

## Special Report

# Women and Children: The Human Rights Relationship

## Asia Regional Conference Report

Bangkok  
December 9 -10, 2007

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The Human Rights Relationship  
Asia Regional Conference Report**

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Bangkok  
December 9 -10, 2007  
UNICEF and Wellesley Centers for Women

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## INTRODUCTION

*“This landmark activity of ours cannot die here as sometimes meetings like this do.”*

- Dr. Purificacion Quisumbing- Chairperson, Human Rights Commission- Philippines

*Women and Children: The Human Rights Relationship, Asia Regional Conference*, organized by UNICEF and the Wellesley Centers for Women at Wellesley College, brought together Asia’s leading human rights advocates at the forefront of women’s and children’s rights for a groundbreaking discussion on how to conceptually, normatively, and in concrete ways advance the linkages between women’s and children’s rights in law and policymaking, institutional arrangements, programming and budgeting, and organizational networks.

The conference explored the synergies between women’s and children’s rights as well as the continuing gaps in the implementation of these linkages. Leading up to the conference, a concept note that set out the themes and goals of the conference, an innovative agenda and discussion guideline were developed. The guidelines for discussion laid out a set of issues and questions that attempted to capture the new developments in relation to women and children’s rights in the region. The discussions were organized primarily around a question-and-answer format directed by a moderator. While participants were not called upon to make individual presentations, their expertise and experiences informed their responses to the specific questions directed to them. The responses from the panelists and the audience interventions were meant to help guide the way in which the dual values of women’s rights and children’s rights can be further advanced through law and policy making, reporting, budgeting and programming. The conference focused on examining new ideas to actualize these normative connections through concrete practice and advance linkages through treaty body initiatives. The overarching goal of the conference was to develop strategic action by government and civil society stakeholders and strengthen the CEDAW and CRC Committees continued collaboration to build on the complementarities of the two rights frameworks.

The conference generated robust and dynamic conversations on the possibilities of linking the two rights agendas and ways to transcend the challenges that might grow out of those linkages. The hope is that this report constitutes a seminal agenda for critical action and contributes to furthering the advancement of the rights of women and children within a human rights relationship.

### **Background Materials:**

As background information, a matrix was prepared which mapped the intersections of the last state party reports from the Asian region to the CEDAW and CRC Committees. Participants have reported that this matrix is an important tool in their current and future work on advocacy, litigation, lawmaking and reporting on the linkages between women’s and children’s rights. Another important source of information was the Guide to Panel

Discussions which set out the proposed parameters and objectives of the panel discussions followed by a set of questions on new developments in the region. Although not exhaustive, the questions were designed to aid the moderator and animate a vibrant discussion on critical cross cutting issues affecting women and children in the region. These questions can be continued to be used as an analytical tool to evaluate the process of integrating women's and children's rights in different regions.

Participants also commented on the usefulness of the UNICEF publication on Women and Children in a Human Rights Based Approach to Development which was included as a background paper to the conference.

### **A Note about This Report:**

The sections of this report that deal with the panel discussions do not constitute a direct transcript of the conference, but represent the substance of the comments and responses of the panelists and participants. Each panel discussion is accompanied by a set of "Recommendations from the Panelists and Participants" which highlight suggestions of steps to be taken to advance the rights of children and women. These recommendations are derived from the analysis of the discussions that took place at the conference. The keynote presentation, the celebration dinner presentation and the concluding comments are presented in full.

## **PANEL DISCUSSIONS**

### **Day One**

#### **Panel One**

#### **Women and Children: The Human Rights Relationship-Setting the Agenda**

This panel set out to examine the multiple ways in which the CEDAW and the CRC are interrelated, inter-dependant and mutually reinforcing. The goal of this panel discussion was to explore the synergistic relationship between the two rights agendas and the ways in which any ensuing tensions can be addressed through creative strategies that can strengthen the human rights relationship between women and children. The panel brought together leaders in the Asian region who had pioneered innovative laws and programs on behalf of children and women in the Asian region.

**Panelists:** Saisuree Chutikul, Aurora Javate De Dios, Shanthi Dairiam,  
Heisoo Shin

**Moderator:** Savitri Goonesekere

**Mining the Synergies and Complementarities: Aurora De Dios (Philippines):**

*Aurora De Dios is a former CEDAW member and the founding head of the Coalition Against Trafficking in Women-Asia Pacific (CATWAP).*

Aurora Dios began by identifying the convergences and the complementarities of the two Conventions. Although, the two conventions emphasized different issues, such as child marriage that is addressed in the CRC but is not explicitly provided for in the CEDAW, she argued that both Conventions are based on the principle of human rights of individuals and, taken together form a critical framework to protect women throughout their life cycle. Since the CEDAW encompasses the experiences of women throughout their life cycle, it covers the girl child as well. Further, she asserted that both conventions focus on eradicating discrimination and inequality. The CRC and CEDAW therefore must be viewed as connected to one another and linked to all other Conventions. A holistic approach to the human rights framework will make sense of the interdependence of the treaties. The CEDAW also adopts the principle of the best interest of the child with regard to parental responsibility. She identified some commonalities that could be the basis for sustained synergy. Two important intersections of the CEDAW and CRC include cultural patterns and traditional practices; that is, cultural attitudes and practices that deny women health care, involvement in decision making, and full citizenship. Article 2 of the CEDAW obliges states to take all appropriate action to address these cultural practices and stereotypes while Article 5 obliges states to take appropriate measures to modify social and cultural practices based on the superiority and inferiority of the two sexes. Article 2 of the CRC too calls for the abolition of traditional practices that are harmful to the health of children. Education is another area where the two conventions intersected and converged. In their Concluding Observations, both treaty bodies often point out that high dropout rates of young girls are an impediment to the realization of the rights of women and children. Similarly, women and children share common vulnerability to sexual abuse and exploitation. She also pointed out some distinct differences between the two conventions. For example, Article 6 of the CEDAW is only a statement on trafficking, but in CRC Articles 34-36, this issue is subject to further elaboration. While women have capacity to make choices about sex work, there is universal consensus that children must be protected from the sex trade.

**Concrete Proposals for the Treaty Bodies and Law Reform: Dr. Saisuree Chutikul (Thailand):**

*Dr. Chutikul is a current CEDAW member and a past CRC member, as well as a former senator and lawmaker in Thailand.*

Dr. Chutikul commented that as a former CRC Committee and current CEDAW Committee member, her reflections on the interconnections between the two treaty bodies were unique and were derived from practical and personal experiences. Her own work with women and children illustrated the need to forge alliances in order to minimize conflicts. Her first proposal which was also echoed by the CEDAW Chairperson was to UNICEF to forward the UNICEF paper co-authored by Goonesekere and de Silva-de Alwis and the matrix on the intersections of the CEDAW and CRC Concluding Observations prepared by WCW for this conference to all CEDAW and CRC members.

Her second proposal was for both treaty bodies to attempt to dialogue more At future sessions in Geneva.

Dr. Chutikul showcased a few examples from Thailand to highlight the interconnectedness of the two rights agendas and their relationship to the human rights framework:

*Integrating Gender Sensitivity and a Child Rights Focus to Lawmaking in Thailand:*

In Thailand, the CEDAW and the CRC have been used together in addressing violence against women and children. For example, the recently passed a law on violence against the family includes all members in a family including older people and people with disabilities. The second important characteristic of the law is that the perpetrator of violence, rather than the victim of violence, is asked to leave the house. The law requires the perpetrator of violence to reside in a shelter and the victims of violence, who are most often women and children, to remain at home.

Under the office of the Prime Minister of Thailand, a committee was created on the revision of laws, rules, and regulations for children in compliance with the Constitution, the CRC, and other international human rights instruments. This committee is supported by UNICEF Thailand And is charged to consider the CEDAW, CRC and other human rights instruments in new lawmaking. The anti- trafficking law has been revised to cover all human trafficking. This law also covers not only the Thai nationals but also both illegal or legal migrant workers, women, men, and all children. The committee has also drafted a new law on medically assisted pregnancies to protect women who are surrogate mothers as well as children born from that process and attempts to create a holistic understanding of the experiences of women and children.

**Resolving Tensions to Connect Women’s and Children’s Rights Agendas and Different Constituencies: Dr. Heisoo Shin (Korea):**

*Dr. Shin is a CEDAW member and a Commissioner of the Korean National Human Rights Commission.*

Dr. Shin shared three case studies on efforts to link the different human rights agendas and explored the synergies and tensions that might ensue from these connections.

In 1995/6 the movement to draft a domestic violence law in the Republic of Korea involved collaborating with groups working on women’s rights and children’s rights, and with children’s rights abuse prevention centers, and other institutions. At the same time, there was a protest by elderly men demanding accountability for elder abuse. This sparked a new discourse on the interrelatedness of rights and triggered an exploration of violence against the elderly. As a result, the Act on Domestic Violence Prevention and Victim Protection of the Republic of Korea covers women, children and the elderly. The movement, however, was initiated by women and the emphasis was on women. Although the law states that children and the elderly who experience violence must be

protected, the law cannot do much if the government does not provide the necessary resources. For example, children abused by parents must be taken out of the custody of abusive parents and put in foster homes. This is not possible without resource allocation.

The second event took place two years ago when the Ministry of Gender Equality was turned into the Ministry of Gender Equality and Family. There was thus a paradigm shift in focus from “women” to “family” and women’s groups resisted connecting the domain of the family to one gender.

Another example of the kind of tensions that can arise between the rights agendas was illustrated in the recent proposal for a single unified treaty body to deal with the core human rights treaties. All treaty bodies rejected the idea on the grounds of the specificity of the rights agendas. Although the universality, indivisibility, interdependence and interrelatedness of all human rights has been well established, the challenge here is to ensure the specific characteristics of rights relating to children, women, the elderly, and the disabled. The connection between these rights can be made clearer by real life examples. For example, on the issue of sexual slavery, the Japanese military drafted into sexual slavery children as young as eleven years. Children were victims of repeated rape, sexual slavery and sterilization. Most of them could not marry or bear children in later life. The goal ahead for all is to see beyond the tensions and work *together*.

**Strengthening Both the Specificity and Interdependence of Rights: Shanthi Dairiam (Malaysia):**

*Shanthi Dairiam is a CEDAW Committee member and the founding head of the International Women’s Human Rights Action Watch-Asia Pacific.*

Shanthi Dairiam posited that women and children must be seen first as bearers of human rights. She warned against recreating women in the image of the mother and linking her sole agency to that of motherhood and the role of the caregiver. She asserted that this ideology of gender and motherhood created a discourse and practice whereby women were seen as dependent on the economic support of males to carry out childrearing duties. This then translates into both a cause and consequence of unequal access to education and economic resources. Women’s engagement in the public sphere is often constrained by her child-caring role and problems that children face are often linked to the mother’s absence from home. The provision of childcare is not taken note of in the work place, and quoting Naila Kabir, she argued that women are often called “unruly” when they demand childcare in the workplace. In adopting a human rights-based approach, Ms. Dairiam argued that the provision of childcare is interpreted as a human right and not as women’s rights. Childcare as a parental right transforms the ideology of women as sole caretakers of children.

Another area of tension can arise when better nutrition for mothers is often linked to the child’s well being. It is important to look beyond a woman’s maternal role to provide safeguards for her own health and wellbeing. This ideology of mothers as nurturers when extended to work choices translates into women being limited to gendered career choices

such as teaching and nursing. In the mother's absence, childcare is also provided primarily by women caregivers. This has resulted in childcare being transferred from one woman to another and remaining devalued. The challenge before us is to look at ways to link women and children without entrenching the ideology that limits women to mothering roles.

### **Recommendations from Panelists and Participants:**

- Develop avenues to maintain the specificity of rights while strengthening the connectivity, indivisibility and interdependence of these rights. Tensions must be addressed through a human rights based approach, one which retains the unique value of each right but locates it within the interlocking web of the human rights agenda.
- Accommodate the different interests of vulnerable groups (elders, persons with disabilities, minority groups) within the rights and legal framework.
- Ensure that both a child rights perspective and gender perspective animate lawmaking that affects both women and children. The domestic violence law promulgated recently in Thailand broadens its scope to cover all members of the family and not just women. The Cambodian domestic violence law too adopts this approach. The Philippines Anti- Violence Against Women and Their Children Act of 2004 and anti- trafficking law invoke the CEDAW and CRC in their preambles and state that the best interest of the child shall animate the interpretation of the law.
- Advance the nexus of children's and women's rights through legislative implementation and judicial practice as well as lawmaking. Provide resource allocation and adequate budgeting to address ways to protect women and children which include counseling and services for child and women victims of violence.
- Ensure *in camera* proceedings for child victims of violence and abuse.
- Advance human rights education at the national and local level as a cornerstone to the strengthening of human rights for women and children.
- Develop laws, labor processes, and educational programs to engage men in caregiving roles so that women are not seen as the sole caregivers of children and family members.
- Develop workplace childcare policies that reflect the shared responsibilities of men and women.
- Use advocacy tools ensure the joint responsibility of both parents as caregivers to structure a work system that enables equal caretaking roles and to create a social security system that takes care of the elderly, the disabled, and the sick.

- Reconstruct gender roles and caregiving as a policy issue. Focus on Concluding Observations that address the ways in which cultural practices and laws reinforce women's role as primary caregivers. Use advocacy tools to ensure the joint responsibility of both parents as caregivers, to structure a work system that enables equal caretaking roles and to create a social security system that takes care of the elderly, the disabled, and the sick.
- Address work/life balance in the unregulated work sector. When a large number of women work in the informal sector, women are shut out of maternal and social security benefits. Examine models and develop legislative initiatives for this sector.
- Address the "opt out" syndrome of women in the workforce who are opting to leave the workforce because they are unable to reconcile their work/family obligations.
- Address the motherhood penalty which causes women with children make less money in the work world in relation to the number of children.

### **Panel Two: Treaty Body Mechanisms in the United Nations: Addressing the Human Rights Relationship Between Women and Children**

A mapping of recent Concluding Observations of the CEDAW and the CRC Committees of Asian Country Reports reveal similar and overlapping concerns in multiple areas. Given these intersectionalities in the areas of discriminatory and inconsistent ages of marriage for girls, harmful traditional practices, violence, trafficking of women and children, and sex-role stereotyping that inhibits access to education and other resources, this panel afforded a seminal opportunity for all the CEDAW Committee members from the region to brainstorm ways in which the two treaty bodies could strengthen these linkages through existing mechanisms as well as by innovative processes. Professor Yanghee Lee, the Chair of the CRC Committee, presided over a dinner meeting on the previous evening and shared valuable insights on the convergences of the two treaties. The panel's recommendations break new ground in conceptualizing innovative procedural ways in which the CRC and CEDAW Committees and other treaty bodies can further advance joint work on related issues through General Comments, Constructive Dialogues, Day of Discussions and Joint General Recommendations.

**Panelists:** CRC and CEDAW Members from the Asian region and the Chairpersons of the CEDAW Committee- Dubravka Simonovic, Heisoo Shin, Ferdous Ara Begum, and Shanthy Darian  
**Moderator:** Elizabeth Gibbons, UNICEF New York

**Three Important Areas for Concrete Treaty Body Collaboration: Dr. Dubravka Simonovic(Croatia), Chairperson CEDAW:**

*Dr. Simonovic is the Chairperson of the CEDAW Committee.*

Dr. Simonovic began with an unequivocal assertion of the relationship between the CEDAW and the CRC and then located this relationship within the context of the human rights framework. She reminded participants that CEDAW was celebrating its 25<sup>th</sup> anniversary and it was fitting that the conference had brought together five current CEDAW members, the Chairpersons of both Committees, and two former members including the keynote speaker. Dr. Chutikul from the host country, as former CRC member and current CEDAW member symbolized the bridge between the two committees.

Dr. Simonovic highlighted three distinctive ways in which these linkages can be strengthened between the two treaty bodies:

*Pre-sessional Meetings:*

The CEDAW Committee during each pre-session working group meeting reviews the recommendations of other treaty bodies including the CRC Committee's Concluding Observations. During pre-session groups, committees raise issues relating to the girl child and the implementation of Concluding Observations of CRC Committee.

*Constructive Dialogue:*

Another level at which it is possible to link the two conventions is when the states parties are before the CEDAW Committee. The Committee can raise specific issues relating to the rights of the girl child, and make direct references to the CRC.

*Concluding Observations:*

An examination of the CEDAW Committee Concluding Observations highlights explicit references to CRC. For example, when referring to the age of marriage for boys and girls, the Committee refers to both the CEDAW and the CRC. The Committee will pursue stronger linkages between the different treaty bodies. There is one human rights agenda and treaty bodies must work together as a system.

