jurisdiction. The executive Secretary of the Commission shall immediately notify the Court, the government of the state in question and the petitioner and offer her the opportunity of making observations in writing on the request submitted to the Court. If the state party has not accepted the Court's jurisdiction, the Commission may call upon that state to make use of the option to recognize the Court's jurisdiction in the specific case.

To refer a case to the Court, the Commission shall submit a request specifying:

1. the parties who will be intervening in the proceedings before the Court;
2. the date on which the Commission approved its report;
3. the names and addresses of its delegates;
4. a summary of the case; and
5. the grounds for requesting a ruling by the Court.

The Commission shall also transmit to the Court at its request, any other petition, evidence, document, or information related to the case.

The Inter-American Court of Human Rights

The American Convention establishes the Inter-American Court of Human Rights as an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights.

The Inter-American Court is presided by seven judges, nationals of the member states, elected in an individual capacity from among jurists of recognized competence in the field of human rights. They are elected by secret ballot by absolute majority vote of the states parties to the Convention, in the General Assembly of the Organization, for a term of six years. No two judges can be nationals of the same country. The states members may submit up to three nominations who can be their own national or nationals of any other OAS member state. If a state submits three nominees, at least one must be a non-national of that state. If a judge is a national of a state which is party to a case, the judge may hear the case. If there is a judge who is national of one of the states involved in a case, "any other state party in the case may appoint a person of its choice to serve on the Court as an ad hoc judge."" Furthermore, if there are no nationals on the Court from any of the states involved in a dispute each has the right to appoint an ad hoc judge.

The Court shall meet in two regular sessions each year , but special sessions may be convened by the President or at the request of the judges. Five judges constitute a quorum for the transaction of business by the Court. The hearings are public, unless the Court in exceptional circumstances decides otherwise. The Court deliberates in private.

The Inter-American Court has adjudicatory or contentious and advisory jurisdiction. In the first case, the Court handles individual or state complaints about human rights violations committed by the states parties to the American Convention interpreting and applying the provisions of the Convention, after the procedures before the Commission have been exhausted. In order to bring a case against a state, the state party must have recognized the jurisdiction of the Court. With respect to advisory jurisdiction, the Court may give its opinion with respect to the content and scope of the rights recognized by the Convention, to the interpretation of the Convention or other treaties related to the human rights protection or to the compatibility of domestic laws and the American Convention or other human rights treaties. This right of consultation also extends to the organs listed in Chapter X of the OAS Charter, within their sphere of action.

The Commission shall appear in all cases before the Court. Only states parties and the Commission have the rights to submit a case to the Court. The parties shall be represented by agents who may have the assistance of advocates, advisors, or any other person of their choice. The Commission shall be represented by the delegates whom it designates. When a state party or the Commission intend to bring a case before the Court, they shall file with the Secretary an application, the human rights involved, and the name and address of its agent or delegates. If two cases which have common elements are brought before the Court, it shall decide whether to join the cases.

A preliminary objection may be raised, in twenty copies, no later than the expiration of the time fixed for the beginning of the written proceedings, setting out the facts and the law on which the party may wish to produce. The Court shall fix the time-limit within which another party may present a written statement of its observation and submissions. After receiving them, the Court shall give its decision on the objection.

In cases of extreme gravity and urgency, the Court may, *motu propio*, or at the request of the parties, take any provisional measure it considers necessary to avoid irreparable damage to persons, at any stage of the proceedings.

The proceedings before the Court shall consist of a written and oral part. The written part includes a Memorial and a Counter-Memorial and, in special circumstances, the Court may admit additional written submissions such as a Reply and a Rejoinder. A Memorial shall include a statement of the relevant facts, a statement of law and the submissions. A Counter-Memorial shall contain an admission or denial of the facts stated in the Memorial, any additional facts, observations related to the statement of law in the Memorial, and a statement of law in answer to that, and the submissions.

