

- **South Asia Training of Trainers on CEDAW**

(Convention on the Elimination of All Forms of Discrimination Against Women)

**A Report**

September 25-29, 2006

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ORGANISED BY



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- Reducing feminized poverty;
- Ending violence against women;
- Reversing the spread of HIV/AIDS among women and girls;
- Achieving gender equality in democratic governance in times of peace as well as war.

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## **About This Report**

This report records the workshop session contents, process and discussions. Beyond serving as a workshop record for the participants of the South Asia Trainings of Trainers on CEDAW, it seeks to provide the building blocks to CEDAW training for wider use. It is not intended to be prescriptive or exhaustive rather it provides the essence of each of the building blocks. The participants and other users of this report are encouraged to use sessions or parts of it that serve their workshop objectives, contextualising it as appropriate and innovating upon training methods used here.

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## • **list of abbreviations**

### **Treaties**

**CAT** Committee against Torture

**CEDAW** The Convention on the Elimination of All forms of Discrimination against Women

**CESCR** Committee on Economic, Social and Cultural Rights

**CERD** Committee on the Elimination of Racial Discrimination

**CMW** Committee on Migrant Workers

**CRC** Committee on the Rights of the Child

**HRC** Human Rights Committee

**ICCPR** International Covenant on Civil and Political Rights

**ICESCR** International Covenant on Economic, Social and Cultural Rights

**UDHR** Universal Declaration of Human Rights

### **Organisations and Terms**

**FWLD** Forum for Women Law and Development

**IWRAW** Asia Pacific, International Women's Rights Action Watch, Asia Pacific

**NCWC** National Commission for Women and Children

**PLD** Partners for Law in Development

**SAHE** Society for the Advancement of Education

**UNIFEM** United Nations Development Fund for Women

**Committee** The Committee on the Elimination of All forms of Discrimination against Women

**TOT** Training of Trainers

**VAW** Violence against Women

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## • introduction

### Background

**T**he Women's Convention (CEDAW) is the principle treaty dealing with human rights of women for it establishes a minimum standard of human rights to which all women must be entitled and all countries must abide by. The strength of the Convention lies in the fact that it provides a wide definition of equality and non-discrimination, which can serve as an analytical framework to address the persistent nature of inequality. It also establishes the immediacy of state obligation.

All South Asian (SA) countries have ratified/ acceded to CEDAW to convert this convention into a reality. Over the past few years, most of them have presented reports to the CEDAW Committee. All governments are obligated to implement the Concluding Comments issued by the CEDAW Committee into their country's legal framework. An Optional Protocol to the Convention has also come into force, which Bangladesh has ratified, Sri Lanka acceded to and Nepal signed. Therefore, there is a need to expand and strengthen a pool of core group of trainers that Governments and other civil society groups can call upon to take CEDAW implementation forward nationally within the SA region.

Partners for Law in Development (PLD), established in December 1998 as a resource group on human rights and the law, has been promoting the understanding of CEDAW within India. Its mission is to promote and secure social justice for marginalised groups and issues, with a focus on women's rights. It aims to do so by promoting and building rights based approaches to development and social action and by using human rights to go beyond the law in defining rights. Integral to the fulfillment of this mission is the use of law as a resource in social action and the expansion of law practice beyond the confines of the formal legal system to non-formal applications and practices in the arena of development.

Facilitating the implementation of human rights instruments and bringing laws into conformity with human rights standards is a critical strategy

of UNIFEM's programme. To further this goal, UNIFEM supported PLD to facilitate a five-day regional Training of Trainers (TOT) workshop on CEDAW implementation and monitoring in New Delhi from September 25-29 2006. Approximately 25 participated in this workshop drawing from a wide range of professionals like trainers, activists, from NGOs and women's groups coming from Afghanistan, Bangladesh, Bhutan, India, Nepal, Pakistan and Sri Lanka all working on CEDAW.

The workshop had certain specific objectives including the creation of awareness of the concepts and mechanisms pertaining to CEDAW. It also sought to enhance clarity on treaty regimes and CEDAW as effective tools for planning development and accessing rights for women. The TOT also acted as a platform for NGOs in the South Asian region to get together and share experiences and develop strategies for the implementation of the Convention.

An overview of the topics covered by the TOT is as follows:

#### **Understanding Discrimination**

- Social context and the role of institutions in reconstituting discrimination

#### **The Framework in International Law: Conceptual**

- Human rights and CEDAW as the treaty embodying women's human rights
- Other women's human rights law documents and standards
- The legally binding nature of treaty obligations
- The status of treaty law implementation in the countries concerned: procedures for incorporation of treaty law into domestic legislation and current domestic jurisprudence

#### **UN System**

- The UN systems and special mechanisms for women's rights
- UN systems and mechanisms for the promotion of women's human rights
- Other human rights systems — African, European and Inter-American Systems

#### **The Convention**

- Key features of the Convention
- Key concepts and principles of the Convention
- Equality, discrimination and non discrimination, Principles of State Obligation

#### **CEDAW Procedures for Monitoring the Implementation of the Convention**

- The reporting process and its significance
- The Optional Protocol

#### **The Implementation of the Convention in General**

- Discussion on issues pertaining to the implementation of the Convention in all countries: factors that facilitate or hinder the implementation of the Convention in social, legal, institutional and administrative matters and especially in relation to each country's Constitution, its laws and relevant institutions
- The role of NGOs: using CEDAW in diverse fields/ disciplines and forming linkages across varied sectors

#### **Identifying Needs for Technical Assistance to Implement the Convention**

- To develop an understanding of the role of NGOs in promoting the use of the Convention, especially among groups working in the areas of gender-based violence
- To understand the format and requirements for preparation of a Shadow Report by NGOs as well as the procedure for participation of women in the country review by CEDAW
- To develop an understanding of the procedures and redress available under the Optional Protocol to the Convention, and thereby empower women to exercise their rights under it
- Identify areas for continuing education in relation to CEDAW and further technical assistance

## Participants

The participants were from diverse backgrounds including NGOs, lawyers, state agencies and other bodies. They had varied levels of previous experience of working on CEDAW and/ or as trainers on women's rights/ CEDAW. This uneven level of awareness among the participants was a stumbling block in developing a deeper knowledge on CEDAW and its implementation.

## Resource Persons

The main resource persons were Deepika Udagama from Sri Lanka, Madhu Mehra from India and Sapana Pradhan Malla from Nepal. Deepika Udagama has served on the Human Rights Commission of her country and teaches law at Colombo University at the postgraduate level. Sapana Pradhan Malla is the Executive Director of FWLD in Nepal and a practising lawyer instrumental in filing several public interest litigations on women's issues with extensive experience in the application of CEDAW and preparation of Shadow reports and lobbying and presenting of reports before the Committee. Madhu Mehra, is active in CEDAW monitoring and preparation of shadow reports in India, and has extensive experience in training on CEDAW as part of PLD and the regional networks in Asia Pacific. S.K Priya assisted the resource pool and facilitated the process sessions of the workshop.

## Workshop Process

Since this was a workshop on Training of Trainers, review, re-cap and process sessions were introduced to enable participants to fine-tune their training skills. It was envisaged that individual analytical skills would be sharpened during the group discussions. The training used, a variety of methods including presentations, plenary discussions, case studies, film shows, role plays and brain storming in small groups. NGO / lawyer participation helped draw into the sessions a clearer understanding of how discrimination against women manifests itself in various spaces especially in the area of gender-based violence and how NGOs can work with their governments in ensuring that state obligations towards addressing this issue are fulfilled. The different awareness levels of the participants necessitated an approach whereby training was combined with presentations and discussions, thereby weaving process sessions into the workshop rather than treating them separately. Creative tools such as using visual material to highlight issues in group exercises and screening films and matrices to provoke and deepen discussions were attempted. Three films were screened to deepen and contextualise discussion on the session topics. The films were *Another World is possible — CEDAW in South Asia* (dir. Aisha Gazdar), *Water* (dir. Deepa Mehta) and *Who Can Speak of Men* (dir. Ambarien Al Qadar).

## Report Structure

The report is divided into the proceedings of the five days during which the workshop was conducted, with the sessions grouped by topic. The power point presentations and slides referred to in the sessions have been integrated with the group sessions. The resource input and elements of the discussion have been synthesised in this report. One or two of the presentations of the group work, rather than all the presentations, are reproduced here as 'process tools' to trigger discussion. The report ends with an evaluation. The Annexure carries the agenda and a complete list of participants.



## • opening session

### Welcome Address

**T**he first day of the South Asia Training of Trainers began with a welcome address by the organisers of the TOT—Madhu Mehra, Executive Director, PLD and Firoza Mehrotra, Deputy Regional Programme Director, UNIFEM. Firoza welcomed the participants and introduced UNIFEM’s vision to integrate a rights-based approach in all its programmes. CEDAW also known as the Women’s Bill of Rights, is an obvious guidepost and pivotal part of any work on the issue of human rights. Advocacy around the Convention was done in a concerted and global manner in 1998, the same year in which the CEDAW Committee had urged UNIFEM to “become to CEDAW what UNICEF is to the Convention on the Rights of the Child (CRC)”.

Firoza emphasised that CEDAW in UNIFEM’s South Asia programme is ‘demand driven’ and has been initiated in response to requests from the government and civil society. As early as 1993 an illustrated translation of CEDAW in collaboration with Society for the Advancement of Education (SAHE) was brought out in Pakistan to serve as a tool for advocacy for women’s group lobbying for CEDAW. It was through the UNIFEM facilitated initiative in South Asia that reporting skills and development of an implementation strategy on CEDAW gained momentum. A transparent and interactive mechanism was established whereby governments and the women’s movement could jointly appraise progress on fulfillment of obligations under the Convention and the Beijing Platform for Action. Women’s skills in rights awareness was developed along with the capacity for domestic application of the Convention (in collaboration with IWRAW Asia-Pacific). A framework for data gathering, research on discrimination against women in specific areas and the effectiveness of state action in eliminating discrimination was developed.

She underlined the key activities of UNIFEM in the context of CEDAW. These are:

- Research
- Facilitating Government / NGO dialogues: Knowledge-based advocacy

- Supporting shadow report preparation by various NGOs
- Facilitating Government and NGO participation in CEDAW reporting process in New York
- Supporting the development of resource tools
- Providing technical inputs to other UN agencies
- Facilitating capacity development on CEDAW

Following Firoza's introduction, Madhu Mehra gave a brief introduction of PLD and its activities. PLD, a legal resource group based in New Delhi, provides legal resources for social justice initiatives focusing on women's rights. Their outreach programme has three broad components: field-based collaborations with community groups and local lawyers, capacity building initiatives carried out through trainings and technical assistance and knowledge creation through production of resource packages, education material and action research.

### **Introduction of Participants**

S K Priya involved the participants in a game to break the ice and flag off the TOT. The participants were asked to tell their names to their neighbour as well as information about their work and interest on woman's rights. Each person was then asked to introduce their neighbour to the group.

### **Introduction to the Workshop**

S K Priya outlined the objectives of the TOT as follows:

#### **Long Term**

- To expand the pool of trainers that Governments and other civil society groups can call upon to take forward CEDAW implementation nationally in the South Asia region

#### **Immediate**

- To enable trainers to assist governments and civil society bodies to provide training for the facilitation of strategies, methodologies, data requirements and experiences in implementing the Convention
- To increase awareness about the significance of the treaty regime in general and the Convention in particular as effective instruments in planning development and access rights for women through law and policy reform
- To raise clarity on key concepts and principles pertaining to women's rights advocated by the Convention: equality, non-discrimination and State obligation
- To provide knowledge and exchange information and experiences on:
  - a) The purpose of reporting and key elements of a CEDAW report.
  - b) The Optional Protocol to the Convention
  - c) The role of NGOs in promoting the use of the Convention

Priya then introduced the tentative agenda for the TOT.

#### **Expectations**

Participants were asked by Priya to state their expectations from the workshop, which were then listed out. The main ones were:

- Setting the context for a rights based approaches in South Asia
- Understanding gender discrimination
- Human rights and women
- Obligations under CEDAW

- Domestic implementation of CEDAW at local and rural level
- Applications of CEDAW
- Clarification of key concepts embodied in CEDAW such as equality, non-discrimination and state obligation
- Case law and legal framework supporting domestic incorporation of CEDAW
- Networking with organisations in South Asia that work on CEDAW to share knowledge and practices
- Accountability of non-state actors
- Training methodology
- Devising materials for training at grass-root levels
- The need for a special session on shadow reporting specifically for the participants from Afghanistan

The expectations enumerated above were matched with the agenda. Priya also pointed out that special time had been allotted for participants to demonstrate their grasp of the concepts and discuss methodology issues. Time had also been allotted for reading the resource package and discussing the readings with the group. Film shows, an outing and a cultural night had also been factored into the agenda.

### **Setting Ground Rules**

Madhu invited the participants to set the ground rules for participating in the TOT. The group agreed upon the following:

- Punctuality for the sessions
- Active participation from all participants
- Speaking one at a time
- Mobile phones set to vibration mode or preferably switched off
- Simplified use of legal terms and terminology
- Special attention to participants not from a law background
- Introducing ice-breakers in between sessions with volunteer participants
- Form of address amongst participants by first names
- Patience exercised by resource persons if participants not clear about certain points
- Power points on a black and white contrast sheet for legibility
- Respecting each other's views and opinions
- Collective clapping or other such gesture to alert the group if any of these ground rules were broken

- **setting the context for rights based approaches in south asia**

### **Session 1: Mapping Challenges for Women's Rights**

**D**eepika Udagama from Sri Lanka facilitated the session. The participants were given a group exercise whose objective was to find out the commonality of challenges facing women's rights in each country. Participants were divided into groups according to country and asked to elaborate on the following in the context of their country.

1. Issues related to general situation of human rights
2. Status of women (highlighting issues and success stories)
3. Challenges to the promotion and the protection of human rights
4. Challenges to women's rights (internal and external factors)

This session helped to develop a general understanding about the prevailing context and the challenges posed to women's rights in different countries of South Asia. Deepika facilitated the discussion in the plenary focussing on Afghanistan and Pakistan. The circumstances prevailing in the two countries were highlighted through presentations following the group work.