**A Holistic Analysis of the Core Human Rights Treaties: Dr. Heisoo Shin (Korea):**

Dr. Shin reiterated that when the CEDAW Committee examines the States parties' reports it considers the Concluding Observations of other treaty bodies including the CRC Concluding Observations. Additionally, at the end of the CEDAW Committee's Concluding Observations, a paragraph references the importance of the core human

rights treaties that are integral to the rights of all persons. Apart from the CEDAW Committees requests to States parties to ratify all of the major conventions, the CEDAW Committee make deliberate efforts to integrate and reconcile different rights so that the rights of children and racial minorities are harmonized into the work of the CEDAW. Similarly, Dr. Shin made a plea for all other treaty bodies to take a similar approach and consider the CEDAW in their deliberations. She also warned against defining women as just a subcategory of other groups.

**Case Studies from Bangladesh to Illustrate the Linkages: Ferdous Ara Begum (Bangladesh):**

*Ferdous Ara Begum is a CEDAW Committee member.*

Ms. Begum highlighted two examples from Bangladesh and located them in the broader framework of an integrated rights agenda:

*Domestic Violence Lawmaking in Bangladesh:*

Article 19 of CRC and Recommendation 19 of the CEDAW on “Domestic Violence” provide a shield against domestic violence. Ms. Begum commented that Bangladesh is in the process of drafting a domestic violence law and asked that a leaf be taken from Dr. Saisurees argument to expand the definition of the family to cover all members in a family and home. The draft domestic violence act in Bangladesh as it stands now stands extends coverage to children, parents, and domestic workers of any sex or age who live in the same shared household. Secondly, any party can ask for a restraining order on the victim’s behalf. Thus complaints can be brought on behalf of the elderly, children, and persons with disabilities.

The draft Bangladesh law also provides a right to temporary protection. For the successful implementation of the law the law must also make provision for gender training for law enforcement officials and judges. Moreover, the law must also provide for psychological assistance for both women and children, and for proper counseling for children. Finally, *in camera* trial must be allowed for children.

*Equality and Education:*

Article 16 of CEDAW on “Equality in the Family” is fundamental to the prevention of domestic violence. Ms. Begum asserted that through Concluding Observations and constructive dialogues the CEDAW and CRC committees must pursue monitoring of inequality in the family and the consequent domestic violence in the family.

Ms. Begum commented that it is important to mine both CEDAW and CRC’s focus on dismantling discrimination in education. Unequal access to education is both a cause and a consequence of early pregnancy and dowry-related marriages. Ms. Begum asserted that food for education programs in rural areas in Bangladesh are successful models that can be replicated in other regions. The Grameen

Bank's microfinance program in Bangladesh also provides support of almost seven billion Rupees and enhances education for the underprivileged with a view to promoting primary education for poor women and girls, early childhood development, and scholarship programs.

**The Principles of Anti- Discrimination are the Cornerstones of the CEDAW and CRC : Shanthi Dairiam (Malaysia):**

Ms. Dairiam reiterated that the right to equality is at the very intersection of the two conventions and that this right can be best operationalized through education. Article 10 of the CEDAW deals with equal rights in education, and provides a natural overlap between the CRC and CEDAW. The CEDAW Committee must identify elements of discrimination and provide recommendations for the improvement of educational attainment of children, and make recommendations to reduce dropouts of girl children. When there is inequality in education it is important to identify gender discrimination as the reason why girls do not attain educational attainment levels of men. It is important to make recommendations to address gender discrimination against the girl child's access to education.

**Concrete Areas for CEDAW and CRC Committee Collaboration:**

***Issuing a Joint General Recommendation on Sexual Exploitation of Girls - Dr. Heisoo Shin:***

Joint General Recommendations by the two Committees is an important starting point for collaboration. One important area of focus on is the sexual exploitation of girls. The problem of the relationship between young girls and old men was just recognized by the CEDAW Committee on review of Korea's 5<sup>th</sup> and 6<sup>th</sup> State Party Report. In this age of information technology it is important to address internet based sexual exploitation. It is also important to ensure that members of the CRC treaty body examine children's rights through a gender lens.

***Improving Women's Role in the Family - Ferdous Ara Begum:***

The Grameen Bank program, which provides micro-credit to poor women without any collateral, is a good model of how empowering women economically can build their capacity to fight against violence. It is also a mechanism to improve women's role in the family and enhance children's access to education. Providing educational loans, scholarships and loans to mothers has proven to be an effective way to increase access to education for children. The Food for Education program in Bangladesh is a unique example of a way to provide both nutrition and education. The great challenge lies in curriculum reform. Stereotyped attitudes need to be changed and the curriculum needs to be accordingly overhauled. The CRC Committee too has requested the removal of stereotypes from the curricula. After the recent cyclone in Bangladesh, many schools have been destroyed and rebuilding these schools provide an opportunity to reform the curricular and create gender- friendly facilities in schools.

***Gender Stereotyping in Schools and Workplaces- Shanthi Dairiam:***

There is a pressing need to look at how discrimination against girls and women intersect and address this in policy formulation. The need for curriculum reform and the way in which girls may be streamlined into certain areas of work must be examined. First, we need to identify the gender differences in the workplace that displace women. In Malaysia today, although more girls are graduating high school and girls have a slight advantage over boys in enrollment in college the wage gap still persists especially at the upper levels of the workforce. We need to examine the choices that women and girls make and the compulsions behind those choices. It is important for proactive mechanisms to be put in place to encourage girls to take up non-traditional courses and careers.

Even in child labor, girls are streamed into gendered jobs such as domestic work. The CRC Committee, the CEDAW Committee and the ILO must consider ways to define girl child domestic labor as a hazardous occupation. A girl child domestic worker's vulnerability to domestic labor heightens the need to characterize this type of work as a hazardous occupation.

**Recommendations:**

***Recommendations by the CEDAW Committee Members:***

Conferences such as this are essential to the discourse on the linkages between the women's and children's rights agendas and the two treaty bodies. The following concrete measures were suggested by panelists and participants at the conference.

***Joint General Recommendations:***

Explore the possibility of a Joint General Recommendation on interconnected issues.

***Proposed Joint General Recommendation on Migrant Women Workers:***

The CEDAW committee is currently finalizing a General Recommendation on Migrant Labor. It is important to seize this opportunity to collaborate with the CRC Committee.

***Proposed Joint General Recommendations on Sexual Exploitation of Girls:***

It is important to draft a joint General Recommendation on the emerging critical problem of sexual exploitation of girls.

***Proposed Joint General Recommendation on Work Family Reconciliation:***

The CRC and CEDAW Committees collaboration in the context of work family reconciliation is another important area. This is an area that is of concern to both the North and the South. With economic transformation, it is important for both state and non-state actors to address this problem as an issue that limits women's earning capacity.

***Proposed Joint General Recommendation on Child Labor:***

Education of girls is one of the most effective vaccines against child labor. International standards on hazardous forms of child labor dilute prohibitions against all forms of child labor. A Joint Recommendation by the CRC and CEDAW Committees will link the need for equal access of girls to education and to labor.

***Constructive Dialogue:***

When states parties are before the CEDAW Committee it is important for the CEDAW Committee to raise special issues relating to the rights of the girl child and cross-reference the CRC.

***Chairpersons Meetings:***

Address intersections at inter-committee meetings attended by chairpersons of each group. Those meetings should be held not just once a year but twice a year.

***Meeting in Geneva:***

The Committee meetings in Geneva provide greater opportunities for exchange between the CEDAW and CRC treaty bodies.

***General Day of Discussions:***

Use the General Day of Discussions to focus on the intersections of women's and children's rights.

***Other Recommendations from the Panelists and Participants:***

- Integrate and cross-reference the CRC and CEDAW in the policy domain and legal framework. The use of Concluding Observations and constructive dialogues from both committees will strengthen the overall pursuit of women's and children's rights issues. For example, the CEDAW Committee raised its concerns about son preference and sex selective abortions in India, Female Genital Mutilation and other harmful practices in African countries, and honor killings in Pakistan and other Muslim countries, which are all also concerns of the CRC Committee.
- More sessions of the Commission on the Status of Women must focus on important intersections like violence against the girl child.
- Hold governments responsible for the full implementation of treaties that they have ratified.
- Review all existing legislation in light of CRC and CEDAW. Resolve all anomalies, inconsistencies and contradictions in legislation. All legislation must be compatible with the CRC and the CEDAW. In particular, address the inconsistencies replete in the legal system regarding the age of majority. It is important that all laws comply with the age of majority as set out by the CRC.

- Provide concrete guidelines from the CRC and CEDAW Committee jurisprudence on the implementation of legislation on behalf of women and children, especially domestic violence law.
- Domestic violence lawmaking should include remedies for both women and children and should cover women and children in the same household. It should also address the psychological needs of both women and children and make counseling available.
- Use tools like the CEDAW and CRC matrix on the intersectionalities (provided as background materials to the conference) to persuade governments to understand how best to forge connections between the CEDAW and CRC in implementation mechanisms.
- Build on the rich jurisprudence of the treaty bodies and use Concluding Observations and General Recommendations in important human rights litigation. Courts are more and more ready to apply human rights standards in decision-making. Judicial interpretation of legislation in accordance with human rights treaties will help to move legislation to actual implementation. For example, in India, Concluding Observations have been used in litigation challenging child marriage.
- Broaden locus standing so that the High Commissioner for Human Rights can file amicus briefs (friend of court) and broaden access to justice on human rights cases.
- Collect examples of how human rights norms have been integrated into judicial decision-making.
- Address the construction of gender roles in schools. Gender stereotypes in curricular help to reinforce subordination of women in both private and public spheres. Revise textbooks and curricula to address negative portrayals of women and to encourage women to undertake non-traditional roles and to equip boys to undertake caregiving responsibilities at home and in jobs that traditionally are performed by a disproportionate number of women.
- Support the adoption of more information technology programs for girls.
- The recent cyclone in Bangladesh has had an enormous impact on women and children and destroyed schools. In rebuilding these schools it is important to prioritize gender concerns and ensure that girls are not left out of the reconstruction plans.

- Develop more programs like the Grameen Bank program that provides micro-credit to poor women without any collateral and like the Food for Education programs which encourage the women in the family to educate their children by providing educational loans and scholarships to both the mother and child.
- Develop a research agenda on synergies and complementarities between women's and children's rights. For example, develop research projects that explore how gender-sensitive lawmaking benefits children in concrete ways. Feminist economists have argued cogently that gender equality in agricultural land can reduce not just a woman's but her own family's risk of poverty, enhance prospects of child survival, reduce women's and children's risk of domestic violence. The risk of physical violence from male members of a family is shown to be dramatically less if women own land or house. Given male migration to cities and the growing female-headed households, agricultural productivity can also be increased by land ownership by women. UNICEF's Legislative Reform Initiative has already begun this work. These research initiatives should be widely disseminated amongst CEDAW and CRC members.
- Build broader coalitions and constituencies to include migrant workers, those with disabilities and minorities.
- Categorize girl child domestic labor as a dangerous occupation. The vulnerability of the girl child domestic worker to sexual exploitation must be recognized.

### **Panel Three: Migration and its Related Consequences: the Impact on Women and Children**

*“Traffickers fish in the seas of migration”*  
- Radhika Coomaraswamy

Along with globalization and the 1990's tiger economies of East Asia, the high percentage of women in contract migration has become one of the most important characteristics in the Asian region and one which has had negative consequences on children and families. The IOM and the UN estimate that there are about 175 million migrant workers. While in the past migration has been associated mostly with male migrant workers, women now constitute about 60-70 percent of the migrant work force. The feminization of migration has spawned a host of problems affecting women and families. Generations of children have come of age and will continue to do so with at least one parent working abroad. Trafficking and migration are distinct but interconnected issues. Trafficking is both a trans-border and internal phenomenon. Multiple forms of gender discrimination, including feticide, infanticide and sex selective abortion have led to cross border trafficking in brides. This panel brought together

pioneers who work at the forefront of trafficking prevention and who speak for the rights of migrant women and their families.

**Panelists:** Charm Tong Nang, Ferdous Ara Begum, Salma Ali, Heisoo Shin and Juree Vichit-Vadakan

**Moderator:** Aurora Javate De Dios

**Aurora De Dios (Philippines): Setting the Stage on Migration:**

Ms. De Dios emphasized that migration is now a global phenomenon that affects all countries, either as sending or receiving countries. While in the past migration has been associated mostly with male migrant workers the face of migration is now that of woman. Women now constitute about 60-70 percent of the migrant work force. This feminization of migration has spawned a host of negative problems and also resulted in generations of children growing up with at least one parent working abroad.

**Trafficking in the Name of Migration: Salma Ali (Bangladesh):**

*Salma Ali is the Executive Director of the Bangladesh National Women Lawyers Association.*

Ms. Salma Ali raised to the surface the blurred distinction between migration and trafficking. She argued that trafficking often exists in the guise of migration in Bangladesh and throughout Asia. Young girls and boys are trafficked as bonded labor, sexual slaves and domestic servants. Forced prostitution and debt bondage are other types of work that children are forced into. She highlighted that vulnerabilities rise to the surface in the context of the family. Polygamy, child marriage, sexual abuse and other forms of violence often leads to trafficking in women and children. Child domestic helpers are also often the victims of physical violence, and of sexual and emotional violence. When these children try to escape, law enforcement authorities often, in the name of rescue, wrongly arrest them and place them in prison. Young girls and boys are also forced into prostitution in Pakistan, India, the Middle East.

Ms. Ali argued that although many government and NGO groups are working to combat trafficking, there is no specific law for migration or trafficking in Bangladesh and very few services for women. It is important for court decisions and laws to recognize repatriation and rehabilitation as a fundamental right and mandate a rescue package. Ideally, when police raid brothel they must be able to provide the sex workers with a rescue package. Within twenty-four hours she must be given support for counseling, etc. Ms. Ali also recommended the promulgation of strong victim/ witness protection laws in tandem with trafficking laws. She argued that Concluding Observations from CEDAW and CRC committees that specifically refer to these issues will help bolster the way in which these problems can be combated.

**The Devaluing of Women as a Cause of Migration: Juree Vichit-Vadakan:**

*Dr. Vichit-Vadakan is a legislator in Thailand.*

Dr. Vichit reminded participants of the importance of addressing both trans-border and internal migration. Although internal migration began with men migrating to the cities, women in Thailand are now being migrated internally for sexual services. This has become so prevalent that at some point that even teachers have purportedly become recruiters for young girls in schools. Underlying this trend is gender inequality. Dr. Vichit argued that case studies reveal that women who migrate have lower status than fellow siblings who are male. In order to gain the love and approval of the family these women enter into hazardous and dangerous occupations. The narratives of these women reveal their self-sacrifice for the sake of the economic well being of the family. Dr. Vichit reasoned that there is a need to examine the value structures in society that lead women to migrate. Her work with sex workers reveal that there is enormous value placed on gender constructed notions of beauty and sexuality. Dr. Vichit concluded that it was important to advance human rights education at every level to foster gender equality.

**Conceptualizing Migration as a Gendered Process: Aurora Javate De Dios (Philippines):**

Migration is a tremendously gendered process from which women just can't escape. It also reinforces the kind of familial obligation that women and girls are often obliged to follow in the service of the family. Notions of sacrifice and the idea that a woman's primary obligation is to support the family even by sacrificing herself is one which underscores the whole migration process.

**Addressing Violence as a Tool of War: Charm Tong Nang (Burma):**

*Charm Tong is the founder of the Shan Women's Action Network (SWAN) and has been named one of Time magazine's "Asian Heroes." She discusses forced migration in context of militarization and internal displacement, rape as a tool of war, and refugees and forced labor in the context of statelessness.*

Ms. Tong spoke from her own experiences of being both a refugee and advocate for Burmese refugees. She too argued that migration cannot be separated from politics and culture and in the case of Burma cannot be isolated from the armed conflict in Burma today.

The increased militarization has led to more human rights abuses in Burma including systematic human rights violations, all forms of arrests, killings and forced relocations and the separation of family members. Systematic abuse, she averred has also caused large-scale internal displacement. In the Shan state, more than 400,000 have been relocated from their homes. Internally displaced people (IDP) don't have access to health care or education Ms. Tong explained that Thai-Burma border is home to some 158,000 refugees. Approximately 1.5 million live outside camps living as migrant workers in Thailand several thousand working in Northern Thailand in orange farms.

Their children have little access to education or training. Moreover, the living conditions have resulted in the spread of HIV, TB, malaria and general breakdown in public health.

The Shan Women's Network has documented the systematic use of rape as weapon of war. The report released in 2001/2002 show that more than 173,000 women and girls were raped by the Burmese regime. Eighty-three percent of the cases of women and children raped by high ranking officers involve brutality, torture, beatings, being burnt alive or having their sexual organs burnt (by batteries being stuck inside the vagina). Sixty percent of women are gang-raped. These so-called development projects including the building of roads contribute to more sexual violence and rape.

### **Marriage Migration and other New Forms of Migration: Heisoo Shin (Korea):**

*Heisoo Shin explains that marriage migration has added a whole new dimension to trafficking and migration in women. Korean, Taiwanese and Chinese men are seeking foreign wives because there are not enough local women. This has created a whole range of abuse and exploitation. Marriage migration affects children too. The importance of specific policies to address this new phenomenon must be established.*

Dr. Shin highlighted the comparatively recent phenomenon of marriage migration in parts of Asia. She argued that though marriage migration is legal it is still problematic. Marriage migration which started fifteen years ago in Japan and is now sweeping Korea, Taiwan, and Malaysia. Women are also the most vulnerable parties to this practice because most interracial marriages are between Korean men and foreign women. Rarely does marriage take place between Korean women and foreign men.