When the case is ready for the hearing, the President shall fix the date for the oral proceedings, after consulting the agents of the parties and the delegates of the Commission. At the request of the parties or *motu propio*, the Court may decide to hear

witnesses, experts, or any other person whose testimony could be relevant for the case.

As the court is an international tribunal, it has its own specialized procedures and the principles of domestic legal procedures are not automatically applicable. The international protection of human rights should not be confused with criminal justice. Therefore, direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered. The Court may utilize circumstantial evidence, *indicia*, and presumptions consistent with the facts. The state cannot argue that the petitioner has failed to present evidence when it cannot be obtained without the state's cooperation. The objective of international human rights law is not to punish but to protect the victims of human rights violations and to repair the damages resulting of the action or omission of the states responsible.

The Convention establishes that "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his rights or freedoms that were violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

The judgments of the Court are final and are not subject to appeal. The judgment must contain:

1. the names of the judges and the Secretary;
2. the date on which it was delivered at a hearing in public;
3. a description of the party or parties;
4. the names of agents, advocates, or advisors of the party or parties;
5. the names of the delegates of the Commission;
6. the facts of the case;
7. the legal arguments;
8. the operative provisions of the judgment;
9. the allocation, if any, of compensation;
10. the decision, if any, in regard to costs;
11. the number of judges constituting the majority; and,

12. a statement as to which text is authentic.

Within ninety days of the notification of the judgment, the parties may request the Court to interpret it with regards to the meaning or scope of the judgment. The states parties to the Convention undertake to comply with the judgment of the Court. The compensatory damages may be executed in the country concerned in accordance with domestic procedure governing in the execution of judgments against the state.

The request for an advisory opinion on an interpretation of the Convention shall indicate the provisions to be interpreted, the considerations giving rise to the consultation, and the name and address of the agent of the applicant. If the request concerns an interpretation of other treaties related to the protection of human rights in the American states, it shall indicate the name of, and parties to, the treaty, the specific questions on which the opinion of the Court is sought, and the considerations giving rise to the consultation. When the request for an advisory opinion refers to domestic laws, it shall identify:

1. the domestic laws, the provisions of the Convention and/or international treaties forming the subject of the consultation;
2. the specific questions on which the opinion of the Court is sought;
3. the name and address of the applicant's agent.

The Inter-American System and Women's Rights

Concentrating on the employment of the Inter-American system in order to promote and protect women's rights, both the American Declaration of the rights and Duties of Man and the American Convention on Human Rights have an "equal protection clause." The American Declaration in Article 2 establishes that "[a]ll persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed, or any other factor." In the terms of Article 1 of the American Convention, the states parties undertake to respect the rights and freedoms recognized by the Convention, and to ensure their free and full exercise without any discrimination for reason of sex. Further, in Article 24, it states that "[a]ll persons are equal before the law.

Consequently, they are entitled, without discrimination, to equal protection of the law.

Examples

I will refer to one case decided by the Inter-American Court, the *Velazquez Rodriguez* case. Although it is not related to women's rights, it may be of the utmost importance for the defense and promotion of our rights.

Angel Manfredo Velazquez Rodriguez was a student who was detained and tortured by the armed forces of Honduras. The government denied that he was being held. His case was one of more than a hundred disappearances in Honduras. The Commission concluded that Honduras had seriously violated Article 4 and 7 of the Convention, which protect the right to life and personal liberty and referred the case to the Court.

The Inter-American Court has considered in the *Velazquez Rodriguez* case (judgment of August 17, 1990) that any impairment of the rights recognized by the Convention which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable by the state, which assumes responsibility in the terms provided by the Convention. For this reason, the Court decided that Honduras had violated Articles 1(1), 4, 7, and 51 of the Convention and that fair compensation had to be paid to the relatives of Mr. Velazquez. On July 21, 1989, the Court determined appropriate compensation to be approximately US$375,000. The Court also asserted that Honduras was obliged to investigate the disappearance of Mr. Velazquez, and to punish the perpetrators of the human rights violations as well as to prevent future disappearances.