#### **Pakistan**

##### **General situation**

- Controlled democracy
- Additional hardship resulting from terrorism and war against terror
- Difficulties in implementing the law
- Barriers in access to justice
- Privatisation vs. government responsibility
- Misinterpretation of Islam

##### **Challenges in Human Rights**

- Absence of positive legislations

- Globalisation and influence of foreign powers
- No awareness on human rights

#### **Status of women in Pakistan**

- 33% representation of women
- Marginalisation of socially and economically disadvantaged groups
- Too much emphasis given to developmental issues without specifically dealing with women's development
- Forced marriages
- Wari - exchange of women to settle tribal disputes

#### **Afghanistan**

##### **General situation**

- War affected country
- Lack of law enforcement
- Few job opportunities
- No guarantee of enforcement of the Constitution; extra constitutional forces are dominant
- No security for individual citizens
- Foreign interference
- Lack of knowledge on human rights
- People know their needs but not their rights
- Signed and ratified 6 human rights Conventions
- Positive discrimination in the Constitution
- Improvement in the situation of women as compared to under the Taliban
- Very few appointments of women in the government

##### **Challenges**

- Misinterpretation of Islam
- Statutory framework consistent with Constitutional rights
- Traditional male dominant society
- Women used as political strategy
- Selection of some women to parliament by new governments without the process of election but through nomination by certain political leaders
- Women used by the government to exercise power
- Women forced to stay at home both during the Taliban and under the communist rule

##### **Discussion**

The discussion on the challenges to women's rights in South Asia ensued after the presentation of the group work. The areas of concern with regard to women's rights in Pakistan and Afghanistan were enumerated as:

- Governance
- Lack of law enforcement
- Rule of law in crisis
- Internal and external armed conflict
- Lack of awareness on human rights
- Discriminatory policies general and specific

Thus it was recognised that specific internal and external circumstances determine the context and challenges posed to women's rights in these two countries. Similar parallels can be drawn for other countries. It shows that the experience of discrimination faced by women is not determined by gender alone but by the interaction of various factors and identities. For instance the experience of a poor woman belonging to an ethnic minority would be different from the experience of discrimination of a rich woman belonging to a majority community. Thus, identity factors like ethnicity, language, class, region, caste etc, position different women differently. Along with gender

identity, these factors have to be considered as a collective whole in order to develop effective strategies for the realisation of rights of women placed in different contexts.

A glance at the prevailing circumstances in different countries point towards both positive and negative factors affecting the realisation of women's rights. Some of the positive factors recognised in the discussion were the high rate of education among women in Sri Lanka, the active participation of women in Parliament in Afghanistan and the existence of a National Plan of Action for women in various countries. However, factors like violence against women, prevalence of customary and tribal rules in different communities, delay in the judicial process, adherence to stereotypical roles for men and women and the effect of such a mindset, negatively impact the realisation of rights for women.

Challenges facing countries in South Asia with regard to women's rights can be summarised as follows:

- Need to make the legal system gender sensitive at least where the Constitution has the non-discrimination clause
- Change in attitudes (from a human point of view)
- Change in attitudes in the sphere of education
- Need to remove systemic discrimination against women in various spheres like judicial, social, education, etc.
- South Asia has contrasting indicators — with women Prime Ministers on the one hand and a history of female foeticide, sati, violence against women on the other. This very contradiction clarifies how class, caste and region contributes to privilege and disadvantage amongst women

## **Session 2: Examining Constitutional and Statutory Law**

The purpose of the session was to examine the Constitution and laws of each participant's home state to identify challenges posed by the law and barriers in accessing the law in various countries. Participants worked in groups based on their countries to discuss the following:

### **1. The Constitution, focussing on the following:**

- Non-negotiable principles relating to women's rights
- Fundamental rights
- Directive principles
- Representation of women in state institutions - Constitutional bodies, political parties, judiciary, executive
- Domestic implementation of international laws

### **2. The Statutory law, focussing on the following**

- Specific law relating to women
- Challenges relation to the law

Two group presentations made by Sri Lanka and Pakistan indicate the manner in which the discussion in the plenary was facilitated and capture the essence of the session's theme and its process.

### **Sri Lanka**

Freedom of thought and freedom from torture are the two Non-negotiable Principles in the Constitution. Fundamental Rights constituted by article 12 (4) of the Constitution provides for special provision for women and children. Directive Principles are derived from article 2(6) equal opportunities and article 27(12) protection for family.

### **Representation of Women in Public and Private Institutions**

- Not satisfactory in judicial, political and Constitutional bodies
- Satisfactory participation in universities
- Representation in the private and the government sector is primarily at the middle and lower levels

### **Implementation of International Law at the Domestic Level**

- ICCPR communications not implemented
- CEDAW recommendations: implemented to some extent
- Laws preventing torture, trafficking, domestic violence: enacted

### **Challenges**

- Recent Supreme Court decision rejecting domestic application of international instruments
- Lack of political attention
- Delay in enactment and law reform

### **Statutory Laws relating to Women**

- Amendment of the Maintenance Act
- Amendment of the Citizenship Act
- Establishment of the Foreign Employment Bureau

### **Human Rights Situation**

- Ethnic conflict
- Tsunami
- Delay in law reform
- Limited recognition of human rights in the Constitution
- Violation of the rights of minorities especially their rights to their own language

### **Status of Women**

- High rate of literacy
- Ministry for Women's Affairs: Women's Bureau, Committee on women
- Good health indicators
- Equal access to education
- Low participation in education
- Impact of war displacement and the tsunami
- Inadequate law reform for instituting women's rights
- Special women's desk in police stations
- Increased rate of participation in government and private sectors
- Lack of effective protection for migrant women workers

### **Challenges to Human Rights**

- Lack of political will
- Lack of judicial independence and activism
- Bribery and corruption
- Political manipulation of human rights issues
- Lack of consistent policies

### **Challenges Specific to Women**

- Harmonising general and personal laws
- Lack of gender disaggregated statistics at the official level
- Gender stereotyping

## **Pakistan**

### **Non-negotiable Principles - Articles 25, 27, 34, 35**

- Equality before the law
- Equal protection of the law
- No discrimination on the basis of sex
- Equal opportunity to employment without any discrimination on the basis of sex
- Steps to ensure participation of women in all spheres of national life
- Protection of family and marriage

- Protection regarding the work-place environment

#### **Representation of Women in Public and Private Institutions**

- Local government: 33% seats reserved
- National Assembly: 17% seats reserved
- Principal Assembly and Judiciary: No special quota
- Administration: No special quota

#### **Specific Laws Relating to Women**

Specific Legislation for protection of women's rights:

- Reservation of 33% seats for women
- Law against honour crimes passed

#### **Challenges in Law**

- Discriminatory laws
- Customary laws and practices
- Parallel legal system in the form of tribal jirga
- Two different systems of Judiciary:- Islamic Jurisprudence, and non-religion based Judiciary
- Access to the law
- Lack of awareness of women's rights and the legal process

#### **Human Rights Situation**

- Democracy is controlled
- Unstable situation of law and order
- Implementation of law is weak
- Access to justice is limited because of long procedures, high expenses and lack of legal awareness
- No participation of public in the process of decision making regarding public transport fares, prices of fuel, privatisation of national assets, etc
- Misuse of religion internally and externally

#### **Status of Women**

- Enhanced participation of women in politics (33% representation in local councils and provincial / national assembly since 2001)
- Limited access to opportunities for self-development
- Marginalised treatment in almost all spheres of life
- Improvement in access to politics, judiciary, banking, etc.

#### **Challenges to Realisation of Human Rights (External)**

- Influence of foreign powers in internal/ domestic affairs
- Globalisation
- International war against terror

#### **Challenges to Realisation of Human Rights (Internal)**

- Lack of information and awareness of human rights
- Absence of positive environment regarding positive legislation and improvement in existing laws

#### **Challenges Specific to Women**

- Lack of awareness of women's rights, its importance and effect on over-all development
- Limited participation of women in the process of decision-making in all spheres, from the home to parliament
- Discriminatory laws
- Subordination of women in customary laws and practices:
  - a) Honour killings
  - b) Forced marriages
  - c) Bride price
  - d) Wari giving of girls and women to settle tribal conflicts

#### **Discussion**

During the discussion the law was given a context, different from the Constitution which is based on standards of equality and non-discrimina-



tion. The Constitution is regarded as the basic law of the land and all other laws need to be in consonance with the Constitution to be valid within the country. The law can be viewed as a set of norms regulating the behaviour of individuals as well as an instrument of social change. In the context of its relationship with society, the law seems to play a dual role, first, as an instrument reinforcing social norms some of which might be discriminatory, and second, as an instrument challenging these norms and aiming at change.

The Constitutions of the countries in South Asia reveal the priority they assign to setting universal standards for human rights and the potential this offers to advance and further realisation of rights of their citizens. The fundamental rights enshrined in the Constitution are enforceable in the court of law whereas the directive principles of State Policy are merely guidelines to be followed by the legislature while making policies but these cannot be enforced through the courts. The factors of whether a particular right can be enforced in the court of law and the time till redress is obtained is a strong indicator of the priority that is assigned to that right. Fundamental rights consist primarily of civil and political rights while economic and social rights are clubbed under directive principles. As will be discussed later, this distinction itself has a deep impact on the realisation of women's rights since most human rights are addresses under social rights.

The Constitutions through the provisions on fundamental rights lay down certain non-negotiable factors regarding the recognition and protection of women's rights. However, the relegation of economic and social rights in the non-justiciable part of the Constitution, the absence of provision for affirmative action in the Constitutions of certain countries, lack of political will and weak enforcement of existing standards because of vested interests are barriers in the fulfillment of equal rights for women. There is, therefore, a pressing need to be able to rely on certain fundamental benchmarks for the purpose of advocacy and change. International law in the form of treaties like CEDAW, allow interpretation of Constitutional rights for the advancement of women's rights. The universally recognised standards in an international treaty, the concepts to combat discrimination and the role of the state in this endeavour pave the way for the realisation of women's equality in the domestic sphere.

- **understanding gender discrimination**

### **Session 3: The Ideology of Gender**

**T**he session on sex and gender was facilitated by Madhu Mehra. The purpose of this session was to develop an understanding of how gender and gender inequality are socially constructed and how the ideology of gender contributes to disadvantage. The discussion began with a reflection on each participant's understanding of the two terms—sex and gender.

The first question posed to the participants was “what is sex” to which there were varied responses. Most felt it to be something natural, permanent, which cannot change, acquired by birth, compulsory, god-gifted, based on biological difference; a few felt can be assigned, and therefore is not natural.

The second question following this was: How many sexes are there? The responses were:

- Male
- Female
- Combination of both male and female
- More than 3
- Scientifically 3 but socially 2
- Exception to the rule is the 3rd sex

The following discussion was on the nature of gender. The most predominant response was that gender is not natural; it is determined by socio-cultural factors and varies across different cultures. The roles of the male and female are assigned by society, which also determines the power play between the two sexes.

This led to the question of how many genders there are? The responses of the participants were:

- There can be two, sometimes three
- The 3rd one is socially labelled as the 3rd sex

- Gender cannot be bound by numbers, given its range and fluidity
- There can only be 2 genders, accepting the third is difficult
- There is a pressure to fall into one or the other gender, the spectrum is wide so it cannot be quantified

Since the discussion was not intended to be confined in binaries of the male and female but to also look at invisibilised categories, the facilitator encouraged the participants to dwell on the different genders that exist and the attributes associated with each of them. The existence of multiple genders was thus recognised among the participants along with the fact that it is difficult to fix specific identities to each gender. However, the participants listed the attributes commonly ascribed to the different genders as tabulated below:

MASCULINE	FEMININE	3RD
Dominating	Attached	Vocal
Strong	Weak	Girlish Behaviour
	Afraid	
Powerful	Kind	Blunt
Aggressive	Loving	Live in Groups
Brave	Caring	Brave
	Sympathetic	
Protective	Sacrificing	Indecent
Bread-earner	Peaceful	Flamboyant
Logical	Patient	Subject of Objectification
Controlling	Emotional	Subject of Desire
Decision Maker	Beautiful	Subject of Fun
Wise	Honest	Bold
Honourable	Obedient	Like Monsters
Owner	Dependent	Bring Luck
Inheritor	Sensitive	Pitiable
Possessive	Sincere	Discomforting to Others
Messenger of God	Vulnerable	Mentally Ill
Leader	Faithful	
	Loyal	
	Passive	
Lineage	Cunning	
	Talkative	
	Maternal	
	Shy	

The discussion that ensued on the three genders reflected on the following:

- If gender is changeable, varying with time and place and embodying power then do men, women and the 3rd gender actually conform to the attributes listed above
- If all men are not masculine then what does it mean to be male, and what does it mean to be a man or a woman if they do not embody all the attributes of masculinity and femininity including their respective social roles?

One participant from Bhutan talked about her experiences of living with a gay couple. She said that they did not fit into the category of masculine or feminine. Their attributes and roles changed with circumstances. During a war situation also many women take up the roles of men. Most women in the north-east of India, which is perpetually war-torn, are the primary bread-earners and conduct all businesses that traditionally came under the sphere of men.

At the end of the session the following questions were posed. Does biology have nothing to do with gender? Biology is intermingled with social construct to make us believe that genders are naturally constructed. If gender is not natural, then what do gender attributes seek to achieve?

At the conclusion of this session it was emphasised that the assigning of gender attributes to men and women helps shape the value system, estab-

lish norms on which to structure roles and relationships within society. The ideology of gender determines what is allowed, valued or expected of us; it establishes our identities, sets standards and our position in society. By fixing specific roles and status, gender ideology sustains existing power relations and further, determines resource allocation such that it privileges men and subordinates women. In the structure that is thus created men have greater power, control and choices; women on the other hand have fewer roles and limited choices.

The discussion also considered how gender can sometimes shape sex, so one can question the extent to which sex should be treated as natural. For example surgery for children born with both genitalia can 'fix' sex onto an individual, as can a sex-change surgery in adulthood.

Finally, the discussion considered the purpose of labels like 'natural' and 'unnatural' in the context of sex and gender. Labels like 'natural' helps to close the debate on sex and gender as well as the attributes that follow from such classifications. These attributes become standards, and each standard carries with it a positive or negative value. This value system is used to judge people, their behaviour and choices — giving positive value to some, stigmatising some and excluding others. Thus gender ideology serves to create stereotypes and limits choices by setting social standards for what is acceptable and what is not on the basis of sex and gender alone.

#### Session 4: Institutions and Inequality

This session was in continuation with the previous one and also facilitated by Madhu Mehra. The participants were divided into three groups. Each group was given two different pictures of women from newspapers representing diversity and differences amongst women. For each picture, the participants had to fill in a matrix in which to unpackage roles, responsibilities and resources allocated to the two women by the (a) state, (b) market, (c) community and (d) the family. This exercise aimed at making participants consider how age, ethnicity, globalisation, fundamentalism, armed conflict, caste, class and religion determine the roles, responsibilities and resource allocation for women and thereby distribute power and disadvantage amongst women. It also aimed at highlighting how all institutions from the private to the public, reinforce a gendered class, caste and lineage-based value system.