Dr. Shin highlighted that one reason for marriage migration is that Korea has been experiencing a decrease in fertility. Women are refusing to give birth because of several reasons including that it forces women to be the primary caregivers of their children. In fact, approximately, 350,000 abortions take place per year.

Some of the problems as explained by Dr. Shin included, foreign women having to show that they have been in a marriage for two years in order to get citizenship. During this two year period there is potential for much violence and exploitation in the family because of the control the husband has over his wife. The foreign wife has to also master the Korean language, customs and culture. The children too have problems acquiring Korean language and are looked down because of this problem in their neighborhoods. Dr. Shin argued that Korea was slowly changing into a one-sided, multi-cultural society where a foreign wife is expected to understand the culture and language of Korea with very little reciprocity on the husband's part.

Dr. Shin also discussed that marriage migration has deleterious consequences on children when women marry Korean men for the second time and leave children behind in their country of origin. Although Korean men promise to support these children, the reality is very different. These children are often neglected and abandoned. Citizenship is sometimes denied to foreign women whose marriages with Korean men break down.

The children of these marriages are often in the custody of their father and this is not always in the best interest of the child.

**An Action Plan to Cover Origin, Transit, Destination and Retirement: Ferdous Ara Begum (Bangladesh):**

*Ferdous Ara Begum discusses the mass-scale displacement of women and children caused by natural disasters such as the recent cyclone Sidr in Bangladesh.*

Dr. Begum referred to her experience as a CEDAW Committee member involved in the drafting of General Recommendation 27 on Women Migrant Workers. Although migration is a major global development, trafficking is one of the worst forms of human rights abuse. The inherent challenge here is how to promote migration and control and combat trafficking. Ms. Begum quoted Radhika Coomaraswamy who has stated in one of her reports that “traffickers fish in the stream of migration.”

Ms. Begum argued that the General Recommendation on migration must embrace the three major principles of the CEDAW: non-discrimination, state obligation, and substantive equality. Governments must ensure that women are protected at the point of transit and destination. The CEDAW protects against all forms of discrimination and includes both non-discrimination and substantive equality.

Ms. Begum explained that the CEDAW Committee is focusing on four types of migrant women: women who are primary migrants, women who are joining husbands (in this case the husband is the primary migrant), migrant women who are in the process of moving and under-committed women. Under-committed women are those who have false documents and creating a situation of trafficking in women. She argued that there are an estimated 26,000 documented migrant Bangladeshi women. The undocumented number is five times higher. In the wake of these explosive numbers Ms. Begum felt it was doubly important for the CEDAW Committee and for all participants present to address women undocumented migrants. Most of these migrant women do not have any education nor do they know the language of the destination country. Most migrant women are unskilled or semi-skilled. Women moving to a destination country face enormous difficulties. Pre-departure preparedness programs and awareness are very important. We must replicate models put in place in other countries. Government agencies must look after migrant people, both men and women. Although there is a ministry to oversee foreign employment, Bangladesh lack an action plan on this policy but the government is working on this. Ms. Begum made strong arguments for a good remittance program covering both women and men; a welfare policy for migrant women’s families; a savings plan that will be their insurance policy on their return; and a plan of action to cover their origin, transit, destination and retirement.

Ms. Begum argued that although the Bangladeshi government had selected eight organizations including NGOs and agencies, to provide training to women migrant workers prior to migration to other countries the participation of migrant women and

returning migrant women were essential to any effective policy formulation. There must also be a strong networks and relationship between migrants and foreign ministries so that they could help locate migrants in that country.

### **The Need to Enforce Bilateral Agreements: Salma Ali:**

Ms. Ali referenced the important role of inter- governmental mechanisms and multilateral agreements in addressing trafficking and providing safety nets for migrating women. In South Asia, the South Asian Association for Regional Cooperation (SAARC) comprises seven neighboring states (Bangladesh, India, Pakistan, Nepal, Sri Lanka, Bhutan and Maldives) and the SAARC Convention on the Trafficking of Women and Children and Children for Prostitution directly relates to trafficking for prostitution. In 2006, all seven countries ratified this convention. The convention calls for extradition and for other type of facilities. Ms Ali argued that despite theses agreements there had been little action. Given that NGOs cannot undertake full responsibility for repatriation embassies must maintain their support of anti-trafficking measures. She referred to specific examples of women in jail in Dubai and Saudi Arabia and argued that it was problematic to take legal action when no one knew who the recruiters were. The recruiters are almost always men. Thus despite the SAARC convention, a weak system of information dissemination and coordination between police, has hamstrung the enforcement of laws and agreements.

### **A Call for an Effective Domestic Implementation of the Law: Juree Vichit-Vadakan (Thailand):**

Dr. Vichit praised the efforts of Dr. Saisuree Chutikul to draft a new trafficking law in Thailand. This law, Dr. Vichit argued was much stronger and much more realistic in terms of operationalizing different ways of coordination and cooperation between agencies. However, this does not mean that when laws and institutional arrangements are in place that problems will automatically go away. Poor coordination still exists among agencies and this results in impeding repatriation and rehabilitation of trafficked persons.

### **How Do We Find Solutions Within a Militarized Context? Charm Tong (Burma):**

Ms. Tong explored the Burmese anti-trafficking law of 2005 which decrees that women under twenty-five should not travel outside the country as a safeguard against trafficking. This is complicated by the fact that women want to leave the country because of systematic abuse in Burma. Women have to bribe or undergo sexual abuse before crossing the border. In Thailand, Burmese women are pushed back to Burma and then they face rape and loss of life. In this context of the breakdown in rule of law there must be alternative solutions to address this problem.

**Protecting Juveniles in Korea: Heisoo Shin (Korea):**

In Korea, legislation prohibits the sale and purchase of sex from minors and there have been discussions on what the government should do to prevent repeat crimes by sexual offenders. Dr. Shin discussed innovative ideas regarding the placement of electronic bracelets so as to monitor sexual offenders. She discussed that rape can be charged only when a victim files a case and the third party is not able to file a case on her behalf. In the case of rape of minors this would be problematic.

**Bringing to the Surface a Child Perspective: Aurora Javate De Dios (Philippines):**

Aurora Dios urged participants to consider the migration of young women who are often below the age 18. Of the 100 million women who migrate from the Philippines many of them are under the age of 18. The children left behind demand our attention. For a lot of mothers, especially in Indonesia and Philippines, children left behind are often denied adequate care, nutrition and parental guidance because they are left in the control of surrogate parents and fathers who are not ready to take on the role of providing care. The children's problems are often blamed on the absent mothers. This is again tied to the notion that women alone are responsible for caring for children.

When families migrate, children remain undocumented and therefore invisible. Children do not have access to basic education, health, and other services. In the Philippines there is a law that requires governments to respond to the needs of both documented and undocumented migrants. However, more needs to be done and undocumented children need to have access to schools. Although destination countries are quite flexible in admitting children of undocumented migrants few institutions cater to their needs.

Dr. Dios discussed her own innovative advocacy initiatives that engaged young men from ages fifteen to twenty-two. At these youth camps, these young men are provided sensitivity training on issues of trafficking and sexual exploitation. The idea behind these youth camps is to question male norms of masculinity and coming-of-age rites that involve exploitation of women.

**CEDAW General Recommendation 27 on Migrant Women:**

Dr. Shin responded to questions regarding the General Recommendation on Migrant Women. She commented that the draft of the General Recommendation has been sent to the Committee of the International Convention on the Protection of the Rights of the Migrant Workers and Members of their Families 1990. One of the issues recognized in the Recommendation was the issue of deportation of pregnant women and States parties must address that type of abuse.

As the chairperson of the Working Group, Ms. Dairiam followed up on the question on the status of General Recommendation 27. She added that the draft was sent to all treaty bodies for their comments. Recently, the Committee on the Convention on Migrant

Workers and Their Families got back to the CEDAW Committee and requested an opportunity to collaborate on this recommendation. Although the recommendation was almost ready to be adopted, the working group of the CEDAW is considering the request for further collaborative work. Ms. Dairiam mentioned some of the challenges in actual collaboration, including that of finding physical space and time intersessionally to sit with representatives of the committee of migrant workers. The Office of the High Commissioner for Human Rights (OHCHR) has offered to facilitate this process. Ms. Dairiam hoped that the CEDAW Committee could adopt it in the first quarter of 2008.

**Sharing of Best Practices: Juree Vichit-Vadakan (Thailand):**

Dr. Vichit commented on the potential of migration to provide opportunities for women. She requested better research on best practices and case studies of the ways in which women and children's lives have been enhanced by migration.

**Migration and Debt Bondage: Heisoo Shin (Korea):**

Dr. Shin and Dr. Vadakam discussed the problems of migration and debt bondage. Migrant workers borrow money to obtain a license from a broker agency and they are often held hostage to the broker. There is much strain on families to pay back this debt and sometimes this results in suicide among family members.

Further they discussed that illegal workers sometimes only accumulate tips as their salaries as their earnings go to pay the brokerage fees. In fact their land is used as collateral and when they return to their homes they are destitute.

**The Relevance of ILO Regulations: ILO Representative:**

The ILO representative discussed that in the Mekong sub-region women have been put into the most dangerous work and forced into forced sterilization and contraception. The deportation of pregnant migrant workers in Thailand is a violation of ILO labor standards and the CEDAW.

She argued that the convergence of the CEDAW and CRC was particularly relevant in this context because when women come into a country for work they often bring their children along as women are still seen as the primary caregivers of children. This results in children being raised in hazardous workplaces such as orange farms in north Thailand which involve handling of chemical products. Children do not receive immunizations and although under Thai law there are provisions that education must be provided for all children, no matter legal or illegal status or documented or undocumented, many undocumented children are not sent to school because of fear of their illegal status. There are deep-seated fears that immigration officers will deport these children. She also reminded participants that bilateral and multi lateral agreements do not cover illegal work such as sex work and work in the informal sector.

## Recommendations from the Panelists and Participants:

- The state must be held primarily responsible and accountable for the safety, security and implementation of the laws and agreements on migration and trafficking.
- Develop an action plan for migrant workers that covers origin, transit, destination and retirement.
- Create welfare policies to protect the economic security of migrant workers and their families in both the sending and receiving countries. Track the ways in which remittances by migrant workers are used and create retirement plans for returning migrant women and their families. For example, create a welfare policy for migrant women's families so that women have access to a saving plan on their return home.
- Encourage sending countries to create and follow good pre-departure and good remittance policies to secure migrant women worker's families, and an effective policy for returning women migrant workers.
- Ensure access to schools, health care and social security for all children of migrant workers (including undocumented workers).
- Develop an action plan to protect the children who are left behind by migrant workers. For example, the Sri Lankan Human Rights Commission set up an initiative to examine the plight of migrant women and the children they leave behind.
- Activate foreign ministries to take responsibility to locate all migrants in the country.
- Develop networks among migrant workers with special regard to women migrant workers.
- Improve implementation and enforcement of trafficking laws.
- Develop strong guidelines for the rehabilitation of trafficked women and children. Allocate resources for rescue, rehabilitation and repatriation. Create monitoring mechanisms and ensure state accountability for rehabilitation and repatriation.
- Urge inter-agency initiatives to deal with trafficking. For example, the Philippines' Anti-Trafficking in Persons Act of 2003 provides for such creative mechanisms.
- Draft strong juvenile protection laws. These must include strong language prohibiting the purchase of sex from minors, strict monitoring of sexual offenders

including placing electronic bracelets on repeat offenders, community notification of repeated sexual offenders who can be monitored, and strict statutory rape provisions.

- Encourage a focus on the impact of migration on children at the global forum on migration and a panel on the subject at the conference on gender, migration and development, both to be held in the Philippines this September.
- Bring a child rights perspective to the General Recommendation 27 on Migrant Women Workers.
- Create regional and bilateral agreements on care for children of migrant families and trafficked children (keeping in mind that bilateral agreements do not address the formal sector).
- Strengthen cooperation between the CEDAW and CRC Committees to address exploitation of women and children.
- Raise the visibility of children's concerns on issues of trafficking and migration.
- Improve human rights education with a focus on men and youth; engage young men in combating trafficking and reducing pull factors.
- Examine the interrelated issues of marriage migration and the complex ways in which children are affected (lack of full citizenship rights, risk of being abandoned etc.)
- Collect case studies of good practices in cases of migrant women workers and their families. Look at ways in which these good practices can be replicated.
- Develop mechanisms to address debt bondage and exploitation of migrant women workers by brokers and "middle parties."
- Address the impact of militarization (Burma) Maoist Violence (Nepal ) on internal and cross border migration and trafficking.

## Day Two

### **Panel Four: Anti- Discrimination and the Elimination of Violence in Economic and Social Policies, Legislative Reform, and Cultural and Traditional Practices Affecting Women and Children**

This panel explored new and interesting developments in law reform in the region. Many of the countries in the region have adopted domestic violence laws and China, Vietnam and Bangladesh are in the process of drafting such laws. Several countries have also

adopted gender equality and anti-discrimination laws. These laws include the newly revised Law on the Protection of Women's Rights and Interests in China and the Gender Equity Law of Vietnam. While all these laws establish the notion that children's rights cannot be advanced within a framework of gender inequality, few laws specifically address the needs of children. The Vietnamese Gender Equity law provides for leave for both parents for the birth and care of children. It also provides for gender equality education in the family and schools. The report of the law commission of Bangladesh on the proposed law of domestic violence acknowledges that children's rights cannot be guaranteed in a framework that discriminates against women. The report establishes any violence in the family makes children victims too, which result in behavioral problems and learned behavior. The draft bill covers children, persons with disabilities, parents, siblings and even domestic workers of any sex or age live in the house or shared household. Law reform in Pakistan has been characterized by inconsistencies and anomalies which reflect political expediency and quick fixes to deep-seated cultural and traditional practices that violate the rights of women and children. Law reform initiatives and good faith efforts have however been hamstrung by a lack of corresponding enforcement mechanisms.

This panel brought together women policymakers and lawyers at the cutting edge of law reform and law implementation.

### **The Special Significance of Human Rights Day- December 10**

At the start of the panel, the panelists were asked to reflect briefly on the significance of the day. Dr. Purificacion celebrated the UDHR as the cornerstone of the human rights framework. The importance of the work of human rights defenders and the need to safeguard their rights was raised by other members of the panel. Hon. Mu Sochua of Cambodia highlighted the move in Cambodia to constrain the rights and liberties of human rights defenders by a draft law that aims to limit freedom of movement and free speech and impose mandatory permits for free assembly. Moreover, human rights defenders, including NGOs, who bring to light human rights abuses are being targeted for violence and discrimination.

**Panelists:** Mu Sochua, Danish Zuberi, Sashi Adhikari, Salma Ali,  
Rowena Guanzon

**Moderator:** Dr. Rangita de Silva-de Alwis, Wellesley Centers for Women

### **Major Elements of a Domestic Violence Law Protecting the Rights of Women and Children in Cambodia: Hon. Mu Sochua (Cambodia):**

*The Hon. Mu Sochua is a former Minister of Women's Affairs in Cambodia and a Nobel Peace Prize finalist. She helped draft the Law on the Prevention of Domestic Violence and Protection of Victims 2004 in cooperation with women's NGOs and children's NGOs. She discusses the creative ways in which she brought these multiple networks and agencies together and how the law reflects the needs of children and women and the challenges they face.*

Hon. Mu Sochua identified the following three innovative provisions in the domestic violence law that she helped to develop in Cambodia:

*What constitutes a family?*

Hon. Sochua argued that the that constitutes a family is a dynamic concept and changes in law must capture the reality of a *de facto* family and not the idealized notions of a family. She illustrated how in Cambodia, the Law on the Prevention of Domestic Violence and Protection of Victims 2004 redefined the family as members living in a household so as to capture the reality of a post-genocidal war-torn country where families had been destroyed, reshaped and re-formed. Given that traditional notions of a family could not fit into the context of a post-conflict Cambodia, a new definition had to be constructed. This new concept of family came out of studies done by both women's rights and children's rights advocates. Without this dynamic understanding of the family, children of multiple wives would have no rights and children living under the same roof would have no protection against domestic violence. Thus according to this definition, all children and women who are exposed to domestic violence can be protected as long as they are under the same roof.

*Marital Rape*

Hon. Sochua also discussed marital rape as a particularly egregious form of domestic violence that must be recognized in domestic violence law. Although few laws in Asia recognize marital rape as a form of domestic violence, rape in a marriage constitutes one of the worst forms of family violence.

*The Role of Local Authorities in Addressing Domestic Violence*

Hon. Sochua also articulated the need for local authorities to play a major role in addressing domestic violence. In the Cambodian domestic violence law the chief of village and other civil servants who serve in the ministry at provincial level can also act to prevent violence and protect children and women who are exposed to domestic violence.