I will concentrate on some grounds of this decision. In the first place, Article 1(1) of the Convention expresses that the state parties "undertake to respect the rights and freedoms" recognized by the Convention. This implies that the exercise of public authority has certain limits and that the human rights constitute definite domains that are beyond the reach of the state. But Article 1 also establishes the obligation of the states parties to "ensure" the free and full exercise of the rights

recognized by the Convention to every person subject to its jurisdiction, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. As a consequence, the states parties have the duty to organize the governmental structures in order to make them able to accomplish this obligation of ensuring the free and full enjoyment of human rights.

In addition, Article 2 of the Convention establishes that "[w]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the states parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights and freedoms." For this reason, the obligation to ensure the free and full exercise of human rights is not fulfilled by the mere existence of a legal system, but it also demands that the government take affirmative measures and provide the means necessary for full realization of human rights.

In the *Velazquez Rodriguez* case, the Court clarified the conditions under which the violation of the rights recognized by the Convention can be imputed to a state party thereby establishing its international responsibility. In the first place, a state is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority. But the state is also responsible when it does not prevent, investigate and punish human rights violations and allows private persons or groups to act freely and with immunity to the detriment of the rights recognized by the Convention. The Court expressed that "[a]n illegal act which violates human rights and which is initially not directly imputable to a state (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the state, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention."

The states parties have the obligation to take the adequate measures to prevent human rights violations, to investigate them, and to punish the persons found responsible and, if possible attempt to restore the rights violated and provide compensation for damages resulting from the violation. These measures include those of a legal, political, social, administrative and cultural nature which are necessary for the protection and promotion of human rights.

This judgment is of the utmost usefulness to expand current ideas of state responsibility. A broadened concept of state responsibility will permit the inclusion of violations of women's rights perpetrated directly by the state, as well as the failures of the states to protect these rights from abuses committed by non-state actors, an the decline of the states to provide the basic resources or essential means for a free and full enjoyment of these rights.

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Regional Enforcement of Women's Human Rights: The African System

Akua Kuenyehia

Background of the African Commission on Human and People's Rights (ACHPR)

The African Commission on Human and People's Rights was established in 1987 after the coming into force of the African Charter on Human and People's Rights on October 21, 1986. The Charter was adopted by the Assembly of Heads of State and Government of the Organization of African Unity (OAU) in 1981.

ACHPR consists of eleven members of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights (Article 31). The members of the Commission are to serve in their personal capacity and solemnly declare to discharge their duties impartially and faithfully. They are elected by the Assembly of Heads of State and Government for a term of six years. The ACHPR presently meets twice in a year and its primary task is

to promote human and peoples' rights and to ensure their protection in Africa (Articles 30 and 45).

The African Charter and the Rights of Women

The African Charter reaffirms faith in fundamental human rights, in the dignity and worth of the human person and proclaims the equal rights of men and women and of nations large and small. The charter provides in Article 18(3):

"The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions."

Thus, the charter provides a deliberate linkage between it and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The article also makes applicable other declarations such as the Universal Declaration of Human Rights. Such declarations are made legally binding on the states since the Charter establishes binding obligations for states parties.

In addition to Article 18, Article 1 of the Charter provides:

"The member states of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in their Charter and shall undertake to adopt legislative or other measures to give effect to them."

The Goals and Procedures of the ACHPR in Promoting and Protecting Human Rights

The mandate of the Commission extends to formulating and laying down principles and rules aimed at solving legal problems relating to human and people's rights and fundamental freedoms upon which African governments may base their legislation. The Commission may also receive communicantions from states, individuals and NGOs.

The Commission will receive a case for consideration only after local remedies have been exhausted. Exhaustion of local remedies in most cases means that the complaint must be

brought before the highest Court of Law competent to deal with the matter and making use of the available remedies and respecting time limits.

On considering a complaint, the Commission cannot grant a remedy against a state party, neither can it bind a state party to any decision. The Commission's power is limited to submitting a report of its finding to the Assembly of Heads of State and Government which has the power to determine the course of action to be taken, if any.