The groups were asked to compare the two pictures in terms of similarities and differences and discuss their status and positioning in society in terms of the roles, responsibilities and resources they enjoyed. This exercise enabled the groups to discuss the intersectionality of identities and the various factors that determine the actual experience of discrimination for different type of women. The groups then presented their collective views.

The presentation of one group is reported here to illustrate the use of this exercise as a tool to clarify intersectionality and how power, roles, choices and status amongst women is different as a result. The two pictures given to this group were of Sonia Gandhi, a politician, and that of an ordinary working-class woman. The following presentation brought out differential status between the two women and the way it shapes their roles and status in the four main institutions of our society:

**IMAGE 1 SONIA GANDHI, A POLITICIAN**

	ROLES	RESPONSIBILITY	RESOURCES
STATE	Policy maker, decision maker	To ensure good governance, be a good citizen	Political Lineage
MARKET	Influential	To generate	Economic power,

	consumer	employment, to develop the economy	independence, economic choices
COMMUNITY	Good leader	Honest, integrity	Recognition, acceptance
FAMILY	Mother, care-giver, mother-in-law	Good care taker, pass on lineage	Love, respect, care, wealth, inheritance, lineage

### IMAGE 2 WORKING CLASS WOMAN

	ROLES	RESPONSIBILITY	RESOURCES
STATE	Citizen, voter, less political power.	Loyalty, follows law and order, public facilities, votes	Labour welfare laws, women's welfare laws
MARKET	Not recognised, poor, unprofitable consumers, market not designed for them	Labourer, poor wages, unskilled	Buys their wage labour
COMMUNITY	Marginalised, vulnerable, poor	Change makers	Unity, access to public property, access to community resources
FAMILY	Mother, daughter, sister, provider of family (financial)	Mother, home maker	Shelter, support - financial, moral, access to moveable family property

### Discussion

The discussion indicated that gender specific attributes are unevenly observed and enforced in reality, but nonetheless sustained to create a value system. When we recognise only 2 sexes and genders the male and female categories, we fail to recognise the countless others amidst us and as a result, we invisibilise them. In doing so we strengthen the false notion that sex and gender are natural and this serves to further reinforce the value system that these notions embody. We thereby stigmatise and delegitimise those who fall outside the binary of the male and female. Social construction measures people not only within masculine and feminine but also on the basis of class, caste, sexual orientation, disability and so on. For example, a dalit woman's role is socially different from that of an upper-caste wealthy woman. Similarly, there are different expectations and choices for the woman who is a mother and the woman who is a political leader. Social expectations for a middle class woman is that she be given a long pregnancy leave, whereas a few days leave is considered adequate for a woman working as a construction labourer. Therefore, inequality exists even amongst women on the basis of differences in class, caste, lineage and social status.

### Session 5: Gender and Law

This session, facilitated by Sapana Pradhan Malla, focussed on understanding the law not only as an instrument to advance the issue of women's rights but also as a site of contestation and a challenge to the realisation of women's rights. This dual characteristic of the law stems from the ideology on which different laws are based which determine whether it can become an instrument of change or whether it continues to reinforce the existing inequality. In order to determine which of the two roles a given law will play it is necessary not only to understand what the law says but also the mechanisms and processes which are established to enforce the same law and the context in which it operates.

The relationship between women and the law is determined by whether and to what extent society and women identify with the law. Do they regard modern law, especially in the form of legislations and legal precedents, as a set of norms that regulate social behaviour and relationships. Or do they identify much more with the norms that are regulated through social customs and traditions as playing this role? For example, despite many laws, actual practice indicates that women seldom take recourse to the law to settle disputes and if they do, then it is usually as their last resort. Women are extremely reluctant to report cases of domestic violence to legal authorities at the very first instance. They try to solve the matter within the family or with the help of relatives or people in the community rather than going to a court of law immediately. This approach depicts the embedded notions of what constitutes a private matter and what a public. Family, household, family relationships are regarded as falling within one's private sphere and viewed as beyond the purview and interference of the state, whereas the public sphere is amenable to state regulation. Therefore, by the prevalent social norms women are not expected to bring a private matter such as domestic violence into the public sphere to get redress. It is socially considered to be a matter of shame for the woman to take such an issue which is perceived to be a private and 'family' matter to court. In such a situation, breaking down this artificial divide between public and private spheres is absolutely essential to enable women to realise their rights through the legal system. However, the question that follows is whether every aspect of a person's personal life should be considered susceptible to regulation by the state.

We may take an example of the existing law against homosexuality in force in India<sup>1</sup>. Should the state have the authority to regulate consensual sexual activity of two adult individuals and impinge the freedom of sexual expression? Should people with different sexual orientation be held to be criminals liable to curtailment of their liberty? Should sexual orientation be a ground for different treatment resulting in exclusion of certain individuals? The attitude of the state towards women in prostitution is similar to its attitude towards homosexuals. These different concerns raise the issue of establishing a criteria which will determine the situations that call for the intervention of the state, and where the line should be drawn—either on the basis of public and private spaces or on the basis of consent versus lack of consent. The criteria must be in tune with the basic values of equality, freedom, dignity and security of all human beings and recognition and respect for the different identities of people. Thus, the private arena should be open to state intervention in certain cases, especially those that involve relations of a violent or non-consensual conduct.

In view of the above, it becomes necessary to determine whether the law is used as an instrument of inclusion or exclusion in a particular context, that is to determine whether a particular law itself is discriminatory or not. This necessitates an enquiry into the substance of the law as embodied in legislations, precedents etc. For instance, it needs to be examined whether law relating to honour killings actually victimises women by depriving them of their freedom; the denial to succession rights to women in Sri Lanka, the Hudood law in Pakistan, family laws based on religion in Bangladesh and India all uphold different norms for women and men and thus can be termed as discriminatory.

In Nepal the citizenship of a child is determined solely on the basis of the citizenship of the father so a woman from Nepal married to a foreigner cannot confer citizenship on her child. Moreover, married daughters are denied the right to inherit property and an unmarried daughter has to return her share of the inherited property upon her marriage. Women in Nepal are excluded from joining the infantry unit of the army and are restricted from taking up employment in a foreign country. The law allows the husband to remarry if his wife's health is in need of care and support. In Nepal, laws relating to adoption of child confer different rights on women as compared to men. In the case of a natural born child, the father has the first right to name the child. Further, if a divorced mother remarries, she loses custody of her child. Many such discriminatory laws exist in spite of the Constitutional guarantee of equality and non-discrimination.

<sup>1</sup> Section 377 of Indian Penal Code 1860 criminalises sodomy and 'unnatural' sex and all sexual activities which do not involve penile penetration of vagina.

At the normative level, the substance of law is only able to determine to a certain extent whether it is geared towards an advancement in the status of women or not. However, as mentioned earlier, all laws are implemented through established mechanisms and processes of the legal system. The question of whether a woman is able to get redress in real terms also depends on the kind of system established for the implementation of laws — that is, the structure of the law. The structure of the law refers to the functioning of law enforcement agencies like the police, courts etc. The factors of function include the time involved in getting redress, cost involved in obtaining justice, the atmosphere in the court during trial proceedings, the sensitivity of police, lawyers and judges and others that impact the final outcome. Many a times the long drawn out legal process and corruption shakes the women’s faith in the ability of the system to deliver justice.

Besides the substance and the structure, the culture or value system in which the law is embedded or operates has a bearing on the interpretation of the law. Even neutral laws at times result in discrimination because of the gendered interpretation given to them. Factors like attitude of the judges, lawyers, court officials and the police are strong determinants of how a particular law is interpreted and the evidence of a particular case assessed. For instance, it might be interpreted as inappropriate for women to be out of their homes at night leading to the views that the woman herself is responsible if an act of violence is perpetrated against her during these hours. A study conducted by an NGO called Sakshi in 1998 in Nepal revealed that 67% of judges upheld the view that women themselves are responsible for violence committed against them, 69% of women lawyers said that they have been sexually harassed by their male colleagues, 68% of women clients said they felt uncomfortable in open courts, 48% said that they felt uncomfortable because of the majority of males present in the court. The culture and system of values sometimes inhibits the sharing of legal information and legal rights amongst women. In many cultures women are unaware that they have the right to seek redress through the court and that they have legal rights that can be invoked.

**FRAMEWORK TO IDENTIFY BARRIERS FACED BY WOMEN IN ACCESSING THE LAW**

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**SUBSTANCE**

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The content of the law — legislations, precedents

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**STRUCTURE**

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The structures of the law--courts, court administration, law enforcement agencies

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**CULTURE**

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Context and culture in which the law operates — socio-economic conditions, attitude of judges, magistrates, court officials, lawyers and of people in community as a whole, level of awareness

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To enable access of law by women, it is necessary to take a holistic view and engage with the law through effective strategic activism focussing on all the three aspects— substance, structure and culture of the law.

A law can help achieve gender justice if it does not discriminate and is not based on the ideology of gender. Unless the law challenges sex discrimination fully, it cannot lead to emancipation of women. On the other hand, if the law is based on the same values which subordinate women then it itself becomes the major barrier to women achieving their basic rights of equality and dignity.

- **human rights and women**

### **Session 6: History of Exclusion and Rights Based Approach**

**T**his session and the next one were facilitated by Deepika Udagama. This session focused on the rights based approach, its use and relevance in initiating a shift from women's empowerment being viewed only as a necessary corollary of economic development to empowerment being viewed as an end in itself.

Women's exclusion which emanates from the ideology of gender, is not just a feature of one particular arena but covers a range of social, religious, political and economic structures from the community to the market and the state. Rights based approach developed as a response to the history of such exclusion. Excluded from political, social, religious and economic institutions, women were consigned to the family.

The history of women's exclusion is also a history of struggle: however, of women fighting against this exclusion in different spheres. Some of the landmarks in this struggle are the suffragette movement, claiming women's right to political participation; labour movements in various parts of the world, which recognised the rights of women workers. But these movements did not usher women's empowerment since these rights were viewed through the prism of development in general: rights seen as necessary for development.

The human rights movement, leading to the formal recognition of human rights standards by the United Nations as reflected in the adoption of Universal Declaration of Human rights, 1948 (UDHR), followed by many other Conventions, marked the beginning of the shift in approach towards women. Article 1 of UDHR specifically recognises freedom and dignity of all individuals. Paragraph 1 of the preamble of UDHR recognises "equal and inalienable rights" of all human beings. The basic characteristics that distinguish these from other rights are that these rights are:



- Inherent
- Inalienable
- Universal
- Indivisible and interdependent

The facilitator referred to the first preambulatory paragraph of UDHR, which recognises “inherent dignity” and “equal and inalienable” rights of all human beings. This paragraph recognises human rights as inherent; they are, not conferred by any authority but are innate to our nature as human beings. The statement even clarifies that human rights should not even be seen as emanating from UDHR, which merely recognises what is “inherent” in human beings. So, human rights should not be seen as restricted to provisions of International Human Rights law developed in the form of UN Declarations, Conventions etc. Rights are based on values originating from social norms, political ideology, religion, culture, conscience etc. Law is only a tool for the realisation of human rights but cannot restrict the scope of these rights. Therefore, it is necessary to appreciate the difference between human rights and human rights law. Moreover, entitlement to human rights is not even dependent on its recognition by the state. For instance, the fact that the Constitution of Sri Lanka does not expressly embody right to life does not mean that the people of Sri Lanka are not entitled to this basic right.

Human rights are inalienable: they cannot be bought, sold, ransomed, bartered or forfeited. This renders human rights unique. Many other rights, like contractual rights can be alienated while human rights are inherent. They are not contingent on the legal system and under no circumstances can they be denied.

The third significant feature of human rights is that they are universal. This implies that rights belong to, and are to be enjoyed by all human beings without distinction of any kind such as “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>2</sup> So, human rights guarantee equal rights and dignity to all human beings irrespective of where they live or the group they belong to. Finally, UDHR does not recognise a hierarchy within the rights. Human rights are “indivisible and interdependent”<sup>3</sup>: the civil, political, economic, social and cultural rights are inter related and equal in importance. They form an indivisible whole and only if all these rights are guaranteed can an individual live decently and with dignity.

The need to emphasise these characteristics of human rights arose in view of the hierarchy of rights that developed in the practice of human rights. Civil and political rights came to be prioritised, whereas those relating to economic, social and cultural rights came to be regarded as developmental problems. The distinction between these two sets of rights although false, came to be crystallised as follows:

CIVIL AND POLITICAL RIGHTS	ECONOMIC, SOCIAL AND CULTURAL RIGHTS
Negative rights — imposing restraint on the state	Positive rights — imposing positive obligations on the state
Not dependent on the resources available to the state	Highly dependent on the available resources in the state
Enforceable and justiciable	Non-enforceable and non-justiciable
Immediate realisation	Progressive realisation

However, a close look, this distinction is actually quite thin. There was a general impression that civil and political rights gave rise to negative obligations and that social and economic rights gave rise to positive rights. The nature of these rights was considered different, and as a result they implied different responsibilities on the part of states. Civil and political rights for example, are the right to life, right to participation in election, right to vote, right to free speech, right to a nationality, right to a fair trial, right against torture. Right to freedom from torture implies that the state shall not inflict torture. Therefore

<sup>2</sup> Article 2, Universal Declaration of Human Rights, 1948.

<sup>3</sup> Paragraph 5, Vienna Declaration and Programme of Action, 1993.

the state has a negative obligation: it is restrained from torturing.

So, the distinction between positive and negative obligation is that of the former the state enjoins to incorporate in its policies means/ measures that enable people to enjoy rights, while in case of the latter the state merely has to recognise the right and not violate it itself. In case of civil and political rights, the state needs to be inactive and refrain from doing certain things but in case of economic, social and cultural rights it has to protect the rights actively for instance, right under the ICESCR, e.g. health care, labour standards, right to food etc —are highly dependent on resources. It requires the state to take measures like build hospitals, train doctors the right to health. In other cases, it would have to build schools, hire teachers, need human and other resources etc so it is required to take positive action. Thus, these rights are therefore considered positive rights.

This categorisation into negative and positive rights is also reflected in the obligations imposed on the States that are parties under Article 2 of the two covenants. Under Article 2 of ICCPR the countries undertake to “respect and to ensure” all the rights mentioned therein to all the people. Whereas under Article 2 of ICESCR the obligation is “achieving progressively the full realisation” of rights “to the maximum of its available resources.”