**A Call for the Repeal of Laws that Oppress Women and Girls in Pakistan: Danish Zuberi (Pakistan):**

*Danish Zuberi is a women's rights lawyer in Pakistan. She discussed the reforms of the Shariah law in the context of the Islamization of the laws during the time of General Zia-ul-Haq's military regime in the 1980s.*

Ms. Zuberi argued that the *Hudood* and *Zina* laws on adultery were part of the Islamization of laws in the 1980's. She explained that these laws were really implemented as a tool of oppression against women, and that was done in various ways. For example, under these laws, if a woman divorced a man and she remarried and the

divorce was not registered, the husband would go and file a case of adultery. It was also used as a tool of oppression to force women into marriages. If a woman marries with the family's consent the *Zina* laws are used by family members to persecute her and accuse her of adultery. The women's movement in Pakistan grew in response to the Islamization of laws in the area of rape, adultery, and evidence. Since 1980s the women's movement has been advocating the repealing of these laws.

Ms. Zuberi identified a major anomaly in the law. Under the new offense of statutory rape, a girl under the age of 16 is incapable of consenting to rape therefore for a girl under 16, consent is not a defense. However, the law has failed to change the definition of an adult girl and the definition is that a girl of 16 is an adult. Thus although a girl under 16 cannot give consent for sex, a girl of 16 or a girl who has attained puberty before 16 is capable of committing adultery. Given that judicial interpretation of laws is often value-loaded, it remains to be seen how statutory rape will be implemented in this case. Ms. Zuberi also discussed how the Islamization of law also created a different offense of rape and adultery. There had to be four witnesses to prove rape. Thus if rape could not be proved, the victim would automatically be charged with adultery or fornication. Although the rape laws have now been amended and the four witness requirement has been repealed, rape shield laws have not been put in place and a woman's character is still admissible.

Although legal reform is an important first step and it is important to have strong laws in place, unless support systems are not put in place, and the enforcement of laws are not secured, these law revisions will be futile. As important as law reform are the systems put in place to enforce the laws. These include in the case of rape, a proper medical examination. Given inadequate evidence, there are acquittals on the basis of lack of evidence; police reform, training of judges, etc. Ms. Zuberi argued that law reform based on expediency and narrow political ends are self-serving and do not bring about real reform.

### **Innovative Gender Equal Lawmaking in Nepal: Sashi Adhikari (Nepal):**

*Sashi Adikari discussed how Forum for Women Law and Development (FWLD) has challenged the sexual exploitation of children and women through groundbreaking litigation in Nepal which has led to changes in customary practices and has overturned unequal inheritance and citizenship laws that discriminated against both women and children.*

Ms. Adhikari discussed that the Nepalese gender equality law of 2006 enshrines the rights of families and was made possible through advocacy by women's groups. However, discrimination in citizenship laws still remain. Children born to Nepalese mothers who marry foreign men are not considered citizens while children born to Nepalese fathers who marry foreign women are citizens. The amendment to the inheritance law has provided equality and as a result daughters have a right in law to

inherit equally and are entitled to use property freely. The Supreme Court of Nepal also issued a progressive directive prohibiting *Chaupadi* (where menstruating and lactating women and girls in the eastern part of Nepal are asked to sleep in cowsheds). However, Ms. Adhikari regretted that these directives still lack implementing policies.

**Coordinating Lawmaking on Behalf of Women and Children- Strengths and Challenges: Rowena Guanzon (Philippines):**

*Rowena Guanzon is a women's rights lawyer and a former mayor. She has been involved in several gender-based law reform initiatives in the Philippines. Here she speaks specifically about the effort to draft the Anti Violence Against Women and their Children Act of 2004 and the forces that came together in that effort.*

Ms. Guanzon provided a *tour – de – force* of the lawmaking in the Philippines. She explained that from 1995 to 2006 there had been a harvest of laws in the Philippines to protect women and children either separately or together. In 1995, congress passed an anti- sexual harassment act. In 1997 an anti-rape act was passed which includes marital rape, and rape of men and boys. The Philippines also passed a victim protection act and a rape shield rule for women. In 2003, the Anti-Trafficking in Persons act was passed, which is concerned with anti-trafficking in persons especially women and children. The Anti-Violence against Women and their Children Act was passed in 2004 and the juvenile protection act in 2006. In the Philippines there has been much momentum built around the anti- trafficking and anti- violence against women act. There was much awareness of state obligation to pass these laws, especially after 2003 when the Senate had just ratified the Optional Protocol to suppress trafficking [The Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography.] The CEDAW and CRC and other international instruments are included in state policies. This, Ms. Guanzon explained was due to the Philippines' Constitutional guarantee that treaties shall be part of the law of the land. The Supreme Court too has supported this in its jurisprudence.

A month after the Anti- Violence against Women and Children Act came into operation, the Supreme Court ruled that in the examination of children as witnesses includes a rape shield rule. In effect the rape shield laws apply to children too and they are protected from questions related to their dress.

Ms. Guanzon discussed the activism of the Philippines Supreme Court in interpreting these laws and the Supreme Court has at times used the CEDAW and CRC to guide the interpretation of the laws. Ms. Guanzon discussed certain criteria to be considered in terms of combining the protection of women and children under one law. For example, the Philippines anti- child abuse law of 1992 is in the process of being revised. The project is being initiated in collaboration with the Philippines Department of Social Welfare and UNICEF. As it is, the law is a patchwork of provisions and is not coherent and consistent and only deals with discrimination against indigenous children and does not address discrimination against all children.

Ms. Guanzon elaborated that the Philippines Anti- Child Abuse Act of 1992 protects the child as victim and complainant and the Juvenile Protection Act of 2006 protects the child as accused and suspect. The Juvenile Protection law exempts children below the age of 15 from criminal liability. Children between the ages of 15 and 18 have no criminal identity unless they acted with discernment. Further, she discussed that the Supreme Court has defined discernment to mean that the child has the capacity to determine right from wrong. One characteristic of the law is that if a boy rapes a girl or woman, he can be arrested but not prosecuted. Discernment has to be proved in this case. This, Ms. Guanzon commented was backfiring against children because law enforcement officials feel that children between the ages of 15 and 18 can be beaten up in custody since they cannot in any case be prosecuted. There is a risk that these children will be subject to extrajudicial or arbitrary executions because they are outside the control of the law. For example, in cases concerning armed conflict, and drug dealing, children are being recruited by criminals since these children cannot be prosecuted. Thus, Ms. Guanzon argued that the problem of exploitation of children who are seen to be outside the protection of the law was a grave problem.

Ms. Guanzon, illustrated the different tensions that can arise from collaborations between different constituencies. This was show cased best during the effort to draft a domestic violence law in the Philippines. One school of thought wanted to protect household members, husbands, domestic workers and all persons living under the same roof. Another school of thought wanted to protect women only. A third and rather unexpected school of thought cropped up during the bicameral meeting of the Department of Social Welfare and Development. This school of thought asserted that children have to be included in the protection of women because as mothers, when mothers are battered children are affected in different ways. So both bills were passed, protecting women and family. The Chair of the legislative committee wanted all parties to explore common ground and come to a consensus, so the task was to find a substitute bill, to develop common ground under these two bills. Ms. Guanzon argued that politically, it is easier to pass protection laws for children than women. On the Senate floor a compromise was made and the two bills were reconciled by including children into the bill taking out all family members. The law now reads violence against women *and their* children. A very positive characteristic of this law is that protection orders available under this law can be used even if a party is suing under another law (sexual harassment, etc).

Ms Guanzon mentioned that despite this reconciliation, there remain many problems concerning the implementation of laws and the Supreme Court is called upon to resolve these issues. She discussed how laws covering protection of children have been used against women. Male parties have filed suit to get custody of their children on alleged grounds of child abuse by their mothers. Given that there are no clear guidelines, judges are called upon to issue protection orders within 24 hours and remove the children from the mother's protection. These are cases in which men use child protection laws as weapons against women. Similarly, there is a fear that a domestic violence law that covers the whole family can be used by men to persecute women. Ms. Guanzon

observed in conclusion that these laws can be used against women to “neutralize what we have gained under law.”

### **Recommendations from the Panelists and Participants:**

- Ensure a dynamic and broad definition of terms such as “family” in keeping with social realities keeping in mind that there are tensions that might arise from this broad definition.
- It is important to learn from the case studies of the Cambodian and Philippines domestic violence lawmaking experience. In Cambodia, the definition of a family was broadened to capture the social realities in a post conflict- state. In the Philippines, the two constituencies came together in a political alliance to expedite the passing of the domestic violence law. It included women and children but narrowed it to cover only the child victims of violence and the children of the women victims of violence. These experiences must help guide lawmaking and organizing processes to reconcile the needs of women and children without undermining either.
- Consider how, when anti-domestic violence laws cover all members of the family, women can be protected against frivolous suits filed by men as a weapon against women. How can law reform reconcile equal protection with the protection of only women and children. How can a compelling case be made for the law to cover women and children?
- Review the legal system as a whole instead of *ad hoc* reform in one area of the law. All laws should be made consistent with the new law revisions and human rights conventions. Anomalies and inconsistencies in law that arise from *ad hoc* lawmaking and law reform efforts must be avoided.
- Support mechanisms must be put in place to implement equality and anti-domestic violence laws.
- Ensure that marital rape constitutes domestic violence as it ruptures the integrity of the whole family.
- Train Members of Parliament, human rights advocates, judges and law enforcement officials on gender sensitive and child-centered lawmaking.
- Develop gender sensitivity training for law enforcement officials and judges
- Cross- fertilize information on comparative laws and policies and disseminate them widely.

### **Panel Five: Laws, Policies, and Budgets: Advancing the Human Rights Relationship between Women and Children**

Several countries around the Asian region have made good faith efforts to bring their legislative and social frameworks in compliance with CEDAW and CRC provisions. Corresponding budgets are needed to help operationalize the law and remedy the violation of rights. This panel brought together women working at the frontlines of law reform and implementation to discuss ways to make women's and children's rights central to laws, policies and budgets.

**Panelists: Danish Zuberi, Rowena Guanzon, R. Vaigai, Dr. Siti Musdah Mulia**  
**Moderator: Anna Wu**

**Addressing Discrimination against Women and Girls through Institutional Mechanisms: Anna Wu (Hong Kong):**

*Anna Wu is a former head of the Equal Opportunity Commission in Hong Kong and an advisor to the Law School of Shantou University.*

Anna Wu argued that the interrelationship between lawmaking, policies, and adequate budgets support is essential to the actualization of the law. If there are no supporting measures, law is often distant and unrelated to actual problems on the ground. In examining the genesis of an understanding of equality, one sees that for a long time, in Hong Kong and elsewhere, women, children, and persons with disabilities were lumped together under the law. What animated this kind of anachronistic thinking was the need to protect these groups as against a recognition of their rights.

***Equal Opportunity Law:***

Ms. Wu argued that the Hong Kong's experience with anti-discrimination lawmaking was a reflection of similar trends in Asia. Under customary law, the girl child was not allowed to inherit property in Hong Kong and an opt-out clause allowed a person to make a will. Government measures too were historically discriminatory. For example, a government measure allowed rights to housing to male indigents but not to their female counterparts. This was subsequently addressed by the equal opportunity law. As many of the participants at this conference have argued, lawmaking has involved a cross-fertilization of lobbying, creativity and compromise. Although the Hong Kong educational system is mostly even, there are instances in which the Ministry of Education has disadvantaged girls by scaling down their test scores of girls. This top 30 percent has been scaled in terms of allocation to top schools while boy's results have been scaled up based on the false assumption that boys mature late. Because of the efforts led mainly while Ms. Wu headed the Equal Employment Opportunity Commission in Hong Kong, this gender biased scaling was struck down by court and the court stepped in to dismantle the systemic discrimination which had been in place for 25 years.

***Special Resources for Abused Children:***

Ms Wu further elaborated that the plight of abused children is another of the major problems that arises both in the context of domestic violence and family relations. She

described how many years ago Hong Kong started an interdepartmental program for abuse of children which provided a network of support, special counseling services and special housing put in place to help abused children. However, from the perspective of law enforcement, husbands are still seen as breadwinners and law enforcement is generally reluctant to charge them. A training manual for police action in alleged cases of abuse and violence is in the process of being developed.

In the workplace, issues relating to pregnancy and maternity are areas rife with gender discrimination. At the same time, while workplace driven childcare services and social security for women who are not employed must be strengthened these benefits should be extended to children whose mother's do not work outside the house too.

### **A Call for a Gender Perspective in Lawmaking: R Vaigai (India):**

*R. Vaigai is a human rights lawyer specializing in women's rights and labor rights litigation and advocacy in India*

Ms. Vaigai identified some of the areas of law and policy that intersect on women and children in India. She argued that the law preventing female infanticide had been enacted but lies dormant. She regretted that this was the case with most laws dealing with special provisions for women and children. India has one of the highest numbers of child labor in the world and has a law preventing children from working in hazardous industries. However, this law too has to be brought to life through public interest litigation. She argued that while the connection between law, policies, and budgets are important, law enforcement mechanisms and judicial sensitization is very important too. She stressed the importance of gender sensitivity training for judges and law enforcement officials especially in cases dealing with sexual harassment.

Policies on maternity benefits must be drafted and implemented with gender sensitivity. Here too, Ms. Vaigai recommended training in gender sensitivity that would help to capture the reality of women's lives. The government has now placed caps on pre-delivery maternity benefits and limited it to two deliveries. This unnecessarily penalizes women as the number of deliveries is often not in women's hands. Because of the devaluing of the girl child, women are sometimes coerced to have babies until a son is born. Given that most judges are ignorant of on-the-ground realities, Ms. Vargai requested CEDAW and CRC committees to recommend gender sensitive training programs for judges and other adjudicators in their Concluding Observations to India's State party reports.

### ***Gender Budgets:***

Ms. Vargai asserted that women's groups in India have made advocacy for gender-sensitive budgeting a priority. Out of the total budget reallocation for 2007-2008, women only got 4.8 percent out of which flowed the entire budget for condoms and are considered part of the gender special allocation. However, contraceptives for women

came out of the budget from the Ministry of Health. Ms. Vargai argued that the girl child's special needs were often neglected. For example, girls are forced to drop out of school because of inadequate toilets in schools. Out of the 4.8 percent total gender budget, women's education has an allocation of 31 percent, health has 24 percent, food 22 percent, and livelihood 13 percent, housing 8 percent, protection 1 percent, and awareness 1 percent. She stressed that without sufficient budgetary allocation, domestic violence laws or laws regulating medical termination of pregnancy cannot be effectively implemented.

### ***Age of Majority:***

Ms. Vargai argued that in some areas of the Indian legal system, a child is still defined as 14 or under. She made a forceful plea for these laws to be revised and brought in line with the CRC and called for a blanket prohibition on children engaging in night work and in work involving work with machinery. There is increased feminization of the workforce in heavy machinery and this area is virtually unregulated and the protective regulations are under-enforced.

### **Inconsistencies in Law Reform: Danish Zuberi (Pakistan):**

#### ***Qisas and Diyat:***

Ms. Zuberi argued that law reform must be viewed in the context of the entire legal system and not as an isolated effort. Pakistan recently made an amendment to the penal code, where new provisions were introduced to address honor crime. Honor crime is one of the most egregious crimes against women and girls in Pakistan and the State for the first time recognized it as a crime. However, the criminal legal system in Pakistan still retains the concepts of *Qisas* and *Diyat*, which are customary processes by which legal heirs can enter into a compromise with the perpetrator. Therefore, although the law attempts to address honor crimes against women and girls which are most often committed by male family members, under *Qisas* and *Diyat*, legal heirs have the right to accept compensation for the crime and in effect nullify the crime against the woman or girl. Ms. Zuberi explained that unless *Qisas* and *Diyat* which deal with retribution are dealt with, the provisions dealing with honor crimes would remain largely ineffective.

She argued further that in the domestic violence law too there was no attempt to address *Qisas* and *Diyat*. Although the law purports to borrow concepts from other jurisdictions including provisions relating to protective orders and shelters there is no mention of inapplicability of *Qisas* and *Diyat* in that bill.

#### ***Reconciling Islamic Principles with Secular International Human Rights Norms:***

Another major issue that Ms. Zuberi focused on was the anomaly that is often created by interpreting the human rights of women and children in compliance with Islamic law. Given that under the Constitution, no law can violate the Islamic law, all legal reforms, particularly in relation to women, must be reconciled with Islamic principles. Although

the women's movement of Pakistan took the decision very early on not to confront the complicated question of law and religion there is a need for scholarship to examine law and Islamic provisions because legal reform ends in commissions led by Islamic scholars. Often issues such as whether under Islamic law an adult woman can be allowed to contract a marriage without a guardian's consent is based both on the CEDAW and on Islamic law.