Under Article 57 of the Charter, all communications have to be brought to the attention of the state concerned. In the past, the Commission interpreted this provision rather restrictively and deferred cases over a long period of time. The Comission would not take action until the state concerned responded, which did not occur in most cases. However, at its 12th Session in October 1992, the Commission agreed on a new procedure to expedite the complaints. Presently, it will consider a complaint if the state concerned does not respond in writing within 5 months from the date of notification of the text of the communication.

ACPHR and the Prospect for Women's Rights: A Case for Improvement

The African Commission is mandated to interpret the African Charter on Human and People's Rights, as well as undertake studies and research on African problems in the field of human and people's rights, and make recommendations to governments among other things. The issue of women's human rights in Africa is a priority issue and would be an appropriate issue for the Commission to undertake to investigate. The Commission could undertake the necessary studies and research that will lead to a proper confrontation of the problem of women's human rights in Africa. There are, however, certain structural weaknesses in the African Commission which for the present, will hamper the effective implementations of its mandate. For example, the Secretariat of the Commission is at the moment in no position to undertake any studies due to lack of resources. Additionally, even the Commission can receive

communications from individuals as well as NGOs on violations of human rights by state parties, Article 59 provides that:

"All measures taken within the provisions of the present Chapter (on the procedure of the ACPHR) shall remain confidential until such time as the Assembly of Heads of State and Government shall otherwise decide."

This has been interpreted by the Commission to mean that it cannot mention the cases nor the countries against which a complaint is made. This lack of publicity has served to erode confidence in the Commission. Potential petitioners do not feel that is worth taking their complaints to the Commission. It is a well known fact, that it is publicity which provides protection to the victim in individual cases. Even though Article 59 (2) provides that the Chairman of the Commission shall publish its reports on individual cases upon the decision of the Assembly of Heads of State and Government, presently no communication has reached that stage, thus far no decision has been taken by the AHSG.

Thus, even though the Commission is theoretically a tool for the promotion and protection of human rights in Africa, especially the human rights of women, there are certain weaknesses highlighted above in the Charter which ought to be seriously considered by the OAU if the Commission is to serve its purpose.

It can however be said that the Commission is still in its formative stages and some of these problems can be resolved to make it more effective. Indeed, at its 12th Session the Commission addressed this issue of confidentiality and agreed in principle to publish some basic information on the cases before it, such as the names of petitioners and states complained against and some indications of the substance of the complaints.

As far as studies and research on human rights issues are concerned, as already mentioned, the Charter gives the Commission a wide mandate. However, to respond to this comprehensive mandate, the Commission needs proper secretarial assistance, which has so far not materialized, given the financial crisis within the OAU. The Commission is at the moment grappling with the problem of accepting external assistance for its

promotional activities and it remains to be seen whether the Commission can meet its obligations in the field of promotion or whether this will be done by NGOs.

Cooperation with NGOs

The Commission has paid particular attention to cooperation with both African and International NGOs and has accorded observer status to over 90 NGOs. Since the 10th Session, the International Commission of Jurists, jointly with the Commission and local NGOs, and with the help of donors, organizes regular workshops on NGO Participation in the Work of the African Commission over three days preceding the Commission's session. The third workshop focused on exhaustion of local remedies, the right to development, and the reflection and strategizing on matters of promotion and protection. The recommendations of these workshops are officially presented to the Session of the Commission and distributed widely. The Commission has shown itself quite receptive to NGO concerns. It provides an opportunity for NGOs to familiarize themselves with the work of the Commission as well as making recommendations on areas of human rights which need to be improved, for example, by liberal interpretation of the Charter provisions.

Conclusion

In spite of the obvious weaknesses in the African system, it still holds the best prospect for the promotion and protection of human rights especially women's human rights. The African Charter, by creating a link between its provisions on the human rights of women and the Convention on the Elimination of All Forms of Discrimination Against Women has provided a basis which can be used within the Commission for a more effective promotion and protection of women's rights.

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