Thus the remedy in case of infringement of any of the civil or political rights had to be immediate, and not dependent on the economic status of the country. On the other hand, economic, social and cultural rights were considered to be mere aspirations to be realised progressively depending on the economic resources available to a state. However, the UN bodies required to implement the treaties have stated that the protection of civil and political rights is not possible without a corresponding guarantee to secure economic, social and cultural rights. For example, people are unable to exercise civil political rights because they lack education or healthcare. Consequently the treaty bodies reinterpreted the obligations under Article 2 of ICESCR and clarified that the states cannot postpone these obligations indefinitely and that there exist core minimum obligations with respect to these rights which the states have to fulfill.

It was also realised that both civil-political and economic, social and cultural rights have positive and negative obligations. For instance freedom from torture, a civil right, also embodies a positive obligation to prevent torture by training law enforcement officers. It also means setting up committees to take to task errant officers, provide remedies, infrastructure, human resource etc. Similarly, the right to education has negative connotations. The state is under an obligation not to discriminate or deny education to any person. At the same time it must take positive action to provide education to all.

However, this categorisation and consequent prioritisation of rights had an adverse impact on the realisation of women’s rights since women were mostly found themselves at the cross-section of the two sets of rights. Today, these categories are being increasingly challenged. Every right has to be supported in terms of resources and the resource allocation by the state must be scrutinised and questioned.

The rights-based approach does take into account the dynamics between civil political and economic, social and cultural rights. It adds an altogether different dimension to service delivery. Human rights claims carry moral force and legal validity rather than a demand for welfare, which renders the recipient highly vulnerable. The basic elements of rights-based approach are as follows

1. Entitlements or analysis of situation from a human rights perspective and the related obligations of governments. Rights based approach requires any problem to be analysed from the rights perspective: to determine what the rights are and on whom the duty is imposed.
2. State obligation — The approach necessitates a clear understanding of the duties of the state which are not restricted to the formal recognition of a right but also carry an obligation to create conditions that enable

people to enjoy rights. It also requires a mechanism to redress violation of rights.

3. Oversight mechanism stresses the need to establish mechanisms to monitor implementation of human rights. This may be done at three levels:

- Domestic— preparation of national plan of action, establishment of human rights mechanisms, participation of civil society to influence decision-making process, protest in case of human rights violation, legal advocacy for change etc
- International
- Regional

Both international and regional mechanisms imply engagement with the review process or use of other mechanisms like complaints etc to raise issues at the international level. Government that refuses to domestically recognise and abide by human rights standards or the ones violating these standards can be put to shame.

### **Session 7: The Relevance of a Special Law**

UDHR, followed by the two Covenants— ICCPR and ICESCR— did recognise “equal and inalienable” rights of all human beings and also guaranteed non-discrimination inter alia on the ground of sex. However in the initial decades, these universal rights came to be interpreted in a limited way, which resulted in non-recognition of women’s rights. The understanding that human rights essentially comprise of civil and political rights in relation to the state ignored women’s contexts within communities and families. The contexts in which women lived their daily lives militated against their enjoyment of human rights, necessitating a special law for realisation of women’s human rights.

Human rights law was developed and came to be operationalised in contexts where violation by the state was seen as human rights. Women’s human rights however were violated within the four walls of the house by non-state or private actors. This private/public dichotomy in human rights constituted a barrier in the realisation of rights by women. For example, while restrictions on freedom of speech and expression by the state was seen as a human rights violation, the imposition of such restrictions on women by their family members was not viewed as human rights violations.

Secondly, prioritisation of civil and political rights over economic, social and cultural rights specifically affected enjoyment of rights by women. As discussed above, economic and social rights, viewed as imposing positive obligations on the state. These are embodied in most of the Constitutions in South Asia as non-justiciable rights. In contrast, civil and political rights have been recognised as justiciable rights in our Constitutions. But actually both sets of rights must overlap if women’s rights are to be realised. For instance, the debate over women’s dress code as set by the traditional elements could be viewed as a right to freedom of expression. At the same time it could be seen as an expression of culture. Prioritisation between the two sets of rights and viewing them in isolation thwarts a complete understanding of the situation. The idea of inalienability of rights has been significant in questioning the priority given to social, religious and cultural norms over women’s equality. It challenges the contention that the human rights of women can be limited by culturally specific definitions of women’s roles.

This brings us to another issue significant to the realisation of women’s rights: whether rights should be viewed as universal or culture specific. Should the rights be dependent on culture or should they be regarded as available to all irrespective of cultural peculiarities? The issue assumes significance especially in cases where women’s entitlement to equal rights is challenged on the ground that the culture of a particular society determines women’s place in it. Resolution of this problem requires us to unpackage culture. The understand-

ing of culture varies in every society and culture is in a state of flux: it is growing, developing or changing every moment; it also varies from one group to another. For instance, in Nepal, women married in a particular household had to do all the household chores. Those who did not work outside their home were referred to as housewives. Lately there has been an effort to refer to women who work within the household or do domestic work in their homes as house managers. This strongly indicates changing notions and perceptions about social roles and cultural norms.

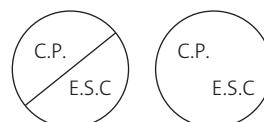
Another relevant question in the context of culture is: who determines the cultural norms of a group? Isn't it mostly the dominant section in a particular group that decides the norms which all the members must follow? In such a situation can cultural norms be just towards women who are not in a position of power in society? It is thus necessary to unpackage culture and delineate norms that are just. The latter must be retained while those that are discriminatory and violative of basic human rights should be discarded.

### Session 8: Journey to CEDAW and Beyond

This session focused on the journey, which led to the adoption of CEDAW and finally proclamation of women's rights as human rights. It was facilitated by Madhu Mehra and emphasised that women's equality required prioritisation within human rights practice if these rights are to realise their principle of universality.

As discussed above, recognition of universality of rights in UDHR and even recognition of right to vote in 1963 failed to translate into rights for women in reality. Adoption of CEDAW in 1979, marked a major step towards the recognition of standards essential for the realisation of women's rights. The need for different norms arose from the diverse contexts in which women live. As is the case with other human rights instruments, CEDAW too faces the criticism that it is western in origin. This criticism, however, loses weight in the light of the fact that the drafting committee of CEDAW had members from Iran, India and other Southern countries. However, even with the recognition of women's rights through CEDAW, it was not until 1993 that women's rights were proclaimed as human rights by The Vienna Declaration and Programme for Action. The need to incorporate gender as an essential component in all the UN mechanisms was finally recognised and an office of special rapporteur on Violence against Women was established. A question that is sometimes asked is if this will justify recognition of special rights of men? But the issue here is not one of 'men v. women'. The issue is of granting visibility to unrecognised and marginalised groups. In this light, it is necessary to keep in sight the marginalised among men. Are all men equally placed? Or is it that upper class, upper caste, rich men are privileged and protected whereas, lower caste, poor men or those belonging to religious or ethnic minority face discrimination? Is such social and economic discrimination akin to gender discrimination? Thus exclusion of different categories of people from different arenas of life necessitates special laws. For instance in Nepal, it has been a struggle for over 10 years for an inclusive policy towards women as far as their participation in army is concerned. A special law is necessary for prohibiting distinct forms of violence against women, such as dowry and 'sati' (practice in India wherein the widow of a man burns herself to death on the funeral pyre of the husband). Another example is the statute of the International Criminal Court, which recognises as culpable the atrocities committed on women during war or armed conflict.

CEDAW's contribution in the discourse on human rights lies in the reinforcement of the key principle of indivisibility and interdependence of rights. The Convention redrew the circle of human rights a concept which had got divided into two: civil and political rights (indicated by C.P in the figure) and economic, social and cultural rights (indicated by E.S.C in the figure)



The Convention can be viewed as comprising of different parts, each dealing with a specific aspect of women’s rights.

**CEDAW**

Article 1	Definition of Discrimination against women
Article 2	Enumerates 7 categories of obligations of the states, to eliminate discrimination against women
Article 3	Emphasises equality for the full development and advancement of women
Article 4	Focuses on de-facto equality and need to implement temporary special measures for the same
Article 5-16	Substantive provisions highlighting discrimination against women in certain dominant areas (health, education, political participation, marriage etc) and the specific obligations of the states in regard to the same
Article 17-30	Detail the constitution and functioning of the Committee, the review process and the Committee’s reporting and communication procedures with other UN bodies

The text of the treaty, which appears to touch upon most of the arenas where discrimination against women is rampant, however, seems to be silent over the issue of violence. However, mere absence of the issue from the text of the treaty does not imply silence. This is because CEDAW, like other international human rights treaties, not only consists of the text of the treaty but also includes the general recommendations<sup>4</sup> and concluding comments<sup>5</sup> issued by the Committee from time to time. This makes the treaty dynamic and enables to extend itself to new areas and contexts. Thus General Recommendation 19 of CEDAW defines gender based violence and places accountability on the state parties to take “appropriate and effective measures to overcome all forms of gender based violence, whether private or public acts.” The recommendation also defines sexual harassment at workplace.

CEDAW has been used in the countries in South Asia not only as a standard, which should inform the framing of the Constitution— as in the case of Afghanistan. The Convention has also been deployed to bring laws in other countries in tune with its standard. The Constitution of Afghanistan was specifically tallied with CEDAW before drafting and the Convention was specifically used to privilege women’s rights over cultural rights. In Nepal, CEDAW was used to combat the practice of chaupari: putting menstruating women in a cowshed. Laws in Nepal provided the husband the right to seek divorce if the wife was infertile. This was challenged in the court of law using Article 16 of CEDAW and finally the courts recognised marriage not only as a site of reproduction but also one that encompasses cohabitation. In India, The Supreme Court used CEDAW in defining and recognising the wrong of sexual harassment at workplace.

<sup>4</sup> General recommendations are interpretative comments on specific articles of the Convention that the Committee considers to be of concern during the review of the reports.

<sup>5</sup> Concluding comments are recommendations issued by the Committee following the review of the reports by the state parties. These are applications of CEDAW to the context of different countries, equivalent of “legal precedence.”

<sup>6</sup> Charter of the United Nations, Article 1 (3)

<sup>7</sup> Charter of the United Nations, Preamble, Para 2

**Session 9: The UN System**

The purpose of this session, facilitated by Deepika Udagama was to familiarise the participants with the mechanisms available under the aegis of United Nations system for realisation of women’s rights and also to introduce regional human rights systems. The UN charter was signed on 26th June 1945 in San Francisco and came into force on 24th Oct’ 1945. One of the purposes for setting up of UN was “to achieve international co-operation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.”<sup>6</sup> The UN charter’s preamble reaffirms faith in “fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.”<sup>7</sup> With this objective, a number of initiatives have been undertaken under the aegis of UN for developing mechanisms to protect human rights and fundamental

freedoms. The international human rights law regime can be said to consist of the following:

- Universal Declaration of Human Rights (UDHR)
- International Covenant on Civil and Political Rights (ICCPR) and the two protocols
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Other Human Rights Treaties (Binding on the state parties to the treaties)
- Declarations (soft laws — not binding but have persuasive value)
- International Customary Law (Jus Cogens) a body of principles on which there is an international consensus, eg. on genocide, fair trial. These principles are applicable even when no treaty or declaration exists or has been ratified

The mechanisms established under the aegis of UN are of two types:

- Charter based mechanisms
- Treaty based mechanisms

### **Charter Based Mechanisms**

Charter based mechanisms (created under the UN charter) consist of the following:

- Human Rights Council 2006
- Special Procedures
- Special Rapporteurs
- Working Groups

### **Human Rights Council**

In July, 2006 the UN General Assembly abolished the UN Commission on Human Rights which till then functioned as a primary international forum on human rights under the Economic and Social Council of UN which in turn reported to the General Assembly. The Commission was replaced by the Human Rights Council which aims to preserve and build on the achievements of its predecessor and also redress its shortcomings. The Council on Human Rights functions directly under the General Assembly.

### **Special Procedures**

Special procedure is a mechanism established to engage with certain issues or certain pressing situations in a country all through the year. The mandate of this special procedure is to examine, monitor, advise or report with respect to human rights situation in a country (country specific) or on a particular human rights issue (thematic). To undertake this task either special rapporteurs are appointed or working groups are constituted.

### **Special Rapporteur**

Special rapporteurs may be country specific or thematic. Country specific special rapporteurs have been set up for Afghanistan, Iraq, Rwanda, Cuba, Myanmar, Zaire, Cambodia, Yugoslavia etc. There are also special rapporteurs (thematic) who deal with issues like torture, religious intolerance, mercenaries, violence against women, internally displaced people etc. The rapporteurs can visit different countries either on request or on invitation from the country.

### **Working Groups**

Working groups consist of experts who work in a group on a particular issue. Such groups have been set up on several issues like enforced or involuntary disappearances, structural adjustment and economic, social and cultural rights, drafting an optional protocol to torture Convention, drafting optional protocols to CRC etc. Working groups are appointed in order to develop existing standards to confront new and growing concerns.

## Treaty Based Mechanisms

Treaty bodies derive their authority from the respective treaties through which they are created. There are seven human rights treaty bodies that monitor implementation of the core international human rights treaties:

- Human Rights Committee (HRC)
- Committee on Economic, Social and Cultural Rights (CESCR)
- Committee on the Elimination of Racial Discrimination (CERD)
- Committee on the Elimination of Discrimination Against Women (CEDAW)
- Committee Against Torture (CAT)
- Committee on the Rights of the Child (CRC)
- Committee on Migrant Workers (CMW)

These Committees comprise of independent experts. They monitor the implementation of the treaties by the State Parties through a number different procedures.

## REGIONAL SYSTEMS

Apart from the bodies and mechanisms established under the UN system, a number of regional human rights mechanisms have been established to protect and promote human rights within that particular region. Some of the major regional human rights systems are European System, Inter-American System and African system. Council of Europe, a regional intergovernmental organisation adopted European Convention for the Protection of Human Rights and Fundamental Freedoms in 1950. The Convention is administered by the European Commission on Human Rights. The Commission is aided in its work by the European court of Human Rights and the Committee of Ministers. The Organisation of American States (OAS), a regional intergovernmental organisation provides for the protection of human rights under its Charter the American Declaration and the American Convention on Human Rights. The mechanisms established for enforcement of human Rights under the Inter American system consist of Inter-American Commission on Human Rights, the Inter-American Court of Human Rights and Inter-American Commission on Women. This Commission on women has adopted Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem Do Para).

The most recent regional human rights system was established by the Organisation of African Unity (OAU) which adopted the African Charter on Human and People's Rights in 1986. The mechanism established for the enforcement of rights under the Charter consists of the African Commission on Human and People's Rights. There is no regional system for protection of human rights in Asia Pacific region.