### **Drafting a Model Family Law in Indonesia: Siti Musdah Mulia (Indonesia):**

*Siti Mulia led the drafting of a model family law (the Counter Legal Draft) based on the principles of equality in Indonesia. She discusses the major elements of that draft law in relation to women and children.*

Siti Mulia commented that although 87 percent of the population is Muslim, Indonesia is not an Islamic state. Indonesia has two schools of law and two court systems: the national law and the Islamic law and a national court and an Islamic court for issues dealing with marriage, *Waqf* [property] and inheritance.

In 2004, as the coordinator for the initiative for gender mainstreaming in the Ministry of Religious Affairs, Dr. Mulia proposed the reform of the Islamic law on marriage. What follows below is a distillation of the major revisions proposed in the Counter Legal Draft. These proposed elements of the law constitute a model for other reformist initiatives.

#### ***Defining Marriage as a Union between a Man and a Woman:***

The prevalent definition of marriage is that marriage is a contract between two males--between the groom and the guardian of the bride. The proposed change sought to reinterpret marriage as a contract between the man and woman and not between two males. Another important proposal was that marriage is a choice and not an obligation and men and women could choose whether or not they wanted to marry.

A major proposal was made to legalize inter-religious marriage with strict stipulations against trafficking of women. This proposal was based on the fact that in Islamic law there is no prohibition against marrying a non-Muslim. The only prohibition in the Koran is of a marriage between a Muslim and a *kafir* [a person who denies the glory of God].

Another innovative proposal was that a woman could also serve as a guardian in marriage. In the Koran, although the witness must be a Muslim, nowhere does it say that it must be a Muslim man.

#### ***Addressing Child Marriage:***

Dr. Mulia asserted that 42 percent of marriages in Indonesia are child marriages. Therefore, the proposed reforms posited 19 as the equal age of marriage for men and women.

***Addressing Inequality in Dowry:***

Another proposal in *The Counter Legal Draft* challenges existing customs that provide for a dowry by the husband to the wife and calls for dowry to be given by both wife and husband as a token of love and affection and as a way to create a relationship based on equality.

***Polygamy as Harmful to Women and Children:***

*The Counter Legal Draft* also prohibits polygamy. Since data shows that polygamy increases the risks of child abuse, conflict between family and society, the proposed revision is grounded on concrete data on the harmful impact of polygamy on children and the family.

***Marriage Registration:***

Marriage registration is another critical issue that affects both women and children in Indonesia. Forty percent of marriages are not registered. *The Counter Legal Draft* proposed mandatory registration of marriage. A new draft proposed by the Supreme Court to amend the Islamic Compilation of Marriage Law also adopts some of the proposals mentioned above and in particular the provisions on marriage registration; minimum age of marriage [19] and equality between husband and wife. This draft is now before the President.

***Equality in Inheritance:***

Given that Islamic principles do not decree unequal inheritance practices, *The Counter Legal Draft* too proposed equality in inheritance and removes the stipulation that women can inherit only half of what a man can inherit.

***Moving from a Patriarchal Interpretation of Islamic Principles to an Egalitarian Interpretation:***

Dr. Mulia argued for a move away from the patriarchal interpretation of culture to a more egalitarian interpretation of culture through education. The urgent need of the day, she argued was to reform all laws in accordance to international norms and make them compatible with the CEDAW and the CRC.

***Need for Comprehensive Budgets: Salma Ali (Bangladesh):***

Ms. Ali referred to the absence of women's groups from pre-budget discussions as a fatal drawback in gender sensitive budget allocations. As a result, women have not been allocated adequate funding in the budgetary development in Bangladesh and have not been allocated more than five percent of the total development allocation. She argued that the lack of budgetary allocations has failed to utilize women's economic potential.

Ms. Ali further illustrated that it was often challenging to implement laws without a supporting budget, for example, releasing girls from brothels is especially difficult in the light of scarce support allocation. Resources such as legal aid and shelters for women and children too cannot function without adequate budgets. Similarly, there is a need for a budget for witness protection, travel for witnesses from village to city, rehabilitation and reintegration of child victims of trafficking, follow up for psychosocial counseling, family counseling etc. Every law needs to be supported by a comprehensive budget.

**Building Partnerships: Dr. Purificacion Quisumbing and Rowena Guanzon (Philippines):**

*Dr. Quisumbing is the Chairperson of the Human Rights Commission in the Philippines.*

Dr. Quisumbing examined what partnerships can be built when looking at laws, policies, budgets to promote connectivity between the CEDAW and CRC. In this exploration she presented model examples from the Philippines that could be used constructively in other jurisdictions as well. She argued that given that there were seventeen national human rights institutions in Asia, it was important to ensure that human rights commissions engage with the important issues raised at the conference.

The Philippine Constitution mandates twelve functions for the National Human rights Commissions and among these functions are the independent investigation of the violation of civil and political rights. The functions also extend to “monitoring compliance of all treaty obligations” including economic, social and cultural rights. The Human Rights Commission previews all legislation and thus is able to comment on all legislation that relates to human rights. The Philippines Human Rights Commission is now conducting a study on Muslim women and children in detention. The commission has found out that these women do not have access to lawyers.

The Philippines Judicial Academy has also developed an effective gender sensitivity training program that integrates a human rights agenda and the Supreme Court now cites treaties in its decisions.

The gender and development law provides that all government agencies and branches of government allocate at least five percent of their budgets for gender issues.

**Recommendations from the Panelists and Participants:**

- Revise family law in light of principles of gender equality and the best interest of the child.
- Broaden access to legal aid and right to counsel for women and children in the criminal justice system.
- Include maternal and family policies, and social security for women who do not work outside the home, in gender sensitive policy formulations.

- Reinterpret religious texts from a gender-friendly and egalitarian perspective. Examine the conceptual foundation for human rights in Shariah law and reconcile Islamic laws with human rights principles. Given the multiple interpretations of the Koran this remains a challenge. More gender sensitive voices will help augment the cry for a gender sensitive interpretation of the Koran based on egalitarian principles of human rights. One such study has been conducted by Shaheen Sardar Ali, a Pakistan Lawyer and scholar, for UNICEF's Legislative Reform Initiative.
- Publicize studies done on the compatibility of the CRC with the Shariah law. These studies include the study from the Maldives by Mohamed Al Sayeed and S.S. Ali's study on A Comparative Perspective of the Convention on the Rights of the Child in Diverse Legal Systems, in Protecting the World's Children: Impact of the UN Convention on the Rights of the Child in Diverse Legal Systems Cambridge University Press, 2007.
- Advocate for the withdrawals of reservations to the CEDAW. Bangladesh has made reservation on Articles 2 and 16 on the ground of Shariah. The Bangladeshi CEDAW member has been lobbying the government to withdraw these reservations. Bangladesh has also been making changes to the Shariah law. For example, the provisions on polygamy have been amended to ensure that a man needs the consent of the first wife to marry a second spouse.
- One way to reconcile shariah law with human rights is to hold countries accountable to the obligations in the treaties they have agreed to. These obligations must be integrated into national laws. There seems to be greater challenges when it comes to reform for women and children. Although a modernist and progressive interpretation of Shariah law is under way, in the meantime, states cannot be excused of their obligations to comply with international treaties that they have entered into. In this effort, create greater awareness of the several Supreme Court cases in Bangladesh and India that have attempted to interpret the Shariah in compliance with international standards.
- Make better use of Concluding Observations by the CEDAW and CRC Committees to close the gap between international human rights norms and national laws. Enhance the participation of NGOs in enforcement of Concluding Observations.
- Strengthen advocacy for the ratification of the Optional Protocol to the CEDAW. All ninety States parties that have ratified the Optional Protocol now have excellent new mechanisms to challenge States parties that are not really applying international treaties at national level.

- Budgetary allocations for women and children should be a pivotal part of law making and implementation of the laws. Laws can be successfully implemented and enforced only if corresponding budgets are made available under each laws and for the functioning of the implementing agencies and support services.

### **Panel Six: Institutional Mechanisms: Strengthening the Connections**

Institutional mechanisms, including government ministries and agencies, human rights commissions, ombudsman offices, and courts and tribunals play a major role in creating synergistic models that connect the rights needs of all stakeholders including women and children. Without strong institutional mechanisms, implementation of policies and guidelines will remain a problem.

A number of national human rights institutions have been established in the Asia Pacific region to protect and promote human rights. These specialized institutions are a means whereby countries can more effectively work to guarantee human rights within their own jurisdictions. In the Asia region, these include the following: Afghanistan-Afghan Independent Human Rights Commission; India-National Human Rights Commission; Indonesia-National Commission for Human Rights; Malaysia-Human Rights Commission of Malaysia; Mongolia-National Human Rights Commission for Mongolia; Nepal-National Human Rights Commission; Philippines-Commission on Human Rights; Republic of Korea- National Human Rights Commission; Sri Lanka-The Human Rights Commission of Sri Lanka; Thailand-The National Human Rights Commission of Thailand; and Hong Kong-Equal Opportunities Commission. Apart from national human rights institutions, some countries have national gender machineries, children's commissions, and equal opportunity commissions. The panelists spoke from their own experiences of working with these institutional mechanisms. The goal is to strengthen institutional collaborations between and across national human rights, gender equality and children's rights mechanisms and with civil society stakeholders.

This panel brought together participants who lead government agencies and domestic institutional mechanisms relating to women, children and equality.

**Panelists:** Dr. Siti Musdah Mulia, Dr. Juree Vichit-Vadakan,  
Dr. Hiranthi Wijemanne

**Moderator:** Grace Agcaoili, UNICEF Philippines

#### **Coordinating Human Rights Efforts: Juree Vichit-Vadakan (Thailand):**

Dr. Vichit raised the question as to how to forge stronger partnerships with National Human Rights Institution on women and children's human rights issues and how to better liaise with relevant agencies on intersecting areas of concern. Given different focal points, efforts must be based to create linkages between and across these agencies. For example, Dr. Vichit noted that Thailand has a National Committee on Trafficking in

Women and Children and several bodies under the Ministry of Labor and Social Welfare to deal with child trafficking. On the other hand, the National Committee on Child Labor Protection addresses the issue of Thai and foreign child labor. The Thai coordinating Committee on Migrant Children protects and assists migrant children. The strength of these institutions depends on how well their work can be coordinated.

**The Role of Hong Kong's Equal Opportunity Commission to Protect Women and Children: Anna Wu (Hong Kong)**

*Anna Wu is the former head of Hong Kong's Equal Opportunity Commission.*

Ms. Wu discussed the formation of the Equal Opportunity Commission (EOC) in 1996 in Hong Kong as an example of strong institution building. The Equal Opportunity Commission administers three sets of laws: gender discrimination, disability discrimination and family status discrimination. As long as the Commission functions within parameters of its law, it can decide on its own policies, and its capacity to spend money and how to conduct its business. While certain items are fixed, the Commission is free to decide how funds can be allocated to priorities such as litigation and education.

The EOC receives many cases on discriminatory treatment of girls. As discussed before, a landmark case dealt with allocation of places at elite public schools which favored male applicants. The suit filed by the EOC challenging this discriminatory process cited both the CEDAW and CRC and dismantled a system that had been in existence for over twenty years. Although the Supreme Court ruled that the policy be withdrawn, the department of education dragged its feet on establishing an alternative system. One reason that the department gave was that schools did not have enough bathrooms for girl students. Again, this reveals the challenges inherent in inter-agency coordination and the need for sustained attention to concrete collaborations and partnerships.

**National Commissions and their Loopholes: Dr. Juree Vichit-Vadakan (Thailand):**

Dr. Vichit too illustrated her comments with examples from Thailand. She argued that despite many different commissions that address human rights, there are many loopholes in national committees. Although the structure might look good on paper, the implementation often falls short in actual practice. Once again, focusing on the breakdown in coordination, she argued that despite a gender equality officer being appointed to every bureaucracy, the national women's machinery does not allocate funds for this. She once again emphasized that multi-sector collaboration was essential in areas such as trafficking prevention.

**Strengthening Sri Lanka's Child Protection Authority: Dr. Hiranthi Wijemanne (Sri Lanka):**

*Dr. Wijemanne is Chairperson of Sri Lanka's National Child Protection Authority (CPA).*

Drawing on Sri Lankan case studies, Dr. Wijemanne raised two major issues that impact on the rights of women and children.

Dr. Wijemanne argued that free education for all children begun sixty years ago soon after independence has helped to spawn a generation of educated girls and women in Sri Lanka. She underscored the importance of unfettered access to education as a source of a strong rights framework for women and girls.

Dr. Wijemanne's next point focused on the importance of political will. The Child Protection Authority (CPA) of Sri Lanka flourished because it had a high level of political support from the then President, Chandrika Kumaratunga.

The reach of the CPA included law reform, a separate police force to undertake investigations of child abuse, therapy, counseling and awareness-raising with the media and schools. The CPA also covered law reform, court procedures, video conferencing, child labor, and the advertisement of children and women in cyberspace.

The CPA statute not only had the unanimous support of parliament but because the authority was located in the office of the President, it had the necessary political patronage. Resource allocation was also key to the successful implementation of CPA's role. UNICEF too invested resources on CPA's capacity building. Linkages with civil society groups was very important for the strengthening of the CPA.

Dr. Wijemanne also commented that over the last couple of years, the Ministry of women's affairs and empowerment and development has been located in the President's office and this too carried a lot of political weight. The children and women's rights linkages are central to the promotion of good governance.

An important point that needs to be kept in mind, Dr. Wijemanne argued, was that duty-bearers were not at the international levels but provincial and village levels. She also argued that institutional capacity building should include media sensitization. This was a very important reminder given that civil society attitudes are developed and often based on the media reports.

### **Recommendations from the Panelists and Participants:**

- Make women's and children's rights agendas a pivotal concern of national human rights mechanisms.
- Review the rights pertaining to children and women in all the core human rights treaties and use those provisions for the advancement of women's and children's rights.
- Ensure the allocation of sufficient resources for the implementation of statutory bodies.

- Ensure that institutional mechanisms have political backing and the support of civil society organizations.
- Engage academic institutions and their capacity for specialized research areas that intersect women and children's rights.
- Develop the media as an important ally and use it to create awareness of the critical linkages between women's and children's rights. Train media on gender- and child-sensitive reporting.
- Strengthen girls and women's access to education as an essential component of development policies.
- Inform the mandates of the Special Rapporteur with a child rights and gender perspective.
- Institute universal periodic review by the human rights council of every single country whether they are member states or ratifying states. Make use of this opportunity to hold states accountable for women and children's rights.
- Form commissions from each ASEAN member country, one for children and one for women. Terms of reference should be drafted for these commissions and submitted to the ASEAN Secretariat for consideration in the next agenda for the senior officers' meeting.

### **Concluding Panel: The Way Ahead: Civil Society Partnerships and Collaborations**

Partnerships across and between institutions, agencies, organizations and borders are one of the most important ways to take the agenda on the human rights relationship between women and children forward. This panel was moderated by Noreen Khan of UNICEF and was joined by leading organizations in the region including the Asia Pacific Women Law and Development (APWLD), the Vietnam Women's Union, Migrant Forum Asia and the UNICEF Country Office in the Philippines. The panelists discussed innovative programming that sought to define and strengthen the linkages between women's and children's rights and ways to operationalize the intersectionalities of CEDAW and CRC into the work of NGOs around the region and how civil society organizations can partner with each other and with the treaty bodies in joint action.

**Panelists:** The Asia Pacific Women Law and Development, Vietnam Women's Union (VWU) and Asia Migrant Forum, UNICEF- Philippines office  
**Moderator:** Noreen Khan-UNICEF New York

**Strengthening partnerships through Lawmaking: The Vietnam Women's Union: The Vietnam Gender Equity Law**

*The VWU discussed the recently passed Gender Equity Law. This law attempts to balance work/family obligations within a gender equality framework and also advances gender equality both in private and in public—in the family and the workplace. The law also asks the assistance of the Vietnam Fatherland Front in advancing these values.*

The VWU examined important elements of the Vietnam Gender Equity Law passed in December 2006. The law addresses discrimination against women and socio-economic conditions that render women and children vulnerable to discrimination. The law also supports gender-equal child-caring responsibilities and prohibits discrimination on grounds of pregnancy and childcare. The law also provides that all property in marriage belongs equally to both husband and wife. One of the major features of this law is the way in which it seeks the collaboration of the different sectors and addresses the way in which civil society must engage in implementing the law. The law calls for the government of Vietnam to collaborate with the Fatherland Front which includes members of farmers' union, veterans' union, elderly people, and the Vietnam Women's Union and is a leading voice in the 64 provinces of the country in advancing legal education and gender awareness. The law also calls for 30 percent women in politics. At the last election, 27.3 percent women entered the national assembly, 24 percent entered the lower people's commission and 30 percent in government. The national machineries for women—the Vietnam Women's Union and the National Commission for the Advancement of Women also partner with the ILO, UNDP, UNESCO, UNICEF, and WHO. These partnerships provide strategic and multi-sectoral assistance to advance gender equity. Further important partnerships have been forged with academic institutions such as the Public Health Institute of Hanoi and international NGO's.