## • **towards equality**

**T**he topic entailed discussion on the key concepts of non-discrimination, substantive equality, affirmative action and state obligation. Deep understanding of these concepts is essential not only to design state level programmes and policies for the realisation of equality but also for grassroots action and programmes. These key concepts are at the root of the rights based approach.

### **Session 10: Recognising Discrimination**

This session facilitated by Sapana Pradhan Malla aimed at developing an understanding of what constitutes discrimination, its various facets and how it leads to denial of rights. An understanding of discrimination helps identify how apparently neutral laws and policies result in discrimination. It also helps develop sharper strategies to address areas of discrimination as a first step towards equality. The Constitutions of all the countries in South Asia uphold the principle of non-discrimination on the grounds of race, class, caste and sex. Despite this Constitutional guarantee, however, inequality is rampant. This calls for understanding the difference between non-discrimination and equality, and the relationship between the two. None of our Constitutions define discrimination. Also among the International Conventions, only the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) and the Convention on Elimination of Racial Discrimination (CERD) define discrimination.

CEDAW gives a very comprehensive definition of discrimination against women. It can be broken into the following. Discrimination against women is:

- Any distinction, exclusion or restriction on the basis of sex
- Such discrimination, exclusion or restriction must result in impairing or nullifying of rights and freedoms. Impairment or nullification could be at



any of the three levels—

- Recognition, enjoyment or exercise of human rights and fundamental freedoms by women, irrespective of their marital status
- Impairment or nullification of human rights and fundamental freedoms may be in political, economic, social, cultural, civil or any other field

This requires that there be an act or action (i.e. distinction, exclusion or restriction) based on ideology (sex/gender — Article 1 read with Article 5 of CEDAW) to constitute discrimination. Further discrimination cannot occur without action. It makes all actions, whether they are intended or unintended to fall within the definition of discrimination, if the result of such action is impairment or nullification of recognition, enjoyment or exercise of human rights or fundamental freedoms in any field.

#### **DEFINITION OF DISCRIMINATION**

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Ideology	Gendered assumptions about women’s role & capacities
Action	Different treatment, restriction or exclusion
Intention	Intended or unintended
Result	Impairment or nullification of recognition, enjoyment or exercise of human rights and fundamental freedoms in any field

The definition of discrimination takes into account discriminatory actions emanating from “the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles of men and women.” An action based on such ideology may entail any of the three:

#### **Different Treatment**

An act which treats men and women differently may be discriminatory if it results in impairment or nullification of human rights or fundamental freedoms. For instance, consider a situation where men are allowed to move freely in any attire but women have to abide by a dress code, say wear a sari. Such a situation amounts to discrimination against women. In Nepal women are allowed to work only between 6am to 6pm whereas men are allowed to work at night as well. This different treatment of men and women results in impairment of the right to work of women and is thus discriminatory. In Afghanistan the age of retirement of men is 60 years whereas that of women is 55 years amounting to different treatment of men and women and restricting women’s right to work. However, in this regard it is pertinent to mention that different treatment geared towards creating conditions that enable women to secure, enjoy and exercise rights does not amount to discrimination. Such enabling conditions are steps towards achieving substantive equality.

#### **Restriction**

Restriction imposed on women also amounts to discrimination. For instance, consider a situation where women are allowed to move freely only during day-time while no such restriction is imposed on men. Thus amounts to discrimination. Similarly restrictions imposed on women from entering mosques or any other places of worship are a form of discrimination.

#### **Exclusion**

Complete exclusion of women from certain arenas or exercise of certain rights amounts to discrimination. For instance, if public mobility is allowed to women only if they are escorted by a male it would amount to exclusion of women from public places.

An action or a law is discriminatory if it intends to treat men and women differently. It thus impairs or nullifies women’s rights in the process. However, a law which sets same standards for men and women might also end up causing discrimination. This is because the ‘neutral’ standards are based on male

experience and do not take in to account the fact that women are placed differently as compared to men.

Laws, which lay down different standards for determining the citizenship of married men and women can be seen as examples of direct discrimination. Good examples here are citizenship rules of Nepal, Bangladesh and Pakistan: here the citizenship of a woman is determined by the citizenship of her spouse it is direct discrimination. Another example from Afghanistan show women were working overtime in an attorney's office are not paid for overtime while men are. A law prescribing same requirements of height, weight etc for both men and women for a particular job does not intend excluding women. But it might end up doing exactly that since women rarely match male physical standards. This is an example of indirect discrimination.

Discrimination can also be historical or crosscutting. An Australian company, for example, following the policy of last hire and first fire retrenched certain workers. It was seen that the company started employing women workers only recently and thus all those retrenched were women. Thus discrimination/exclusion of women in the past may lead to discrimination against them in the present, indicating that discrimination may be crosscutting.

A discriminatory action can result in either impairment or nullification of human rights or fundamental freedoms. Impairment occurs when qualification or condition is attached to a right leading to a limited exercise of that right. For instance in Nepal, women are not absolute owners of property inherited by them from their fathers: they have to return the property on getting married. Thus the law acknowledges women's right to property in a limited way. Let's consider another example from Nepal to illustrate nullification of a right. Here marital rape is a crime but there is no provision for the punishment of the husband under the law. Thus the absence of any remedy renders the right redundant.

Impairment and nullification of rights can also be at the level of recognition of the right i.e. law might not acknowledge the right at all. It can also be at the level of enjoyment of right, i.e. there might be an absence of structural arrangements necessary to enable actual enjoyment of right. Impairment or nullification can be at the level of exercise of right as well when there is no system to provide redress in case of violation of right.

Furthermore, the definition of discrimination recognises that discrimination may take place in any arena of life and takes within its purview all aspects of life. The experience of discrimination varies even among women. Women are not seen as a homogenous entity. The differences among women on account of their class, caste, ethnicity etc shape their experience of discrimination.

### **Session 11: Towards Substantive Equality**

The discussion on meaning and definition of discrimination provided a base for discussing approaches to equality. The discussion started by posing the question: what is meant by equality? Does it mean the same treatment for everyone? Or could equality include different treatment in certain circumstances? The session facilitated by Deepika Udagama commenced with a discussion on Article 7 of UDHR which states, "All are equal before the law and are entitled without any discrimination to equal protection of law . . ." It implies that we are equal as human beings i.e. we have equal worth. This approach towards equality held sway in the initial period of struggle when women demanded right to vote on the ground of equality.

Gradually limitations of this approach became evident particularly in view of women's biological differences. Given that certain roles can biologically be performed only by women, treating women and men in the same manner would amount to discrimination. At times, setting same standards for men

and women excludes women. For instance in Sri Lanka, the police department prescribed height of 5.11 inches as the qualifying criteria for appointment. However, the average height of women in Sri Lanka is much less than 5.11 inches and not surprisingly, no woman could meet that criteria. Though the same criteria was set for both men and women the standards ended up discriminatory between the two. This is not direct discrimination, but an indirect one.

Same treatment for all irrespective of their biological difference was thus found inappropriate. This led to emphasising an approach to equality that recognises biological difference. This approach renders uniform treatment for only those who are similarly placed and renders differential treatment for those differently placed. Men and women being biologically different were thus deemed deserving of different treatment. This was the phase in which maternity benefits for women came to be viewed as measures towards equality. Laws in all the countries in South Asia have provisions providing for maternity leave to women working in public sector. However as far as the private sector is concerned the position in different South Asian countries varies.

It's not just biology that places women differently vis-à-vis men. Social factors affect their positioning as well. Social construction depicts women as weak, vulnerable they are seen as needing special care and protection. The model of equality based on this approach is known as the protectionist model. The protectionist approach does not just recognise differences but also considers them natural and unchangeable. It works within the parameters of differences and in the process strengthens them. This model was part of the feminist stream that recognised and celebrated women's difference. It was a significant departure from the formal model that sought to erase difference. But limitation of this model is that in offering protection to women it sustains the difference. It does not therefore empower women or change their status. This model was a step forward to the extent that it recognised the difference. However, it did not challenge or question the notions from which these differences emanate.

The third approach to equality also recognises the differences, but questions the causes and results of such difference, and seeks to correct them. This approach is known as the corrective or substantive model of equality. It seeks to correct continuing disadvantages and has choices built into it. The approach examines the actual outcome of gender differences. If the outcome of a difference disadvantages women, this approach tries to create conditions that counter this particular disadvantage.

Summing up the discussion on different approaches towards equality it must be emphasised that all the approaches towards equality evolved through feminist engagement with law. The sameness approach which stresses uniform standards for men and women does not recognise that these are biological and social difference between the two. The protectionist approach does recognise the different social positioning of women but accepts the social assumptions that perceive women as weak and subordinate. This approach thus touched the periphery while retaining or rather reinforcing the core of the problem. The corrective approach however, recognised different social positioning as emanating from the deep-rooted ideology of gender (reason) and the need to challenge the ideology and correct the disadvantage (result) emerging out of it in order to achieve equality. It thus supports affirmative action, which aims at providing enabling conditions to overcome the discrimination.

## **Session 12: Affirmative Action**

The need to address not only the cause but also the negative effects of ideology of gender requires proactive steps to be taken. These proactive steps

towards correcting historic disadvantage is known as affirmative action. The session on affirmative action was facilitated by Sapana Malla Pradhan. CEDAW recognises the special significance of affirmative action as a means to achieve equality. Article 4 of CEDAW explicitly provides for adoption of “temporary special measures” by the states to accelerate “de facto equality.” The measures adopted under Article 4 can be of two types:

- Temporary
- Responding to special needs (permanent) — such as maternity

Temporary special measures aim at achieving equality by addressing historical disadvantages. They are temporary in the sense the result has to be secured within specified time. Thus the term temporary has been interpreted in relation to the objective that the measures seek to achieve. The notion of temporary implies that condition is changeable. Thus maternity would not fall within this but is covered under response to special needs. Temporary measures are not just limited to providing reservation for women in different arenas but also include measures like tax or fee exemption, loans for various purposes etc. The need to introduce temporary special measures has been emphasised by CEDAW committee in General Recommendation 25. The recommendation focuses on the following:

- Negotiation with the private sector to introduce temporary special measures
- Designing plan of action for implementation, monitoring and evaluation
- Collect and maintain gender-segregated data to measure achievement
- Introduction of temporary special measures especially in education, political participation, employment, international representation
- Temporary special measures to modify cultural practices and stereotypes
- Reporting to the Committee on the temporary special measures adopted

### Session 13: State Obligation

The role of States in incorporating CEDAW norms into the domestic legislation and implementing them is enormous. The state parties to the Convention owe the primary responsibility to secure the same. The significance of the international standards set by the treaties lies in their translation into reality in different domestic jurisdictions and all the arms of the state — legislature, executive and the judiciary — have a role to play in this. Once a state has ratified the Convention it is under obligation to take steps to realise its standards. Implementing and incorporating the standards set out in CEDAW within its domestic jurisdiction is part of State obligation set out in CEDAW. The various constituents of state obligation under CEDAW were discussed in a session facilitated by S. K. Priya.

The binding nature of the treaty and the nature of obligations it embodies are found in the preamble to the treaty and Articles 2-4 of the Convention. Provisions 2 to 4 of CEDAW outline the obligations of state parties with respect to achieving de-facto equality for women. These obligations can be categorised as -

- Respect
- Protect
- Fulfill

The obligation to respect implies a duty of non-derogation by the state with respect to the rights recognised under the treaty. This includes taking positive steps to secure recognition of these rights in the domestic legislations and state action. The obligation to protect includes creating system and structures to provide redress in case of violation of rights while the obligation to fulfill relates to creating conditions to secure enjoyment of rights by women. Creating conditions to secure fulfillment of rights includes temporary special measures to be adopted by the state to create an environment enabling and

accelerating the enjoyment of rights. The measures to be taken should not be protectionist such that they restrict choices to women but rather, that they should be directed towards enhancing opportunities and enable women to realise their potential.

These obligations are however not limited to ensuring that steps are taken with the aim of recognising equality but they extend to ensuring an equality through outcomes. The two obligations are respectively known as:

- Obligation of means
- Obligation of results

Obligations of means implies that the states make laws, adopt policies and programmes and also make budgetary allocation to realise equality. Having adopted the means to achieve equality the state is also under an obligation to ensure and demonstrate that these means are getting translated into results by putting in place system to monitor full development and advancement of women.

The obligation of the states under the Convention also extend to accountability of the state for violations committed by the private actors in any sphere, public or private. The states have to demonstrate that they have exercised due diligence in allocating means and also that they have taken steps to ensure that these means translate into results. The extent of fulfillment of due diligence can be assessed through the existence of laws, policies and programmes and the effectiveness of access to redress mechanisms.

#### **Session 14: Marshalling Arguments in Favour of Women's Equality**

In order to further strengthen the understanding of the participants with respect to equality and non-discrimination, the learnings from the previous session were applied to different contexts. The participants were divided into groups to discuss 4 issues: natural disaster, armed conflict, violence against women and informal sector. The guidelines for the discussion were as follows:

- What forms of direct and indirect discrimination do you anticipate against women in these situations? Mention special groups within women who suffer discrimination where relevant
- Present a response based on substantive equality, pointing elements, which constitute substantive equality

Of the 4 groups constituted for this session, the presentations of 2 are reported below to illustrate the application to specific contexts.

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#### **Informal Sector**

The group interpreted the topic as referring to the private sector and discussed the matter in that context. However, while sharing their discussion during the plenary it was clarified that informal sector refers not to the private sector but those sectors of economic activity which are not included within the broad formal economic framework like construction workers, contract labourers etc. Based on this clarification the forms of direct and indirect discrimination that were identified were as follows

#### **Direct Discrimination**

- Non-application of labour laws in informal sector
- No special provisions like maternity leave etc.
- Low wages or no wages
- No benefits like pension, insurance etc
- No job security

- Non-recognition of contribution to the national product
- No evidence of employment as there is absence of formal contracts being signed between the parties

#### **Indirect Discrimination**

- Risk of being subjected to false allegations and cases
- Sexual harassment without redress
- No access to justice
- Unavailability of credit
- No access to market

Direct discrimination against people working in the informal sector primarily emanates from the absence of any law to regulate and protect people working in this sector. This is in sharp contrast to the abundance of laws protecting the rights of people working in the formal sector. In such a situation, response based on substantive equality would first of all involve due recognition of the work done by people in the informal sector and application of all the labour laws in the informal sector, especially provisions relating to payment of wages, maternity relief etc. Special attention needs to be paid to the conditions of work and the conditions on which credit is given. Mobile banks can be introduced for the purpose and conditions such as security as collateral for loan should be altered. Special incentives should be provided to such people to market their goods. The group also emphasised setting up of monitoring mechanism by the state to assess the status and conditions of workers working in the informal sector. The state should also assess the impact of globalisation on the life of women working in the informal sector and make efforts to eliminate any adverse effect on them on that account.

#### **Natural Disaster**

The group considered a situation of earthquake and the direct and indirect discrimination women face during the natural calamity. In the plenary, the point was raised that we tend to view floods, earthquake, Tsunami as natural disasters but seldom think of drought as a situation of natural disaster. The situations of direct and indirect discrimination against women in circumstances of earthquake were listed as follows

#### **Direct Discrimination**

- Relief materials distributed are heavy and are distributed from certain focal points which are distant from the houses of the people thus putting women at a disadvantage
- Distribution of same quantity and kind of food to everyone neglects the special needs of pregnant and lactating mothers who need extra nutrition
- Distribution of general medicine and sanitary item also does not recognise special needs of women
- The arrangement and facilities in relief camps often ignore women's right to privacy and also expose them to a greater danger of violence
- Danger of violence and absence of any special measures to prevent it and builds an atmosphere of mistrust and fear further pushing women into the private sphere
- Disasters impose extra burden of work on women. They are then required not only to look after the needs of the family members but also manage the setting up of a home all over again

#### **Indirect Discrimination**

- Compensation to the person holding property destroyed in a natural disaster, results in exclusion of women because women seldom have immovable property in their name. As women are situated differently in comparison to men, the same standard applied to both results in discrimination against women. Similarly only immovable property that is destroyed during a calamity is reckoned for compensation. There is no compensation for loss of moveable property like jewellery which are mostly owned by women. This again results in their exclusion from the

process of compensation.

**Special groups of women who are affected differently**

- Single women
- Disabled women
- Widows or women traditionally excluded from going out of their homes for work

**Elements of response based on substantive equality**

- Compensation in the name of both the spouses
- Ensure membership of women in relief committee
- Facilitate constitution of informal committees
- Customisation of relief packages according to needs of the people
- Secure delivery of relief material to people who are unable to collect it themselves
- Focus on special needs of women including need of gynaecologists
- Day care center for children to enable women to do chores required for resettlement
- Skills training for women
- Vigilance by police to prevent violence against women
- Women friendly toilet facilities

- **obligations under CEDAW**

### Session 15: Review Process

As discussed earlier, ratification of a treaty imposes an obligation on the state parties to take all appropriate measures to realise its standards. Moreover, a mechanism is needed to assess if steps are being taken to translate the standards into reality. CEDAW establishes a mechanism to monitor and review the steps taken by the state parties. The Convention's provisions from Article 17 to Article 30 provide for the constitution and functioning of the treaty body. They also mandate the Committee to review the progress made by the ratifying states. Articles 2 to 4 impose general obligations and Articles 5 to 16 impose specific obligations on the states. They have to submit periodic report to the Committee. The process of review by the Committee was discussed in this session by Deepika Udagama.

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When countries ratify or accede to a treaty they are called State Parties. Article 17 of CEDAW provides for the establishment of a 'Committee on the Elimination of Discrimination against Women' to consider the progress made in the implementation of the Convention. The Committee consists of 23 members. These members are nominated by the state parties and elected by secret ballot. Once elected, members serve in the committee in their individual capacity. The members are persons of high moral standing with good expertise in the field covered by the Convention. While electing the members consideration is given to equitable geographical distribution. Article 18 of CEDAW imposes an obligation on the state parties to submit a report to the Secretary General of the United Nations to be considered by the Committee. The State party has to submit a report within a year of ratifying the treaty. Thereafter they have to submit a report every 4 years. These reports are called periodic reports.

The report submitted by a state party is considered by the Committee, which then enters into a dialogue with the state party to discuss concerns, ask further questions and make recommendations. The Committee then issues a report, called the Concluding Comments of the Committee. The concluding comments reflect the Committee's assessment of a state's performance and also



contains recommendations of the Committee to that state party to improve matters. The concerned State is required to take steps to implement these recommendations. For instance during the review of Sri Lanka, the Committee made recommendation on the issue of statutory rape. Thereafter the laws in Sri Lanka witnessed positive changes vis-à-vis laws relating to marriage, citizenship and statutory rape. While making concluding comments, Committee has keep into mind the local situation and conditions in that country.

Deepika then discussed the role that NGOs and other civil society groups can play in the review process. She discussed the various levels at which NGOs can act. These are as follows:

- Identify priorities
- Gather and analyse information
- Collect official papers
- Legal documents
- Information on impact of state machinery
- Need to read the concluding comments of the Committee from the previous process of review
- Get government report and critique it
- Prepare shadow report, disseminate it and send copies to the Committee members
- Participate in the review process — bring shadow report to the review, make presentations in informal meetings held on the first day of the reporting session
- Hold dialogue's with your government on its report and the concluding comments

### **Session 16: Role of NGOs in the Review Process**

The NGOs can play a role to make the review process more effective. Madhu Mehra and Sapana Malla Pradhan discussed the experience of NGOs in India and Nepal with the review process.

The significance of a shadow report lies in the contribution it can make in informing the Committee on the actual grassroots situation in a particular country. This enables the Committee to have a more constructive dialogue with the state party. In some countries when the government prepares the country report, it consults with social workers and civil society organisations. Sometimes the government does not make the report public before it is submitted to the Committee, but once it is with the Committee it becomes a public document. In India during the review in 2000 the civil society organisations did not have access to the government report until prior to the review, whereas the 2nd and 3rd periodic report to CEDAW in 2007 was made public by the government months in advance and comments were invited from the public. The government report cuts across many ministries. There is a distinction between the shadow report and the alternate report. Shadow report is submitted by the NGOs after the government submits its report as to provide a civil society perspective. The alternative report is the one that is submitted by NGOs when there is no government report.

Sapana elaborated on the process followed by civil society groups in Nepal while preparing the shadow report. The information about the preparation of country report is advertised in the newspapers. At this point all groups interested in being part of shadow report writing process come together. The interested members constitute three groups to divide the work. Issues to include in the shadow report are selected and then the members divide the work on different issues among themselves. Draft report on each issue is discussed in a consultation process at the regional and national level. Once the shadow report is ready, a team is constituted to go to New York to participate in the presentation of the shadow report. A press conference is organised at the national level before the groups leave for New York. There is an attempt to network with the media at that time. In New York, NGOs are allowed to pres-

ent their report before the government report. The team carries all the data, case studies, statistics and other forms of evidence to support their stance. They have only 12 minutes to present their shadow report. After their return, the members again hold another press conference.

In India, the National Alliance of Women's Organisation, a network of women's groups coordinates the process of preparation and presentation of the shadow report. Groups with expertise in different areas contribute chapters to the shadow report. The report is then taken to New York. The first report from India selected a few issues to be highlighted and the work continued after returning from New York. It resulted in government introducing many laws to promote gender justice. The experience of presenting of shadow report encouraged NGOs to expand their information base, widening NGO participation in the second shadow report. There is also the need for percolation of concluding comments to the grassroots. This necessitates continuous engagement with the government for the implementation of the concluding comments.

The participants from Bangladesh referred to impact of continuous engagement with the government with respect to obligations under CEDAW. At the time of ratification of the Convention by Bangladesh the state reserved<sup>8</sup> a number of Articles in the Convention. However, after the first review process, some of these reservations were lifted. The shadow report submitted by the groups from Bangladesh helped highlight at the international level a number of issues, such as violence against women, on which the country report was silent.

## Session 17: Municipal Incorporation

Sapana Malla Pradhan facilitated this session on the municipal incorporation of international standards. The significance of international standards recognised in the international treaties lies in their ability to influence the domestic laws. International human rights instruments may be in the form of declaration or treaty/covenant. The declaration on VAW is an example of the former and CEDAW, of the latter. The nature of declaration is essentially different from a treaty. A declaration is an international instrument, which sets standards on which there is consensus. It is not strictly binding on the states. It, however, has a great persuasive value under international law. On the other hand, treaty is the most binding form of international law. On signing a declaration, the state undertakes not to violate the principles enshrined therein whereas on ratifying a treaty the state does not just undertake to respect its principles, but also to undertake specific measures to achieve its goals. In addition, it becomes accountable for these obligations through the review process.

The incorporation of international law into a country's domestic law depends on the legal system it follows. The two approaches governing the relationship between international and domestic law in a country are: monist and dualist. According to the monist approach, the moment an international treaty is ratified by a country, the law enshrined in it becomes applicable in that country. These are the countries, which recognise and give precedence to international law. Not needing specific incorporation into the domestic law, the treaties under this system are held to be self-executing. Netherlands follows the monist approach whereas India follows the dualist approach. Dualist approach emphasises that the systems of international law and municipal law exist separately and therefore influence or overrule each other. According to dualist approach treaties are not held to be self-executing they require an enactment for their incorporation into the national law of a state. The Environment Protection Act, 1986, Juvenile Justice (Care and Protection of Children) Act, 2000 are examples of legislations enacted to incorporate international standards into domestic law. Notwithstanding the difference between the approaches, the ratification of an international treaty raises certain basic pre-

<sup>8</sup> A reservation is a formal declaration that a state does not accept as binding upon it a certain part of the treaty. A reservation can be entered provided it is not incompatible with the object and purpose of the Convention.

sumptions. It is presumed that the States would not enact laws inconsistent with the treaty obligations and statutes would be interpreted consistently with treaty obligations. However, if there is an irreconcilable clash between the national law and international law, then the former prevails.

Besides incorporation into domestic law by the legislature, judiciary can also incorporate international standards into domestic law through progressively interpreting existing laws. If there is absence of law on a subject covered by a ratified treaty in India, and no contradictory law exists on the subject, the international standard enshrined in treaty may be read into the domestic law, as in the case of *Vishaka v. State of Rajasthan*. Thus in case of a legislative vacuum, international law can be read as part of the domestic law.

## **Session 18: Introducing the Optional Protocol to CEDAW**

The session on understanding the significance of Optional Protocol as an additional mechanism for securing implementation of an international treaty was facilitated by Deepika Udagama. Optional Protocol is a supplementary treaty that exists as an adjunct a “mother” treaty. It is open to ratification by states that have ratified the mother treaty. The Optional Protocol to CEDAW if ratified by a State party provides two additional procedures for monitoring State obligation under the Convention by the Committee. The procedures are:

**Individual complaint mechanism** — Under this mechanism, an individual can complain to the Committee only after having exhausted available domestic remedies.

**Inquiry mechanism** - Under this procedure, an inquiry can be initiated by the Committee in case it receives reliable evidence indicating grave or systematic violations of the Convention in any of the State parties.

Essentially the Optional Protocol expands the powers of the Committee beyond the periodic country review to investigate and examine communications and reports of violations. In doing so, the Optional Protocol provides individuals direct access to the Committee. The criteria followed by the Committee for entertaining individual complaints depends on the following elements:

- The communication should be made by an individual/ group or victim of violation
- It must be in writing
- It should not be anonymous
- It should be against a state party
- The domestic remedies must have been exhausted

A communication of complaint is liable to be rejected if it is

- Incompatible with CEDAW
- Ill founded/ not substantiated
- Amounts to abuse of process
- Beyond the time limit within which complaints are permissible

An important concern that arises in the context of individual complaints is the security of the person making the complaint. In this regard it is significant that there is a clause, which provides that complainant’s identity can be kept secret. The resource person suggested that a better strategy in such situations is to approach the committee through an NGO. Once the complaint reaches the Committee, it makes a reference of the matter to the State and asks for a response. After meeting the representatives of the State the Committee issues recommendations and again asks for a response from the state.

In case of inquiry mechanism instituted by the Committee, the Committee sends a rapporteur to visit the country where inquiry is to be made. Findings of the Committee along with its recommendations are communicated to the State and the State is asked to respond.

- **bringing CEDAW home**

### **Session 19: Obstacles and Opportunities in Application of CEDAW**

**I**n this session the participants were divided into country based groups to examine the status of implementation of CEDAW in their country. The session focussed on the role of judiciary, parliament, government and NGOs in the process of implementation of CEDAW.

#### **Afghanistan**

Afghanistan has not submitted report to any international Committee including CEDAW. The Constitution of Afghanistan has a provision on equality and affirmative action. There are approximately 25% women in the legislature (consisting of two houses of Parliament). One member of cabinet is a woman and one provincial governor is a woman. The ministry of women affairs has formulated a national policy on women. A Commission on violence against women has been constituted in Afghanistan. There is an inter-ministerial committee on forced and child marriage. Women's studies centres have also been established in universities. Efforts towards incorporation of standards set in CEDAW at the domestic level have begun with the initial focus on raising awareness within the government and society as a whole about CEDAW. This has special significance because the process of review of laws by Parliament is underway so efforts are being made to ensure compatibility with CEDAW. NGOs working on women's issues are specially involved in this process. There are about 110 NGOs in Afghanistan working on women out of which 95 are members of Afghanistan Women's Network constituted as a core group for CEDAW shadow report.

#### **Bangladesh**

Bangladesh initially ratified CEDAW in 1984 with reservations on Articles 2, 13(1)(a) and 16(1)(c) & (f). After going through the review process by the

Committee, and domestic advocacy, the reservations to Articles 13(a) and 16(1)(f) were withdrawn. Bangladesh's government has thereafter made efforts towards gender mainstreaming. Women and children are recognised as target groups for development projects. Three seats were reserved for women in the upper house of Parliament. Later on, the legislature increased the number of seats reserved for women in legislature, however these seats pertain to appointments based on selection process. The draft legislation on domestic violence and citizenship have been prepared for further discussion. However, uniform family code has still not been adopted. Discriminatory laws relating to citizenship, succession and other family matters must be changed to be made compatible with CEDAW. Judiciary has played an important role in calling attention to reform discriminatory laws. In *Malkani v. Government of Bangladesh*, the court recommended repeal of discriminatory citizenship law. Even in the absence of any specific law, the court recognised mother as a guardian. It has also recommended equal rights for members of Parliament appointed on the reserved seats.