### **Moving From the Local to the Global: Asia Pacific Women Law and Development (APWLD):**

*As the pioneering Asian regional organization on women's human rights, the APWLD spoke about their innovative initiatives to link women's and children's rights in the region.*

APWLD argued that in certain rural areas local women often found it difficult to relate to international Conventions. However, APWLD uses campaigns to link food sovereignty, health issues, access to land, and food production to the CEDAW, CRC and ICESCR frameworks. APWLD argued that these programs address food, mining and community-based exchange programs to share experiences and strategies and to hold governments accountable to the degradation of their environment as well as internal displacement. Moreover, APWLD addresses the health impact of mining on women and children. The CEDAW, CRC and the ICESCR General Comments also relate to government obligation to protect and fulfill right to food.

APWLD has initiated a number of important projects to take the women's rights agenda from the local to the global. APWLD has also held a number of consultations in partnership with national and regional organizations with the Special Rapporteur on

Violence Against Women, Special Rapporteur on Migrant Workers, Special Rapporteur on Housing and Special Rapporteur for Human Rights Defenders. These consultations provide an opportunity for groups to raise issues with UN's special procedures as well as an opportunity to discuss critical issues with government officials and help develop national plans of action. This is also an important mechanism to create accessibility to rural women to engage in conversations on international norm creation.

### **Building Alliances Across the Region: Migrant Forum Asia**

*Migrant Forum Asia (MFA) has a wide network of 290 organizations around the region. These include both migrant organizations and trade unions. As a regional network of organizations, it is concerned with issues of migration.*

The MFA is very active in addressing issues of migration in Asia and has worked with other regional organizations like APWLD in the region. MFA has also engaged with the ASEAN taskforce to draft a regional mechanism to protect rights of ASEAN migrant workers. So far only Sri Lanka and the Philippines have ratified the Migrant Workers and Their Families Convention. During the 39th CEDAW Session, the MFA advocated for the drafting of General Recommendation 27 and is looking forward to the adoption of this General Recommendation. The MFA has also been tasked by the Philippine government to work closely with government agencies on migrant issues. The MFA is also working on identifying themes and concerns in relation to the forum on migration and development to be held in Manila. This will create another important opportunity to open out space for the discussion of the rights of migrant women and children.

### **The Dynamic Role of UN Agencies in Partnership Building: UNICEF Philippines**

Grace Agcaoili discussed an important collaboration between UN agencies on harmonizing and improving the UN entities reporting to the CEDAW Committee. Human rights reporting affords an important opportunity for UN agencies to provide the UN treaty bodies with additional and objective information on specific topics. United Nations agencies with field presence are able to show disparities not clearly shown in national disaggregated data. United Nations reports to the CEDAW, which remain confidential, if such is requested, have been greatly appreciated by the Committee. The UNFPA, WHO, UNICEF, UNDP and UNIFEM have begun exploring ways to improve the flow of country-specific information to the CEDAW Committee through inter-agency collaboration. The first joint confidential written report was submitted to the 34th Session of the Committee (January 2006). The CEDAW Committee expressed in its official report (36th session) its appreciation for this initiative and encouraged the entities of the United Nations system, through country teams, to expand this practice. This initiative, the first involving joint reporting to a human rights treaty body, should be viewed as a logical move in the context of achieving greater cohesiveness among UN entities. It is hoped that joint programming on implementation of the CEDAW Committee's Concluding Recommendations will be the next step.

Due to this effort, the UN country team in the Philippines produced a UNCT report to the CEDAW Committee. As a result of the role of the UN country teams, there have been advances in facilitating implementation of the CEDAW Concluding Observations. UNICEF's country office in the Philippines also partners with international financial organizations like the Asian Development Bank. On the gender budget, UNICEF helped to cross-fertilize the human rights based approaches to the social based analysis adopted by the Bank. Following on prior effective collaboration, UNICEF is also planning on collaborating with the ILO/IPEC and World Bank on CRC reporting.

### **Recommendations from Panelists and Participants**

- Build strong partnerships among civil society organizations and between civil society and treaty body mechanisms. These partnerships are critical to monitoring human rights and to forcing accountability.
- Encourage partnerships at three levels of possible intervention: domestic, regional, and international. At the domestic level it is important to ensure the broadest participation. In Korea, for example, a national conference was convened to examine Korea's 6th Report to the CEDAW Committee and how the Concluding Observations can be operationalized. The importance of dissemination of these Concluding Observations to the provinces cannot be overemphasized.
- Encourage greater collaboration between civil society organizations on addressing the Concluding Observations of the treaty bodies.
- Develop concrete work plans for the implementation of the CRC and CEDAW Concluding Observations at regional seminars.
- Provide guidelines in relation to children's rights under each article of the CEDAW in order to highlight the way in which women's rights impact children's rights positively.
- Encourage civil society organizations to use their shadow reports to address the human rights norms in both the CEDAW and CRC.
- Strengthen the capacity of civil society organizations to enter into constructive dialogue during the universal process of periodic review.
- Hold states accountable to treaty implementation. In a situation where NGOs are called upon to take on a larger role, States parties cannot abdicate their role as duty-bearers.
- Advance the campaign for State party ratification of the Convention on the Rights of all Migrant Workers and their Families.

- Pay special attention to the language of the laws when drafting legislation. The Gender Equity Law of Vietnam would have a much stronger basis if the terminology were changed to equality instead of equity. In Asia, traditionally, the term equity has diluted the definition of both formal and substantive equality. Although certain compromises occur in the lawmaking process, core values cannot be sacrificed at the altar of lawmaking.

## CONCLUDING COMMENTS

### Shanthi Dairiam (Malaysia)

*Ms. Dairiam is a CEDAW Committee member and founding head of IWRAW.*

It is indeed a great honor, privilege, and pleasure for me to stand before you and say the last concluding remarks at the end of this very vibrant conference, stimulating discussion. I really expect that many good things are going to come out of this conference. I would like to start by saying that the concept of Women and Children: the Human Rights Connection, which is the theme of this conference, is for me very enlightening. It can be used to establish the connections between women and children in a way that protects the rights of both women and children. In many ways, as we've discussed during these two days, linking women's and children's rights, may at times create tensions and this is because such linkages have served to establish the dependence of children on their mothers in a linear fashion. And in a way that was detrimental to the human rights of women because it absolved responsibilities of other duty-holders such as parents, society and the state. And so that kind of linear linking created the tensions. This is what we need to unpack.

What this meeting has allowed us to discuss is that we need to find ways to resolve these tensions and they must be resolved, certainly, because clearly the very survival of children at a certain stage of their lives, in particular, starting with human conception, depends on the wellbeing of their mothers. Conversely we also ought to recognize that where children are valued and their rights to survival and development are protected by the state and other duty-holders, it would have positive effects on the well-being of mothers as well. So I wish to recall the incident we discussed of migrant women, where their children are not valued by the receiving state and that this had serious repercussions on the wellbeing of mothers of such children. The troubling question for us as human rights advocates, however, has been, how do we safeguard the survival, development, and wellbeing at moments of symbiotic relationships with their mothers without diminishing the persona of women as human beings and as individuals, entitled to the full range of human rights, both civil and political as well as economic and social, whether or not as bearers of children and throughout their lives? That's a serious question for us.

The fact is that this very agenda of protecting children's rights could be jeopardized if the full range of women's human rights is not protected. My thesis, therefore, is that the entry point with operationalizing the concept of Women and Children: the Human Rights

Relationship is not by setting out to protect the rights of women as mothers. A sentence should not start with mothers, but with, by, setting out to protect the human rights of women, as human beings on the basis of equality and non-discrimination. This does not mean that there should be no support for civic programs for women targeted towards their reproductive functions or their functions as mothers. Feminists have fought for recognition of the reproductive rights of women. The case of Nepal is something that we could consider. Women's groups have succeeded in including reproductive rights as a fundamental in the present in the new constitution that's being drafted.

The catch is therefore to try to avoid entrenchment of women's identity with their biological function, not to avoid considering the importance of women's reproductive functions or their biological means. As I pointed out yesterday, entrenching the identity of women with their reproductive functions has many serious consequences. At the ideological level, as we discussed, seeing mothers as being exclusively responsible for child rearing, taking on from the fact that child bearing cannot be avoided by women and entrenching or transferring the function of child bearing to that of child rearing has served to lump women with children as vulnerable groups, and even at times treated women as children in policy. This morning we heard that at a certain stage in our history, women were also grouped together with the insane. This means that there is no accountability from the state, so when this happens, there is no accountability from the state to fulfill the human rights of women and the full range of human rights of women, women's public role is not appreciated, they receive less education and access to economic resources and certainly very limited access to decision making, so the roles ascribed to women, as mothers and as childbearers, snowballs through a process of discrimination into creating a state of inequality between women and men. Conversely, it also stereotypes men into roles and provides them with certain entitlements, which give men authority and power over women, contributing to a hierarchical gender relationship. This is sometimes called culture.

Secondly, in terms of state accountability, the state of affairs also allows governments to absolve themselves of their obligations to fulfill rights both for children, their right to safety, to nutrition, to medical care during infancy, leaving it entirely to an incapacitated mother and children to suffer when this happens. Disempowered women cannot take care of their children or protect health. They are unable to protect their children from sexual abuse in the family, they are unable to prevent child marriage, make choices and decisions that would empower their own children and especially their girl children, so it works both ways. CEDAW Convention, however, is very clear about what needs to be done in order to protect the rights of both women and children both at a very general level in obligating the state to eliminate all forms of discrimination against women and in bringing about equality was the intention and spirit of the convention, as well as more specifically under Article 16, 1d, where it says that women and men should have the same rights and responsibilities as parents in matters relating to children, in all cases the interests of children are paramount. So women should have the same rights and responsibilities in marriage towards their children and in Article 16, 1g where it says women should have equal right of guardianship rights. Now the rights given here cannot be realized by women if in all of the spheres women are unequal and discriminated

against. So women need interrelated rights to protect the interests of their own children. This is something the convention strongly promotes. We therefore need to work towards a social order that values all human beings: women, men, and children, as equals. Now this is to give you the more conceptual understanding of the connections and I want to go then to some programmatic implications.

As we have discussed again, holistic approaches are needed, and we've had some examples of nutritional programs during pregnancy and the need to have programs that address nutritional needs of women at all stages of their lives. But more importantly, also, to understand the conditions that cause malnutrition and deficiency and to have holistic approaches to such causes. While agencies are specialized and will carry out specialized functions, agencies must have the awareness and capacity to support and promote holistic approaches and the work of other organizations that may be doing this. In the context of women's human rights, it will also be about promoting legal and constitutional frameworks for women's and children's right to equality, for promoting women's political participation, for good governance, and good law and in fact supporting the implementation of all relevant treaties and particularly the CRC and CEDAW. All programs and services for children, women must be based on the normative framework of CRC and CEDAW, and interpreting these obligations and these conventions as widely as possible and we don't have to go to courts for that. I think this was pointed out to us in one of the discussions as well. There's much we can do to implement these Conventions without going to courts.

The third point I want to raise is on State obligations. We need to look again at the state and all its branches: the executive, the legislative, and as well as the judiciary. And there is a need for cohesion and cooperation in the understanding of the normative framework of the Convention and their specific roles in their implementation. The legislative to bring about the right legal frameworks, the judiciary to enforce, and we will need bureaucracy to implement. We have interesting examples of when one of these branches of government has not done the right thing, other branch has come in. This is the case that was explained to us, I think, it was yesterday from Bangladesh where the legislature had provided for affirmative action for women for local counselors, the executive issued an order, a directive that made such women who had come in through the special process less equal, less important than other counselors who had come in through the general electoral process. This went to the court, and the judiciary ruled that this was wrong. So this is how the three branches of government can come together, and even one of them do not do the right thing, the other ones will set it right.

The fourth point is on the role of civil society. We have heard something about it so I'm not going to say much except to say that the participation of civil society in monitoring the implementation of the conventions have been crucial in both CEDAW and the CRC have reached this tradition now of such participation. My own organization has initiated a program with the Convention and with the CEDAW Committee. I just want to point out that the more recent trends in the program that we run in relation to children's rights because we have given guidelines to NGOs under each article of the convention as relevant, they have to have at least a paragraph on how children are affected, under the

CEDAW, so that children's rights are adequately brought to light on the report to the CEDAW Committee. Finally, the human rights connection can be best established through promoting the implementation of both CRC and CEDAW and activists have to work with both committees and they must find ways to continue the cohesiveness of both committees and both sets of treaties and build, this can be done by providing guidance or providing assistance through their shadow reports to show the coherence between the two sets of rights. And the CEDAW Committee treaty bodies too must begin to establish this coherence, they can work on building on each other's Concluding Comments. The CEDAW Committee continuously does this. It looks at Concluding Comments of other treaty bodies and reinforces those Concluding Comments as relevant in their own Concluding Comments. I also think that it is feasible to do collaboratively joint Concluding Comments where this is feasible. And finally, I think the two sets of treaty bodies, as well as other treaty bodies together can engage in providing technical assistance to State parties in the implementation of Concluding Comments as a joint collective program. So all of us therefore can come together in very many ways to promote the fulfillment of the rights of both women and children in ways that do not diminish the rights of the other. With that I shall conclude and congratulate the organizers for this two-day conference, which I think has benefited us all.

## Appendix

### KEYNOTE ADDRESS

#### Savitri Goonesekere (Sri Lanka)

*Professor Goonesekere is a former CEDAW member and former Vice-Chancellor of the University of Colombo, Sri Lanka*

The Asia Regional Conference on Women's and Children's Rights brings together two sponsoring institutions – UNICEF and Wellesley College, renowned globally for their contribution to realizing those separate and distinct agenda. Wellesley pioneered gender equitable university education and inspired many similar institutions that helped women to reach the highest standards of excellence in their professions. UNICEF, created as an emergency fund for children, has worked with passion and commitment to integrate the concept of children's human rights into national and regional initiatives on children. I have been privileged to work with UNICEF, when many dedicated staff from UNICEF headquarters, the Innocenti Research Centre and the UNICEF East Asia and Pacific Regional Office worked together, helping the agency to understand the complexities of CRC and CEDAW, and bring a new dimension into UNICEF's work for children. This meeting also brings together many friends and colleagues in Asia who, like me have worked on both issues. Some of us can recall the time when activists on women's issues rejected the added value of a human rights agenda, suspicious that it would undermine the gains already achieved. Over the years human rights provided the overarching framework for the activism of regional women's organizations like IWRAW Asia Pacific, helping women's groups to understand and connect with the work of the CEDAW Committee. Today is an occasion to activate institutional memory, recall the contribution of many special people, and renew commitment to a common cause. New development agenda compete for attention, but we need more than ever before to reinforce the human rights linkage in women's and children's rights, creating a better understanding of the potential for using it to strengthen both agendas, and development.

The Bangkok Declaration (1993) which preceded the World Conference on Human Rights in Vienna reflected the tension between what were described as communitarian 'Asian values' and a Eurocentric Western concept of individual human rights. This Asian critique of the concept of human rights, however, helped the World Conference on Human Rights in Vienna (1993) to forge a consensus that human rights in international law were based on universal and indivisible interdependent norms on both civil and political rights and socio-economic rights. Yet more than a decade later, even after the near universal ratification of the women's rights and children's rights treaties, CEDAW and CRC, our regional understanding of these core human rights values continues to be diverse and fractured. Despite the many international conferences, in all regions, and published literature on the complementarities of women's and children's rights agendas, a strong global consensus has not been developed to carry forward effective joint

initiatives. Indeed, it is ironical that two very recent initiatives, the UN Secretary General's studies on Violence Against Women and Violence Against Children proceeded as completely parallel initiatives. We have not yet overcome the perception that women's issues are women's concerns, and that only children's issues can attract a broader constituency of both men and women.

My own discovery of human rights and women's and children's rights was, like perhaps for some of you, a personal odyssey. Lawyers in my time were trained as perhaps they still are, to accept that women and children had diminished legal rights and status. Children and women, especially married women were as disempowered legally as those persons a distinguished Professor of Civil Law categorized as "insane persons, prodigals and insolvents"! The desire to understand the bias and eliminate it, gave me a lifetime's interest in both women's and children's rights issues. The common status of disempowerment helped me to understand that each of these categories of people, women and children, had a right to human rights.

Patriarchal, family and community values have diminished the rights of women and children and placed both under what the English jurist Blackstone called "the wing" of male "protection". Protection ideologies continue to haunt us today, and provide a rationale for imposing disabilities and denying rights. Historically the maternal responsibilities of women have been manipulated in practically all societies to deny women life chances. Responding to these realities has often created tensions between advocates of women's and children's rights. Linking women and children is perceived as helping to perpetuate negative stereotypical values on women's diminished social, economic and legal status.

Feminists have critiqued human rights ideologies as entrenched in male bias and patriarchal perceptions of women in the family and community. They have in recent years argued that developing an ethic of care based on inter-personal connections and relationships is more important for women than the individualistic ideologies of human rights. There has been a frequent mistrust of child rights activism as an effort to prejudice the advancement of women, denying life chances and personal choice. There is a perceived tension between children's rights to development and protection, women's reproductive rights, and their livelihood opportunities. A children's rights agenda is in general considered to entrench women in their traditional role in the family and community, limiting their right to participate in public life.