In order to secure incorporation of CEDAW in to domestic legislations, it is necessary to raise awareness on it among government officials. Though there is a provision in the Constitution prohibiting discrimination on the basis of religion, race, sex, caste and place of birth, yet it invisibilises discrimination in the private sphere as the Constitutional provisions does not apply in private arena. The changes to bring laws, government actions etc in tune with CEDAW are fraught with a number of challenges. The first and foremost being lack of sensitivity among the government officials, judiciary and people in general. Discriminatory laws, public private distinction maintained in the non-discrimination provision of the Constitution, prevalence of discriminatory customs and practices also relegate women to a subordinate status. Furthermore, weak monitoring of government initiatives, ignorance of entitlement among people, absence of gender budgeting and non-availability of gender disaggregated data pose additional barriers. These challenges require political stability, sensitisation of officials and public, attitudinal change and collaboration of government with NGOs in order to be addressed.

## **Bhutan**

Bhutan ratified CEDAW in 1981. In 2002, the country's government submitted one combined report for all the years after it ratified the Convention. This was reviewed in 2006. National Commission for Women and Children was established in 2004. The 7th report to CEDAW committee is due in 2007. The preparation of this report is underway. Bhutan's National plan of Action, has recognised gender as a critical area of concern. Gender focal point network has also been established. As Bhutan follows the dualist approach, which determines the relationship between domestic and international law, standards recognised in CEDAW need to be specifically incorporated into the municipal law through enactment of a law. In case of conflict between the international standards and the domestic law, the latter prevails. Articles 7 and 9 of the draft Constitution relate to fundamental rights. However, there is no specific provision against discrimination. The major challenges facing the domestic incorporation of CEDAW standards are traditional and customary beliefs, which are discriminatory, absence of civil society and level of awareness about CEDAW and women's rights. One of the major enabling factors towards incorporation of CEDAW standards is the governments willingness to do so. Given this, there is need to increase civil society awareness about CEDAW. Advocacy and lobbying with the legislature should also be increased.

## **India**

India ratified CEDAW in 1993. Thereafter gradual efforts have been made to introduce changes in the laws to bring them in tune with CEDAW. Recently a number of laws have been enacted or amended like Hindu Succession Act (equal right of daughters in ancestral property recognised), Indian Divorce

Act, Prenatal Diagnostic Techniques Act (to curb sex selective abortions), Protection of Women from Domestic Violence Act (provides for civil remedies in case of domestic violence), National Rural Employment Guarantee Act (provides 33% reservation for women in employment programmes). The statement of reasons and object of the Protection of Women from Domestic Violence Act specifically refers to India's obligations under CEDAW. Judiciary has also relied on CEDAW to uphold women's rights, such as in relation to sexual harassment at workplace. In another judgement, the judiciary has given directions on registration of marriages. There is need to bring about further reforms in laws and to enact new laws, draw new policies and programmes to bring about equality. Some of the programmes that focus on women are:

- National Rural Health Mission focus on Maternal Mortality and Infant Mortality
- Kishori Samridhi Yojna — National Scheme for malnourished and anaemic girl child
- Nutrition support for pregnant women
- Women and child desks in police stations in certain districts
- Women's studies departments in universities

There is need to dismantle discriminatory social structures, raise awareness on gender issues, advocate for withdrawal of reservations by India on CEDAW, make available gender disaggregated data for analysis and for developing a holistic approach. There is also need to provide gender training, monitoring of government initiatives by the civil society, submission of country report on time and also implementation of concluding comments of the Committee by the government. Civil society groups in India have been advocating the following

- Sexual Assault Bill
- Sexual Harassment at Workplace Bill
- Ratification of International Criminal Court by India
- Ratification of Optional Protocol to CEDAW

CEDAW is being used by various women's groups to address sectoral discrimination such as education, HIV positive women, through training lawyers and activists at all levels.

## **Nepal**

The Judiciary in Nepal has played a commendable role in recognition of women's equality. Judicial decisions have recognised the right to privacy, inheritance of ancestral property by daughters, recognition of marital rape as well as rape of a woman in prostitution, and finally right to equity.

The legislature has recently enacted a law on gender equality. The government has drawn a national plan of action on CEDAW. With the advocacy and lobbying by women's groups, a draft Bill on Domestic Violence has been prepared. Women's groups have also filed public interest litigations in court challenging various discriminatory provisions in law. Besides this, they undertake gender sensitisation trainings and act as pressure groups. Women's groups feel that a lot needs to be done to strengthen implementation of CEDAW in Nepal, the first step being that of raising awareness among the government agencies and stakeholders on CEDAW. They also feel there should be more lobbying for the ratification of Optional Protocol to CEDAW.

## **Pakistan**

With the ratification of CEDAW, the discriminatory laws in Pakistan have come into debate. A law prohibiting honour killings has been enacted. There is need to introduce changes in other laws, such as the Hudood law, which is still in force. Government has begun planning programmes and policies keep-

ing CEDAW in mind. Ministries are also focusing their attention on millennium development goals. The effective implementation of CEDAW in Pakistan requires political stability, sensitivity towards gender issues, effective cooperation between government and civil society, greater participation of women in decision making process and harmonisation between CEDAW and Islam. The civil society organisations working in Pakistan plan to hold CEDAW orientation sessions with the community to raise awareness, increase their involvement in shadow reporting process, sensitise judiciary on gender issues, hold dialogue with the government on discriminatory laws.

## Sri Lanka

Sri Lanka ratified the Convention in 1981 and the Optional Protocol in 2002. It follows the Dualist system embodied in the Art. 27(15) of the Constitution. Since ratification the country has submitted four periodic reports. The Right to Equality is framed in Sri Lankan Constitution through diverse provisions, these include:

- All persons are equal before the law and are entitled to the equal protection of the law
- No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds
- Imposing a language as a qualification for any public employment or office will not be considered discrimination if it fulfills two conditions: that it is required for discharge of the particular job and also that reasonable time is given to the person to acquire knowledge of the language
- No person shall, on the grounds of race, religion, language, caste, sex or any one such ground, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion
- Nothing in this Article shall prevent special provision being made, by law, subordinate legislation or executive action, for the advancement of women, children or disabled persons

CEDAW is operationalised through the following laws:

- Amendment to Penal Code to incorporate definition of trafficking 2005
- Domestic Violence Act 2005
- Amendment to Citizenship Act 2003
- Maintenance Act 1999
- Amendment to Penal Code 1998 and 1995
- Revision of the age of Marriage
- Definition of Discrimination

The policy framework on gender equality includes; Women's Charter, National Plan of Action for Women, Ministry for Women's Affairs, National Committee on Women, Women's Bureau and Rural Level Councils, women and children's desk in police stations, Foreign Employment Bureau.

Despite the above mentioned legal framework, Sri Lanka faces many challenges, such as the lack of political commitment and will, restrictions on the judiciary, no judicial review of legislation, moreover the fundamental rights are applicable only in the public domain. The socio-economic, political barriers include: impact of armed conflict, lack of awareness, unequal personal laws, lack of protection for women working in the informal sector and export processing zones.

The enabling conditions that exist for implementation of CEDAW include: increasing women's representation in politics by quotas, monitoring mechanisms for state and non-state combatants, gender trainings in state institutions, Collection of sex-disaggregated data, as well as recognition of contribution of women to the economy (formal and informal).



- **the next steps**

### **Session 20: Our Roles in Change**

**T**he participants were divided into three groups and the aim of this exercise was to evolve the strategies and point out what role they could play in ushering change. The strategies were to be designed keeping in mind the broad context of poverty, economic disparity, religion, culture, conflict and overarching patriarchy. The participants were required to focus not only on broad strategies but also strategies at the local level and contribution of CEDAW in their work and also at the individual level.

#### **Group 1**

##### **Strategies at Broad Level**

Lobbying with parliamentarians was mentioned as the first strategy. It would involve giving of material to parliamentarians on the issue. Explaining to them how CEDAW addresses these issues/problems by discussing and sharing the text of CEDAW, General Recommendations and Concluding Comments with them. Exchange dialogue with parliamentarians on how the proposed changes can improve the situation. Remind them of state obligations regarding CEDAW. The group also pointed out that one should be very careful about whom we are interacting in the process. For instance Parliamentarians who are like minded and sensitive towards women's issues should be approached.

Conducting public hearings on the issues (involving all the groups/rural people) was another strategy. This would involve summarising of public hearings and giving this information to public through representations, memoranda etc

Lobbying the media by holding press conferences, publishing articles in newspapers, using manifestoes of political parties as tools of advocacy during lobbying with parliamentarians was also mentioned as a strategy.

Monitoring of legislative process by attending assembly sessions, especially at the committee level (standing committees). It could also be done by tracking media clippings and reports. It was stressed that to be involved in the process one needs to make oneself visible by one's work, activism and public mobilisation

Endorsing campaigns, exposing the patriarchal interpretation of religions and training and awareness raising were also mentioned as strategies.

Levels at which the strategy is intended to be implemented:

- 1) Judiciary
- 2) Executive
- 3) Lawyers
- 4) Activists (grass roots level)

The level of training will vary for each level. The modules will focus on concepts of gender and rights and it will be an ongoing process. Introduction of refresher courses, follow up of trainings would be mandatory to this process. Monitoring of CEDAW implementation process in the country and engagement with CEDAW Committee (process of shadow reports and concluding comments) would also be a part of strategising. Sharing of information and having connectivity between the organisation and particular areas was also stressed. Litigation and other forms of representation by dharnas and demonstrations were highlighted by the group. Above all connection between executive actions, national law and states obligation at the national level was recommended.

**Contribution of CEDAW**

The group felt that CEDAW and its implication have increased from local to regional level. It has enhanced awareness of issues and helped in conceptual understanding of the concepts of gender, discrimination and equality. This has helped in the incorporation of CEDAW in domestic laws and enhanced capacities in planning of projects, training sessions with gender perspective.

**Group 2**

The following issues were identified for the different countries by this group:

Health	Afghanistan, India, Nepal, Bangladesh, Bhutan
Education	Afghanistan, India, Bangladesh, Bhutan
VAW	Afghanistan, India, Nepal, Bangladesh, Bhutan
Trafficking	Afghanistan, India, Bangladesh
Conflict / Security	Afghanistan, India, Nepal
Migrant Women's Rights	Nepal, Bangladesh, India
Worker's Rights in the Unorganised Sector	India, Nepal, Bangladesh

**Strategies at Broad Level**

An important strategy discussed was strengthening bilateral co-operation through SAARC and assigning it a role in implementation of CEDAW. Apart from that, the group highlighted the need to incorporate gender mainstreaming at all levels, especially in the area of budgeting and training for media personal. Afghanistan was taken up as an important example where gender component had to be incorporated in the process of bilateral cooperation. Interpreting religious books in the light of CEDAW was emphasised as another strategising mechanism. Legal training for lawyers and judges was emphasised along with CEDAW sensitisation and interactive processes for journalists, judiciary, police, and media personnel. It was reiterated that CEDAW would be used in media campaigns and research and publication purposes.

### **Contribution of CEDAW**

The group felt that knowledge, skill sharing, networking and sharing of good practice are important contributions of CEDAW. It's the benchmark for understanding gender equality, women's rights applicable at the organisational and the local levels.

### **Group 3**

Issues identified by the group were poverty, violence against women, political participation and access to justice. It was felt that poverty would lead to trafficking, migration, prostitution and influx into the informal sector. The structural, social, physical, mental and certain cultural norms and practices which exemplify violence against women were also discussed at length.

### **Strategies at Broad Level**

Critical analysis and awareness of gaps in Constitution, policy and action was mentioned as a strategy. Networking with civil society, grass roots groups and policy makers also at a regional level was marked out as an important strategy. Training for capacity building and transformation of social roles was yet another strategising mechanism. Media had to be graded into being more sensitive to gender issues. It has to portray women activists as role models. Further the group elucidated the importance of the use of public interest litigation in their work. Involving religious leaders, law enforcing agencies, males in gender sensitisation process was reiterated. There was a call for maintaining gender disaggregated data. It was felt that support services (physical + psychological + legal) and rehabilitation should be ensured to all in need. Other strategies discussed were: to pressurise the government to ensure effective participation of women at all levels and create temporary special measures, sensitise the local elites about laws, provide free legal aid, services, counselling and legal assistance, make women aware of their entitlements, popularise CEDAW General Recommendations and its Concluding Comments at all levels using different media, and finally advocacy for withdrawal of reservations.

### **Contribution of CEDAW**

The group felt that the General Recommendations deepen and expand scope of rights. This is especially true of Articles 5 & 2 (G.R 19) which help to challenge traditional practices and file public interest litigation. Various gender just laws have been adopted because of CEDAW. At individual level, the members of the group felt that CEDAW has been able to influence and change organisational approaches. Lastly, it was stated that CEDAW enables analysis and monitoring of women's rights situation and government periodic reports in respective countries.

## **Session 21: Identifying Needs to help us Generate Change**

This session was facilitated by Madhu. She asked the participants about the technical help they needed to carry forward the learnings from this TOT based on the strategies outlined in the previous session. The recommendations of the participants were as follows:

- Networking of participants and trainers through a yahoo group account
- Refresher courses to be held periodically for the trainers, and to share differences as well as experiences in refresher courses
- Exchange programme \information \materials to be widely shared with participants from other countries so that a broader resource pool is created
- Training tools/ manuals to be evolved

- For countries like Bhutan and Afghanistan, where there is not enough internal capacity on CEDAW, technical assistance needed for sensitising judiciary, parliament, and political parties should be provided. Resource persons could be called from within or outside the country to train the trainers
- TOT duration should be 7-8 days
- Paucity of time reflected in inability to discuss in detail the legal, political, economic and social situation in a few countries
- There should be a resource pool of South Asian trainers
- Training should be done at local and state levels with appropriate material /modules need to ensure that more time is available for informal interactions between the participants
- CEDAW training to include gender budgeting and gender policy.
- For the next TOT it was suggested that participants should bring training tools to share with other participants
- It was also suggested that the participants who attended this workshop should present their learning and also share their experience which would help to train trainers in their respective offices
- Thematic and country level training and TOT were absolutely necessary for special issues such as culture and for countries developing new systems, such as Afghanistan and Bhutan

## • evaluation

**T**his is a summary of the participant's written evaluation of the workshop. A total of 24 participants submitted the evaluation form out of 25 who participated in the TOT workshop. The following are the responses to the questions asked as per the evaluation form. Following are the responses grouped in thematic categories.

### **1. Name two points that you learnt from the workshop that you did not know before**

#### **Regional Commonality and Diversity**

- Learned about the country situations, different levels of implementation of CEDAW, strategies adopted in implementing CEDAW in South Asia
- Learned about the commonality of discrimination against women in the region

#### **Concepts**

- Change in my conception of gender — that neither sex nor gender are of two fixed categories. The session on sex and gender clarified the fluidity and diversity of sex and gender and the dangers of stereotyping into two categories
- How CEDAW converges with issues like violence against women was a new area of concern
- Definition of discrimination
- Direct and indirect discrimination was discussed in a rigorous manner
- Conceptual understanding of CEDAW was done in a systematic manner

#### **International Law**

- Optional Protocol as a concept was made easy
- Difference between Convention and Declaration
- Reporting Process and ingredients of CEDAW shadow report was made clear
- State obligation towards CEDAW and specially UN mechanisms were interesting sessions

- The difference between Alternative reports and Shadow reports was made clear

#### Domestic Incorporation of International Law

- Learned about how reservations become impediment in law reforms
- Learned how progressive judicial interpretations can absorb CEDAW into domestic law
- The session on municipal incorporation was the most appropriate for my work

#### Training Skills

- Training methods / techniques for various constituencies/ target groups

### 2. Were the areas of difficulty that you had detailed in your application met?

Most participants answered in the affirmative. A few regretted that the TOT did not cover the following:

- Development of measurable indicators on women's issues
- Learning from practical experiences of conducting CEDAW training from other participants
- Group work on conducting more 'hand-on' training with newer methods

### 3. What session did you find least useful?

- Two participants cited that the session on direct and indirect method of discrimination as least useful for their work
- Two participants felt that the session on state obligation had not been useful
- Two participants felt that the recapitulation sessions were not useful
- Two participants felt that the sessions on UN mechanisms could have been left to individual study
- Two participants felt that the session on CEDAW use as a tool could have been avoided
- One participant mentioned the sex and gender session and the one on equality could have been merged

### 4. Were you satisfied with the duration, administration and hospitality? Please give your suggestions for improving the workshop.

- Most participants said that all arrangements were good
- Some felt that time management had to be improved
- A few commented that the workshop could have been of a longer duration

### 5. Please rate the following as either good bad or needs improvement

	GOOD	AVERAGE	NEEDS IMPROVEMENT
Content	21	1	1
Process	8	13	4
Resource Persons	22	3	
Communication	15	7	4
Resource Material	20	3	2

### 6. Give three examples of how you might use this training in your work?

#### In Training

- The understanding developed through this training will be put to use in

the trainings that I conduct

- As a trainer, I will use the knowledge and skill acquired from this training to train new trainers. I will deliver more effectively. At the office level, community level, I will try to organise training for the judges and the media persons. Through these trainings, I will create awareness among the local women as well as other people
- I think this TOT is not enough for me as a trainer; I will try to attend other trainings (regional), refresher courses in my country. So that I can use the experience for further trainings in: a) my organisation b) our community level c) by networking
- Try organising TOT on 'CEDAW'
- I will use the knowledge gathered from this TOT while conducting training of human rights /women's rights and prosecution system training for police, lawyers and journalists on behalf of my organisation

#### **For Organisational Capacity Building**

- I will disseminate this among my organisation and my colleagues. Will do the same with college students, judges. The training material, which we are developing, would be as per CEDAW guidelines
- I might incorporate the knowledge of CEDAW in HR related cases; while planning new projects for the organisation; while making arguments during advocacy process with legislatures; developing of small orientation sessions on CEDAW; sharing of information with colleagues in office during formal and informal discussions
- I will disseminate the information to my colleagues and other office staff; train others in my organisation and outside my organisation; network with other participants. I will organise training in my respective field. I will use CEDAW as a training tool. I will organise TOT for juniors in my country
- Build capacity of other staff on CEDAW

#### **For Teaching and Research**

- In engagement with the other groups, research and activism around different issues, the CEDAW standards will be incorporated.
- Engaging in further research on application of CEDAW standards in the specific contexts
- In teaching, research writing and decision-making, I will use CEDAW standards

#### **Community Awareness Raising**

- I will use CEDAW principles with examples to help the community men to internalise the CEDAW values
- I am working mainly on gender and violence issues as a trainer. This TOT has helped in my own understanding. It will help in my training with local partners and community
- Creating awareness on gender and women issues among all sectors in the country

#### **Creating new resources in Local Language**

- I will compare the sessions that I have learnt from this TOT, and compile a manual
- Translate 'CEDAW' to local language (Oriya) and popularising it through paralegals

#### **Monitoring**

- Use and monitor 'Domestic Violence Act' and Sexual harassment at the Workplace, keeping the CEDAW guidelines in mind
- Explore different ways for implementation of CEDAW

### **7. Any Other Comments**

#### **The Need for Country Level and Thematic Training:**

- It was difficult to address context specific needs in a sub regional conference for countries like Bhutan, Afghanistan, whose situations are

culturally and politically vastly different from others.

- It was pointed out that for transitional countries, such as Afghanistan, there was a greater need for long duration residential workshops rather than short conferences on CEDAW, to build internal capacity. A long term and focused approach is needed to move away from dependence on consultants
- Special thematic workshops and discussions on culture and CEDAW are of utmost importance to allow Afghanistan and Baluchistan to focus on approaches, perspective and strategies in their distinct contexts.
- The participants showed a unanimous helplessness when it came to the carrying forward of CEDAW and its implementation in their specific countries, especially with colleagues who were not aware. Some participants asked whether there could be country specific trainings organised.



## • annexure I programme schedule

### DAY 1 25.09.06

TIME	SESSION: CONTENT TOPICS/ELEMENTS	OBJECTIVES / OUTCOMES	ACTIVITY	RESOURCE PERSON FACILITATOR
<b>OPENING SESSION</b>				
9.30 am	Welcome Address	Welcoming participants		UNIFEM and PLD
10 am	Introduction of Participants	Introducing participants	Round-table discussion	SK Priya
10.45 am	Introduction to workshop	Mapping the objectives against participants expectation		SK Priya
11.15 am	Tea Break			
11.30 am	Setting down ground Rules	Setting ground rules for the workshop	Discussion	Madhu Mehra
<b>TOPIC 1 SETTING THE CONTEXT FOR RIGHTS BASED APPROACHES IN SOUTH ASIA</b>				
12 pm	Mapping the Challenges for Women's Rights	Sharing Experiences of the Status of Human Rights in South Asia and Challenges to Implementation of Human Rights Values and Standards in South Asia Examining external and internal barriers to implementation of human rights standards/law		Deepika Udagama
1 pm	Lunch Break			
2 pm	Examining Constitutional Law and Statutory Law	Examining Constitutional Law and Statutory Law from the region to assess challenges and entry points for CEDAW implementation		Sapana Pradhan Malla
<b>TOPIC 2 UNDERSTANDING GENDER DISCRIMINATION</b>				
3 pm	The Ideology of Gender	To develop an understanding of the social construction of gender and inequality		Madhu Mehra

Understand the implications of the ideology of gender in determining disadvantage

4 pm	Tea Break			
4.15	Institutions and Inequality	To recognise the contexts in which discrimination occurs and in which it is structured To understand that discrimination is interconnected		Madhu Mehra
5.30	Allocation of Reading Material			
9 pm	Film Show	Who Can Speak of Men (dir. Ambarien Al Qadar)		

## DAY 2 26.09.06

TIME	SESSION: CONTENT TOPICS/ELEMENTS	OBJECTIVES / OUTCOMES	ACTIVITY	RESOURCE PERSON FACILITATOR
9.30	Recap		Presentation on Reading Material	
10 am	Gender and Law	To critique the role of law and its implementation in reinforcing the inequality of women		Sapana Pradhan Malla
11 am	Tea Break			
11.15 am	Process Session	To Construct the Identity of South Asian Women To critically examine the social construction of gender within the special external and internal contexts operating in South Asia	Game	SK Priya

## TOPIC 3 HUMAN RIGHTS AND WOMEN

12.15 pm	The History of Exclusion	To provide a brief historical background to women's exploitation and activism surrounding it To enable participants to understand the systemic nature of discrimination and the need for holistic approaches to counter it To understand the meaning and nature of Human Rights and standards within the international human rights discourse		Deepika Udagama
1 pm	Lunch Break			
2 pm	The Relevance of a Special Law	Examining other HR documents and standards To understand the need for a special law for women		Deepika Udagama
3 pm	Journey to CEDAW and beyond	To provide a brief background to CEDAW To examine the various responses - national and international to women's activism To surface the need for the concept of substantive equality		Madhu Mehra
4.15 pm	Tea Break			
4.30 pm	The UN systems	To familiarise participants with mechanisms for women's rights and the regional human rights systems (African, European and Inter American Systems)		Deepika Udagama
5.30 pm	Process Session	To explore ways in which other HR systems can complement CEDAW	Group Work Presentation by Participants	SK Priya
9 pm	Film Show	Water (dir. Deepa Mehta)		

**DAY 3 27.09.06**

TIME	SESSION: CONTENT TOPICS/ELEMENTS	OBJECTIVES / OUTCOMES	ACTIVITY	RESOURCE PERSON FACILITATOR
<b>TOPIC 4 TOWARDS EQUALITY</b>				
9 am	Recognising Discrimination	To understand the different dimensions of discrimination To understand that discrimination is interconnected and leads to the denial of rights To adapt the CEDAW framework to South Asian conditions		Sapana Pradhan Malla
10 am	Towards Substantive Equality	To enable participants to differentiate between the various approaches to equality and their relative merits To analyse the implications of different approaches for promoting development and autonomy for women		Deepika Udagama
11am	Tea Break			
11.15 am	Affirmative Action	To understand that more pro active measures are necessary to eliminate discrimination To examine various proactive approaches adopted from around the region The need for and implications of Reservations and Quotas		Sapana Pradhan Malla
12 pm	State Obligation	To understand the legally binding nature of the state's obligation under CEDAW To examine the implications of the Paris Declaration To examine the meaning and implications of gender budgeting		SK Priya
1 pm	Lunch Break			
2 pm	Marshalling Arguments in Favour of Women's Equality	To help participants identify and counter arguments commonly used against equality of women	Group Work Presentation by Participants	
<b>TOPIC 5 OBLIGATIONS UNDER CEDAW</b>				
3.30 pm	Review Process	Familiarise participants with the reporting and monitoring processes under the Convention Familiarise participants with the principle elements of a report to the CEDAW Committee and data requirements Identify intervention points for women's activism		Deepika Udagama
4.30	TEA BREAK			
<b>HALF DAY FREE</b>		<b>GROUP EXCURSION / OUTING</b>		

**DAY 4 28.09.06**

TIME	SESSION: CONTENT TOPICS/ELEMENTS	OBJECTIVES / OUTCOMES	ACTIVITY	RESOURCE PERSON FACILITATOR
9 am	Municipal Incorporation	The status of treaty law implementation in the countries concerned Procedures for incorporation of treaty law into domestic legislation Current domestic jurisprudence in relation to the application of treaty law		Sapana Pradhan Malla
10 am	Role of NGOs in relation to the review	Sharing lessons learnt on writing shadow reports	Presentation by Participants	Madhu Mehra & Sapana Pradhan

	Process Session	The status of implementation of the Concluding Comments: methodology used, good practices, problems and issues	
11.30 am	Tea Break		
11.45 am	Introducing the Optional Protocol CEDAW	Familiarising participants with what it means and how to access it	Deepika Udagama
1 pm	Lunch Break		

#### TOPIC 6 THE ROLE OF THE COMMITTEE

2 pm	Under the Convention	To provide a background of the powers, composition and functions of the Committee To familiarise participants with the procedures for reporting and review	Deepika Udagama
2.45 pm	Under the Optional Protocol	To provide a background of the powers and functions of the Committee To familiarise participants with the procedures for making a complaint To explain the inquiry procedure	Sapana Pradhan Malla

#### TOPIC 7 BRINGING CEDAW HOME

3.30	Obstacles and Opportunities	To surface Issues pertaining to the Implementation of the Convention in all the countries with special reference to facilitating or hindering factors - social, legal, institutional To share practical approaches to enforcement from around the region To share strategies for getting CEDAW reflected in national budgets	Group Work/ Presentation	Madhu Mehra
4.30	Tea Break			
4.45	Group work continues			
5.15	Application of CEDAW	To identify how CEDAW can be used by the participants in their work and domestic contexts To develop linkages across sectors		Sapana Pradhan Malla

#### DAY 5 29.09.06

TIME	SESSION: CONTENT TOPICS/ELEMENTS	OBJECTIVES/OUTCOMES	ACTIVITY	RESOURCE PERSON FACILITATOR
9.30 am	Implementing the Concluding Comments	Sharing of Strategies	Film Show Another World is Possible (dir. Aisha Gazdar)	
11 am	Tea Break			

#### THE NEXT STEPS

11.15 am	Our Roles in Change	Identifying the next steps participants will take in implementing the learning points at the TOT		Madhu Mehra
12.15 pm	Further Needs to Generate Change	Identification of needs for technical assistance to implement the Convention		Madhu Mehra
1.15 pm	Lunch			

#### 2.15 EVALUATION AND CLOSING

- **annexure II**  
**list of participants,**  
**resource persons &**  
**rapporteurs**

COUNTRY	NAME OF THE PARTICIPANT	ORGANISATIONAL AFFILIATION
1. Afghanistan	Azim Nazir	AWN Afghan Women's Network
2. Afghanistan	Najia Zewari	UNIFEM
3. Afghanistan	Shukria Kazmi	AWN Afghan Women's Network
4. Bangladesh	Maksuda Akhter	Bangladesh Mahila Parishad
5. Bangladesh	Mitali Jahan	BNWLA Bangladesh National Women Lawyer's Association
6. Bangladesh	Nasima Akter Milon	Naripokkho
7. Bangladesh	Sadia Tasneem	ASK Ain O Salish Kendra
8. Bhutan	Karma Dema	National Commission for Women and Children
9. Bhutan	Pem Chuki Wangdi	National Commission for Women and Children
10. India	Amita Punj	PLD Partners for Law in Development
11. India	Aradhana Nanda	FARR Friends' Association for Rural Reconstruction
12. India	Bindu Bobby	Positive Women's Network
13. India	Kailash Chand Kumbkair	Academy for Socio legal Studies
14. India	MG Sreekala	North East Network
15. Nepal	Bishnu Bashyal	FWLD Forum for Women Law and Development
16. Nepal	Bijaya Rai Shrestha	Pourakhi
17. Nepal	Kabita Pandey	Pro Public
18. Nepal	Rajendra Kharel	National Judicial Academy
19. Nepal	Yashoda Timsina	Sancharika Samuha
20. Pakistan	Firdaus Arshad	Simorgh Women Resources and Publication Center

21. Pakistan	Hameed Ullah Khan	ROZAN
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23. Pakistan	Yasmin Begum	Srikat Gah
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25. Sri Lanka	WD Samararatne	CENWOR Centre for Women's Research

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