UNICEF and other agencies have, for almost two decades, held conferences on the compatibility of women's and children's rights, including with members of the CEDAW and CRC Committees in Cairo and Geneva. Feminist women's movements have, however, not moved beyond the situation at the World Conference in Vienna in 1993. Women's groups at the time refused to make common cause with child rights activists who belonged to a mixed group of both women and men. It is this failure to forge a link between feminism and child rights activism in a human rights based approach that has in my view, prevented greater progress on both agendas.

I believe that it is the human rights approach that can help us to resolve this tension. Human rights are based on the philosophy that rights can be both specific and categorized. Today, distinct international human rights treaty standards, as in CEDAW and CRC, have been developed to respond to the rights concerns of women and children and other categories such as persons with disabilities and migrant workers. Analyzing and understanding the different nature of women's and children's human rights under CRC and CEDAW can help to both reject protective approaches to women's issues, and forge partnerships in protecting the human rights of women and children.

The failure to appreciate that the human rights of women and children are distinct and separate fosters an environment in which gender based discrimination is ignored. Responses of government and international agencies continue to link women and children in programmatic interventions that are gender blind, and merely perceive women and children as "vulnerable groups". Inevitably protective, gender neutral, social welfare approaches replace a human rights based approach that addresses the specific and institutionalized discrimination and infringement of the rights that women and children, particularly girls, experience. This is especially visible in responses to situations of conflict and natural disaster.

Protective State policies on children restrict adult women's access to employment, including to overseas migrant work in Asia, without seeking to develop interventions based on human rights in CEDAW and CRC that help women to combine parental responsibilities with work outside the home. The tendency of Asian governments to combine women and children's concerns in Ministries and other institutional arrangements also reinforce traditional patriarchal and protective approaches, or prioritize children, and exclude women in policy formulation and resource allocation. It seems important to recognize that children's rights of survival, development, protection and participation in CRC are distinct from adult women's rights as they are set out in CEDAW and other human rights instruments. The difference is perhaps best demonstrated in the law on statutory rape. An adult woman has capacity to consent to sexual intercourse and marriage. A child's right to development and protection from sexual aggression and exploitation demands that an age threshold is set to restrict the right to express consent to marriage or sexual intercourse. The concept of evolving capacity and participation rights of children only means that the age of consent can be lower than the age of majority. The conceptual framework on children's rights should not therefore be misunderstood and used to analyze women's human rights. Institutional arrangements to implement these rights should also be kept separate, with maximum rather than shared resources.

Today more than ever before, there is a need to recognize both the distinct identity and the interface between women's and children's rights in the interests of both groups. While women's rights and children's rights are located in general human rights, we must not forget that we have two separate Conventions. The adoption of CEDAW and CRC as separate human rights instruments is a response to the historical reality of the exclusion of women and children. The idea that each group must have rights underpins the adoption of two conventions. Yet the synergies in the two agenda are also obvious.

Continuing harmful traditional practices, discrimination against girls and their lack of access to basic health and education, sexual exploitation and early marriage, violence such as female infanticide and feticide may be relevant only to Asia and Africa. However, all regions are affected by domestic violence, cross border trafficking and sexual and gender based violence against women and girls, diminishing access to family support and care giving, and access to social security and health care. Economic transformation and globalization and an oppressive work ethos in the corporate sector affect women in both the developed and developing world, placing them under extreme pressure to multitask in the home and the work place. Tensions created within the family encourage fundamentalist religious lobbies to advocate for a return to patriarchal family values, both in developed and developing countries. Failure to understand and respect the balance between individual rights and responsibilities that CRC and CEDAW promote is reflected in the tensions in communities between the youth and elderly population in many of our countries. Forging partnerships to prevent gender based discrimination and violence against women and children in the community and family as an essential social good, and helping adult women and men to be economically productive and fulfill joint responsibility in the family in terms of CEDAW and CRC values on human rights is a challenge in all regions. Activism on women's and children's issues without appreciating the need to realize the interconnected CEDAW and CRC rights in these particular areas inevitably prevents us effectively impacting on many of the above problems. Joint initiatives on the other hand can help to prevent child rights being manipulated to perpetuate discrimination against women both within the family and in public life.

We must recognize that feminist ideology and the work of the CEDAW Committee have fertilized the international and national law and jurisprudence on human rights. International and national criminal justice, the meaning of equality and discrimination especially in the work place, property and labor laws have been transformed because of feminist thinking, and the deconstruction of laws with feminist insights. Women's groups and child rights activists in our own region in Asia have in recent years collaborated in important initiatives on law reform, especially in the area of nationality, domestic violence, criminal justice and trafficking. It is important to acknowledge these successes in Asia and see whether we can build upon them, moving into non-legal areas that can advance both women's and children's rights. We also need to question recent interventions on violence, such as the Prevention of Women from Domestic Violence Act, 2005 in India which cover only women, and exclude children from an important common area where there is an interface.

CEDAW and CRC are treaties which provide a conceptual framework that facilitates collaboration between the two Committees that monitor the treaties. The norm of universality on all rights for all women and children has been recognized in both instruments, but has still not been effectively internalized because of the politics of ethnic and religious identity. There is also a North/South divide among both feminists and child rights activists on this core value of universality. Cultural relativist approaches to custom and tradition that are adopted undermine the human rights of both women and girls to

bodily security, health and education. It is only a commitment to a human rights analysis that can help to forge a consensus that reservations to CRC and CEDAW, particularly CEDAW Article 16 must be withdrawn. There is a need to initiate joint initiatives by women's rights and children's rights advocates on the withdrawal of reservations.

Rights violations and dilutions cannot be legitimized in the name of religious and cultural ideologies or the disinclination to introduce alien and foreign norms. History shows us that culture is constantly transformed and reinterpreted. Colonialism and contemporary forces of globalization are transformative forces. Human rights norms were developed out of human experiences with abuse of power and represent abiding values relevant for all peoples. Cultural relativism perpetuates a patronizing myth of the "noble savage", and a Western perception of static non-Western societies. Cultural relativism gives legitimacy to the denial of important human rights in non-Western societies. A human rights approach can help to promote the idea that feminists and child rights activists must commit themselves to rejecting cultural relativism in the interpretation of both women and children's rights. The African Protocol on Women's Rights can, and should inspire all of us, helping to forge a consensus on the universality of women's and children's rights, and need to deconstruct and evolve cultural norms from a human rights perspective.

Giving adequate recognition to basic needs in health education and shelter is also the core of a human rights approach to women's and children's issues. South Asian countries and other regions can be inspired by East Asia's tradition of recognizing the State's responsibility to use national resources and give access to these needs as rights, ensuring adequate allocation of human and financial resources to realize them. The recent Domestic Violence legislation in both Africa and Asia represent pioneering efforts to understand that resource allocation and addressing basic needs must be an inherent dimension of law making and legislative interventions to address social problems. The indivisibility of rights provides a basis for both women's and children's groups to critique and transform new development ideologies like the MDGs, so that they reinforce rather than undermine the situation of women and children.

CEDAW and CRC have also set norms and contributed to the jurisprudence on liability of non-State actors, including the family, in realizing the human rights of women and children. Recent determinations under the Optional Protocol to CEDAW reinforce the accountability of the State for non-State actors. Making claims on non-State actors, the community and the corporate sector to respect protect and sometimes fulfill these rights is a new dimension that is critical to realizing human rights in the complex world we live in today. Similarly, a transformed vision of the family, based also on the concept of joint and shared responsibility of men and women for children, challenges traditional feminist thinking on the unchanging, oppressive, male headed patriarchal family unit. It provides space for legal economic and social transformation that will make the family accountable for ensuring the well being of all its members. Both the women's rights and children's rights agendas have suffered because feminist ideologies have sometimes replaced the exclusion historically suffered by women and children, with the exclusion of men. CRC

and CEDAW both provide space for needed male participation and support in realizing an agenda of women's rights.

A human rights approach based on CEDAW and CRC can also help to prevent gender-neutral approaches in child rights activism. Article 2 of CRC, in my view, has not been used adequately by the CRC Committee to address systemic discrimination against girls, which is very different to the infringement of rights that boys experience. Gender-neutral approaches encourage child rights activists to perceive problems regarding children as common problems for both boys and girls. This prevents nuanced responses to the reality of gender-based discrimination against girl children. The "Best Interests of the Child" concept and the Non-Discrimination Norm of both CEDAW and CRC have and must continue to provide entry points to both reinforce adult women's rights in the family, and address issues specific to the girl child.

An effective human rights relationship that can strengthen both the women's rights and children's rights agenda must address the need for collaboration between the treaty bodies of CRC and CEDAW. CEDAW has only one specific Article 16(2) on the girl child, but several other articles on the family which recognize the interface between children's and women's rights. Concluding Comments of the CEDAW Committee on country reports as well as General Recommendations such as 19 and 24 have not hesitated to refer to the girl child or the situation of children when they impact on women's rights. The Beijing Platform for Action identifies the girl child as a critical area of concern. However, a broader interface is recognized in other areas of this document. The areas of complementarity are therefore not confined to CRC's Article 2 on the girl child, though the article connects with CEDAW's objective of eliminating gender-based discrimination. Should not both Committees now be persuaded to adopt separate General Recommendations or Comments which clearly identify the interface areas and the scope for common initiatives? Cannot women's and children's rights activists within countries examine Concluding Comments and Observations of both Committees and develop joint programs of action to realize CEDAW/CRC standards in common areas of concern? When constitutional, legal, and policy reform initiatives take place, should not efforts be made to ensure that both child rights and women's rights groups work together rather than independently in evaluating their impact on both CEDAW and CRC rights? The failure to collaborate in this area in Asia has resulted in constitutional and legislative reform and policy initiatives ignoring their different impact on women, and children. This has been evident in policy changes on migrant work, as well as domestic violence and criminal justice, and the non-incorporation of socio-economic rights in Constitutions.

Linking with general human rights treaty bodies and human rights activism is critical to take forward the campaign on violence against women and make common cause in resisting efforts to undermine civil and political rights in counter terrorism campaigns and situations of armed conflict.

More than a decade ago, the Bangkok Declaration of Asian Values (1993) contributed to developing the norm on the indivisibility of human rights and the equal importance of both civil and political rights and socio-economic rights in harmony with both CRC and

CEDAW. Madam Saisuri Chuticul, member of the CEDAW Committee, gave leadership in Thailand in the 1990s and joined with the UNICEF Regional Office, and some of you present today, connecting CEDAW and CRC in many practical areas of law reform policy formulation and programming on human trafficking. The Mekong Initiative in East Asia on cross-border trafficking in women and children helped to break down the barriers of State sovereignty, developing consensus among governments on the need for national laws, as well as bilateral agreements. These initiatives also strengthened regional activism on trafficking in women and children and reinforced efforts to promote bilateral cooperation between governments in the SAARC region. These were indeed pioneering initiatives in an environment where there was studied failure, for many years, to recognize the problems of cross-border trafficking. I hope that this meeting in Bangkok will bring together collective Asian insights and experiences inspiring us all to work together to eliminate the decades of resistance to recognizing an important reality. Children's rights and women's rights commitments can complement and need not undermine each other. Harmonious and transformed relationships within families based on the equal rights of girls, gender equality, tolerance and human rights are worth striving for. We need not reject, but rather recognize the wisdom of an old saying in Asia: *"Where there is goodness in the heart, there is harmony in the family; where there is harmony in the family, there is order in nations; where there is order in nations, there is peace in the world."*

**CELEBRATION DINNER ADDRESS December 8, 2007**

***The Girl Child and the CRC- Professor Yanghee Lee, Chairperson of the Committee on the Rights of the Child***

I would like to first begin my intervention by thanking Wellesley Centers for Women and UNICEF for organizing this groundbreaking conference. Most particularly, I would also like to thank the organizers for hosting this lovely dinner. Everybody went out of their way to make this very important event possible and to make it possible for me to attend. Dr. Rangita de Silva was most resourceful and my UNICEF partners were most helpful as always. Unfortunately, I will not be participating through the entire conference due to my activities at the World Fit for Children + 5.

I have organized my intervention in the following manner. I will first give a very brief summary of how our Committee on the Rights of the Child has been integrating gender perspective in our work. Then I will follow with some very specific examples of the issues and concerns that our Committee addresses.

The Committee on the Rights of the Child is an 18-member treaty body monitoring the Convention on the Rights of the Child and its Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, and has consistently emphasized the need for full implementation of the rights of the girl child. Our Committee has attempted to include a gender perspective its work. In this regard, it highlighted concerns relating to the girl child due to the fact that they are among the most vulnerable in terms of access to nutrition, physical and mental health care and education and enjoy fewer rights, opportunities and benefits of childhood and adolescence than boys.

## Concluding Observations:

1. An overview of the Committee's Concluding Observations (from September 2005 to June 2007) indicates that, despite the efforts of many States parties to address the issue of equality between sexes, the persistence of stereotypical attitudes concerning the roles and responsibilities of women and men still constitute an impediment to the full enjoyment of all human rights and fundamental freedoms by girls. Discrimination against girls remains widespread. Girls living in poverty, girls with disabilities, girls belonging to minorities or indigenous peoples as well as asylum-seeking and refugee girls are often in the weakest position of all and experience multiple discriminations. In some societies the education of girls is not seen as such a valuable investment as the education of boys. The Committee has recommended, inter alia, that local, religious and other leaders be invited to take a more active role in supporting the efforts to prevent and eliminate discrimination against the girl child and to provide guidance to communities in this regard.

2. Moreover, the Committee regularly notes in its Concluding Observations that the situation of the girl child is of particular concern in rural and remote areas in which girls live under the influence of community and religious leaders and face persistent harmful traditions and practice. Therefore, the Committee suggests that customary, religious and community leaders should be systematically involved in steps undertaken to overcome the negative influences of harmful traditions and customs to advance the rights of girls.

3. Comprehensive, integrated manner of sex-disaggregated data collection is essential. In this regard, the Committee requests sex-specific data on all forms of discrimination in the list of issues sent to the governments in connection with the consideration of their reports.

4. The Committee not only focuses on the rights of the girl child when considering reports of States parties, but also focused on the gaps in the protection accorded to boys: for instance, lack of provisions relating to the protection against sexual abuse of boys. In addition, the Committee has expressed its concern at the growing number of boys dropping out of schools.

5. Girls are still considered as undesirable in many regions of the world. Selective abortions and infanticide as well as the abandonment of girls continue as negative consequences of existing family planning policies and societal attitudes. All children are not systematically registered immediately after birth and this disproportionately affects girls. The Committee has been alarmed by the reported cases of crimes committed against girls in the name of "honor" and the continuing failure of some States parties to end impunity for these crimes. In this context, it has expressed its concern at the insufficient number of accessible shelters and counseling services for girls who are at the risk of "honor" crimes or victims of these crimes.

6. The Committee has drawn attention to the use of the biological criterion of puberty to set different ages of maturity between girls and boys and that in some States

parties a judge has the discretionary power to decide that a child has reached majority at an earlier age.

7. Child marriages and early pregnancies have a serious detrimental effect on the health, education and development of the girl child. In many countries the minimum age for marriage is not clearly established or it remains too low and discriminatory (i.e., the minimum age for marriage does not apply equally for girls and boys). Notwithstanding legislative amendments and media campaigns aimed at raising awareness of the health risks and adverse social effects of early marriage, in some communities young girls may be married with the consent of a guardian and a judge. The Committee has noted with concern that in some countries there are various minimum ages for marriage under different laws and that they are not the same for girls and boys. The Committee has also paid attention to the practice of temporary marriages involving girls, sometimes as young as 12 years, who are given in marriage in exchange for money. The Committee is further concerned that these girls, when abandoned by their husbands after a short time, are deprived of the rights acquired with legal marriage, stigmatized and have little access to measures of physical and psychological recovery and social reintegration. The practice of falsification of documents proving the age of children in order to 'legalize' early marriages has also been among the Committee's concerns. The Committee has recommended, inter alia, that States parties should address the poverty-related parental pressure placed on girls to marry at an early age.

8. The Committee emphasizes that female genital mutilation (FGM) is incompatible with the principles and provisions of the Convention. It remains concerned that FGM is still practiced and that FGM is not specifically prohibited by law in several States parties. The Committee has recommended that States parties strengthen and accelerate their ongoing efforts to prevent FGM and conduct awareness-raising campaigns to combat and eradicate this and other traditional practices harmful to the health, survival and development of girls. It has recommended that States parties introduce sensitization programs for practitioners and the general public to encourage change in traditional attitudes, and to prohibit harmful practices, engaging with the extended family and the traditional and religious leaders. Furthermore, follow-up procedures for the practitioners of FGM who have abandoned their profession should be established. Also other harmful traditional practices, such as *trokosi*, have been addressed in the concluding observations.

9. In particular, the Committee has expressed concern about violence against girls and it has noted with deep concern the occurrence of violence in all settings, even in protective environments such as families and schools. In some countries reports of violence against girls, including sexual abuse, in the family indicate an escalating trend. The lack of alternative homes for girls may force them to go back to the same homes where the abusers live.

10. During the past two years the Committee has expressed its concern at reports indicating that rapes of girls by law-enforcement agents have not been investigated as well as concern about gang rapes of girls, rapes of girls belonging to indigenous and tribal groups and rapes of girls committed by members of the military. In general, there

is a lack of statistics, a limited number of investigations and sanctions in relation to such cases. Therefore, the Committee has urged States parties to reinforce mechanisms for monitoring the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation, including within the family and schools as well as in institutional or other care.

11. In 2001, on the recommendation of the Committee on the Rights of the Child, the General Assembly in its resolution 56/138 requested the Secretary-General to conduct an in-depth study on the question of violence against children and to put forward recommendations for consideration by Member States for appropriate action. The report of the independent expert for the United Nations study on violence against children (A/61/299), which was presented to the Third Committee of the General Assembly in New York on 11 October 2006, addressed the gender dimension of violence against children stating that “States should ensure that anti-violence policies and programs are designed and implemented from a gender perspective, taking into account the different risks facing girls and boys in respect of violence; States should promote and protect the human rights of women and girls and address all forms of gender discrimination as part of a comprehensive violence-prevention strategy (A/61/299, para.106). A follow-up report was presented to the General its sixty-second session.

12. A high number of girls are still being trafficked, internally and/or cross-border, for the purpose of sexual exploitation, prostitution and child labor, particularly domestic labor. The Committee has pointed to underlying conditions which exacerbate girls’ vulnerability to all forms of exploitation. These include poverty, lack of adequate resources, persisting cultural attitudes discriminating against women and girls and social stigma. In this context, the Committee has noted with particular concern that the majority of cases occur with impunity. Limited information on the extent of the problem as well as the number of children affected are among the Committee’s concerns. The Committee has addressed the issues of increased risk of trafficking and exploitation faced by girls of vulnerable groups, such as girls belonging to minorities or indigenous peoples. In some countries girls from minority ethnic groups are more likely to be victims of trafficking as fewer educational or employment opportunities exist for them. The Committee has recommended that States parties should strictly enforce anti-trafficking legislation and strengthen community based mechanisms to prevent and monitor child trafficking and exploitation, including the local committees, and, at the same time, undertake preventive actions to improve living conditions and economic opportunities, in the zones of departure as well as high-risk zones paying particular attention to economically disadvantaged families.

13. With regard to girls in conflict with the law, the Committee has repeatedly noted that girls, both in pre-trial detention and after sentencing, are placed with adult women in adult facilities. Sometimes girls are either being sent back home without adequate provision for guidance and counseling or placed in alternative homes. It has also noted with concern that children in conflict with the law, particularly girls, are not provided with adequate recovery and social reintegration services. In its newly adopted General Comment No. 10 (2007) on children’s rights in juvenile justice (CRC/C/GC/10, para.8)

the Committee states that “It is quite common that criminal codes contain provisions criminalizing behavioral problems of children, such as vagrancy, truancy, runaways and other acts, which often are the result of psychological or socio-economic problems. It is particularly a matter of concern that girls and street children are often victims of this criminalization.” The Committee also emphasizes that “Since girls in the juvenile justice system may be easily overlooked because they represent only a small group, special attention must be paid to the particular needs of the girl child, e.g., in relation to prior abuse and special health needs (CRC/C/GC/10, para. 40).”

14. Girls seeking asylum, refugee girls, as well as internally displaced girls, are in need of special protection from physical or mental violence, including sexual abuse, maltreatment, exploitation and neglect. It has recommended that the security of refugee and IDP camps should be improved in order to protect girls against sexual exploitation. The Committee has noted that many former child soldiers and children who indirectly took part in the armed conflict, including girls, do not receive adequate assistance for physical and psychological recovery. All cases of abuse should be fully investigated and prosecuted and perpetrators of these crimes should be sentenced.

#### **General Comments:**

15. The Committee has addressed the vulnerable status of girls with disabilities in its General Comment No. 9 (2006) on the rights of children with disabilities (CRC/C/GC/9) and requested States parties to pay particular attention to girls with disabilities by taking the necessary measures, and when needed extra measures, in order to ensure that they are well protected, have access to all services and are fully included in society. It also expressed its deep concern about the prevailing practice of forced sterilization of girls with disabilities. This practice, which still exists, seriously violates the right of the child to her or his physical integrity and results in adverse life-long physical and mental health effects. Therefore, the Committee urges States parties to prohibit by law the forced sterilization of children on grounds of disability (CRC/C/GC/9, para.60).

16. The Committee has been concerned at girls infected with HIV and/or affected by HIV/AIDS as well as at the situation of girls due to unwanted and/or early pregnancies and complications due to unsafe, often clandestine, abortions, as these have a negative impact on their health and development. In addition to causing risks to physical and mental health, the incidence of adolescent pregnancies also limits the personal development of the individual, has a detrimental affect on young women’s ability to sustain themselves financially and creates a poverty trap with overall negative effects for society. The criminalization of the termination of pregnancies, also in cases of rape and incest, and the lack of adequate sex education and accessible reproductive health services contribute to the elevated incidence of maternal mortality among adolescent girls. It has also drawn attention to the difficulties pregnant girls face in order to continue their education. Pregnancy continues to result in the exclusion of girls from educational establishments.

17. The Committee's General Comment No. 7 (2005) implementing child rights in early childhood (CRC/C/GC/7/Rev.1, para.28) reminded States parties that children's right to education include all children, and that girls should be enabled to participate in education, without discrimination of any kind (Article 2 of the Convention). Persisting gender disparities in the enrolment of children in early-childhood care and primary education, including gender biases and stereotypes in school textbooks, curricula and school management, have been highlighted by the Committee which is concerned about remaining disparities in access to and availability of education, which negatively affect girls. In many countries girls' enrolment in secondary education is lower than boys'. Sometimes distinction between male and female roles in the curricula results in discrimination against girls. The higher non-attendance and earlier drop-out of girls because of traditional views and the exclusion of pregnant girls from school have also attracted the Committee's concern. The Committee has also noted that the lack of appropriate sanitary facilities, including separate toilets, impedes the full participation of girls in education, particularly in secondary schools. The Committee has recommended, among other things, to take effective measures to address gender disparities in education, for example by expanding literacy programs for women and girls and developing and adopting a gender-specific education strategy, including scholarship programs for girls living in rural areas.

#### **Day of General Discussions:**

18. The Committee devoted its fourth Day of General Discussion that was held in 1995 to "The Girl Child."

19. In the context of children without parental care, the Committee noted with concern at its day of general discussion, held in 2005 ("Children Without Parental Care") that girls without parental are more vulnerable to violations of their rights including sexual exploitation, child marriage and lack of access to education. It was also emphasized that there is often a gender imbalance in care institutions and that both girls and boys need role models of both sexes. Henceforth, the Committee recommended that States parties and other stakeholders ensure that a gender perspective is included in all approaches to care.

20. In its consideration of the reports of States parties on implementation of the Convention, the Committee has systematically stressed the importance of children's right to express their views in all matters affecting them, with those views being given due weight in accordance with the age and maturity of the child. However, it has noted that traditional attitudes towards children in society, in particular towards girls, limit the right to express their views and to have them taken into account, especially within the family, schools and media. On 15 September 2006 during its forty-third session, the Committee devoted its Day of General Discussion to the theme "Speak, Participate and Decide - The Child's Right to be Heard" and it urged States parties to pay special attention to the right of the girl child as sexist stereotypes and patriarchal values undermine and place severe limitations on the enjoyment of the right set forth in Article 12 of the Convention.

**Follow up to the Concluding Observations:**

In the report of the sub-regional workshop on the implementation of the Committee's concluding observations held in Buenos Aires, Argentina in 2005, the importance of gender awareness was highlighted. Concern was expressed at the phenomena of gender-based violence and sexual abuse which is widespread and has immediate repercussions on the situation of the children.

*The Girl Child and the CEDAW- Dr. Dubravka Simonovic, Chairperson of the CEDAW Committee*

**This presentation was sent to the editor by the Chairperson of the CEDAW Committee for inclusion in the report.**

The Convention on the Elimination of All Forms of Discrimination against Women focuses on the rights of all women to be free from discrimination. Discrimination against women does not start with the age of a woman's maturity but at her birth or even before.

All States parties to the Convention have an obligation to pursue without delay a policy of elimination of all forms of discrimination against women and to ensure the practical realization of the principle of the equality of women and men, as stated in article 2 of the Convention. As such, implementation of the Convention in its entirety impacts directly and indirectly on the rights and well-being of women of all ages, including girl children and young women.

The Convention has been ratified or acceded to by 185 States. It is the only legally binding international instrument to prohibit all forms of discrimination against women committed by public authorities or by any person or organisation in the full range of civil, political, economic, social and cultural areas, and covering both public and private life. The Optional Protocol to the Convention, under which the Committee considers communications submitted by or on behalf of individuals or groups of individuals who claim to be victims of a violation of rights in the Convention and inquires into grave or systematic violations of the Convention's provisions, now has 90 States parties.

The Convention makes it clear that the elimination of discrimination against women must be pursued by all appropriate means. This means that States parties are required to take legislative, policy and all other appropriate measures to ensure compliance with their treaty obligations.

The Committee regularly monitors the way in which States parties adhere to these overall obligations in regard to women. I will highlight aspects of the Committee's work on the elimination of discrimination and violence against the girl child and young women as reflected in the Committee's constructive dialogue with the State parties, country specific concluding comments, and general recommendations.

The Convention (articles 2 f and 5 a) pays specific attention to the impact of stereotypes on the achievement of equality for women. It requires modification of social and cultural patterns of conduct of women and men, and the elimination of practices based on the idea of the inferiority or superiority of either of the sexes. Such stereotypes often restrict rights and opportunities for girls from a very early age, and affect their education, health, reproductive roles, and participation in public life and decision-making. Those discriminatory stereotypes take different forms in different countries but in all those instances, the Committee takes the firm view that States parties have a clear obligation

under the Convention to change such practices and to act forcefully and creatively to eliminate such discrimination de jure as well as de facto.

The Convention requires that States parties ensure equal rights of women with men in the field of education at all levels. Compliance encompasses girls' and women's equal access to education and training at all levels, as well as the quality of education they receive. This provision is of primary importance to girls and young women, yet the Committee continues to see lower levels of girls' education, and large gender disparities in school enrolment rates of girls and boys, almost always to the detriment of girls. Girls' high dropout rates, owing to a series of factors including early and forced marriage and pregnancy also persist. Likewise, discriminatory stereotypes are found in school curricula and textbooks that often project inferior roles of women and girls.

The Committee consistently emphasizes the role of education as a human right and as a basis for the empowerment of girls and women, and regularly calls for a range of actions by States to enhance compliance with article 10 of the Convention. In some instances, legislative measures are required to ensure de jure equality. More commonly, and also in line with the MDG goals, policy and programmatic measures are necessary to achieve universal primary education for girls and to eliminate gender disparity in school enrolment rates at all levels. The Committee also calls for awareness raising measures, to overcome traditional attitudes that constitute obstacles to girls' education and for measures to ensure equal access of girls and young women to all levels of education, to retain girls in school and ensure that pregnant girls stay in school during pregnancy and return after delivery. Curricula reform and enhanced teacher training, incentives for young women to enter traditional male-dominated fields of study are other steps the Committee regularly recommends so as to eliminate discrimination against girls and women in education.

Importantly, the Committee emphasizes the consequences of girls' educational choices for their later opportunities and chances in the labour market as well as for their equal participation in public life and decision-making at all levels. The Committee also tackles discrimination and inequality of girls and young women in the area of work, where it has flagged for example, the exploitation of girls in domestic work, and related consequences for girls' education

The Convention addresses women's health in general and also focuses on reproductive health and services related to pregnancy, confinement and the post-natal period. In its general recommendation 24 on article 12, the Committee clarifies that women's health must be addressed throughout women's lifespan, and thus must also focus on girls and young women. It highlights particular vulnerabilities faced by girls and adolescents, and draws attention to unequal power relations and their impact on women's and girls' ability to enjoy health-related rights.

Among the issues the Committee regularly raises with States parties under this article is lack of, or limited access by women and girls to adequate health-care services, family planning services and reproductive health services for girls and boys.

The Committee carefully examines teenage pregnancy rates and early motherhood, as these present significant obstacles to girls' educational opportunities and economic empowerment and recommends the adoption of appropriate measures for their prevention and reduction. It also examines related issues, such as availability to young women of family planning and contraceptive means, and of sex education. The Committee stresses the need for sex education for girls and boys. It recommends the implementation of awareness-raising initiatives on women's health, including sexual and reproductive health and rights that target adolescent girls.

It assesses rates of HIV/AIDS infection in adolescent girls and requests that measures be taken to eliminate discrimination against women and girls infected with HIV/AIDS. It calls for the eradication of harmful traditional practices, such as female genital mutilation that constitute a violation of the human rights of a girl child or young woman.

Article 16, paragraph 2 of the Convention specifically prohibits marriage of a child, and also requires that a minimum age for marriage be specified, including in legislation. The Committee elaborated the scope of this article further in its general recommendation 21 on equality in marriage and family relations. It considers that the minimum age for marriage should be 18 years for both man and woman.

The Committee consistently addresses situations where the minimum legal age for marriage for girls is below 18 years. The Committee without exception requests that States raise the minimum legal age of marriage for girls in order to bring it into line with article 1 of the Convention on the Rights of the Child, and with article 16, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination against Women, and the Committee's general recommendation 21.

The Committee calls for awareness-raising and other measures to ensure compliance with such laws, and to combat stereotypes so that a woman can indeed exercise her right freely to choose her partner. The Committee also points to the importance of the registration of all marriages as a means for enhancing compliance with minimum age of marriage, and the protection of the rights of children, as well as to establish equality between the partners.

Violence against women and girls is a violation of human rights that persists in every country in the world. The recent in-depth study of the Secretary-General on violence against women clearly highlights the many different forms and manifestations such violence takes, and the study on violence against children further enhances our knowledge about the plight of millions of children.

The issue of violence against women remains a concern the Committee has to raise consistently with each reporting State. In its general recommendation 19 of 1992 the Committee has clarified that violence against women is covered by the Convention. It gives detailed guidance on the obligation of the State to act with due diligence to prevent violence against women, to protect its victims and to prosecute and punish the

perpetrators. It also elaborates the linkages between violence against women and implementation of other provisions of the Convention. This general recommendation pays significant attention to the many forms of violence that are perpetrated against girls and young women, and also elaborates on the risk factors and particular vulnerabilities to violence this age group continues to encounter.

High prevalence of violence against women and girls, sexual exploitation of young girls in primary and secondary schools and the persistence of illegal practices such as sex-selective abortion, female infanticide and the non-registration and abandonment of female children have been highlighted by the Committee, as has the vulnerability of young girls who migrate as domestics to urban areas and are subject to exploitation by their employers, including sexual abuse.

The Committee places high priority on the need for comprehensive measures to address all forms of violence against women and girls. Such a comprehensive approach should include specific legislation on violence against women, and its effective implementation, as well as specific legislation where certain forms of violence persist such as pre-natal sex selection, or female genital mutilation. Other elements of a comprehensive approach include policies and action plans, awareness-raising and capacity-building efforts for different groups of public officials and the general public, as well as services for victims of violence.

Trafficking of women and girls and exploitation of prostitution of women and girls are addressed in article 6 of the Convention. The Committee consistently calls for special efforts to prevent violence against and exploitation of young women and girls and regularly calls for targeted interventions to respond to the specific needs of girls and young women. It calls for the effective prosecution of offenders; support to girl victims of trafficking, and for an end to the exploitation of young prostitutes, or of girls working as domestics and are victims of sexual and economic abuse and exploitation.

In all areas discussed, the Committee is increasingly concerned about intersectional discrimination of particular groups of women including girls that are also discriminated on the other grounds such as race, ethnicity, or because they are migrants, or live in rural or remote areas.

The Committee is also increasingly focusing on the impact of measures taken as many States now have been party to the Convention for extended periods of time. As significant gaps remain worldwide in the full implementation of the Convention, it is imperative that all States parties ensure that the Convention is integrated into national law and is fully applicable in domestic legal system and accelerate compliance with the Convention through regular and timely reporting, constructive dialogues with the Committee and follow-up to the Committee's concluding comments. Active cooperation with NGOs working in this field is also recommended to all States parties.

Data and research are essential as lack of such data is also an impediment to the State's own impact evaluation of measures taken and results achieved in the actual situation of

women across their life cycle and in tracking trends over time. States need to monitor, through measurable indicators, the impact of laws, policies and programmes to promote gender equality and progress achieved towards the realization of women's and girls' de facto equality.

Much remains to be done in order to ensure that each girl's future is determined not by stereotypes and prejudices, but by each one's capacities, hopes and aspirations, and the full respect of their human rights and fundamental freedoms.