



ASIA PACIFIC FORUM
ADVANCING HUMAN RIGHTS IN OUR REGION

Promoting and Protecting the Human Rights of Women and Girls



A Manual for National Human Rights Institutions

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Promoting and Protecting the Human Rights of Women and Girls: A Manual for National Human Rights Institutions

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Asia Pacific Forum of National Human Rights Institutions
GPO Box 5218
Sydney NSW 1042
Australia

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This manual was written by Dr Anne Gallagher AO, international human rights lawyer and practitioner, whose association with the APF dates back to its establishment in 1996. Anne was a UN official from 1992 to 2003, including four years as Adviser to High Commissioner for Human Rights Mary Robinson. Since 2003, she has worked with the governments of South East Asia on the issue of human trafficking and is recognised as a global expert on the subject. An independent and award-winning scholar, Anne has written many books, journal articles, handbooks and manuals on women's rights, human trafficking, migrant smuggling and the rule of law. She is the author of *Integrating Reproductive Rights into the Work of National Human Rights Institutions of the Asia Pacific Region*, published by APF and UNFPA in 2011.

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This is dedicated to the women and girls of the Asia Pacific region.

Foreword

In recent years, a wide range of international human rights treaties have been established that protect the civil, political, economic, social and cultural rights of women and girls. Despite these achievements, progress has been slow in translating these rights into reality for the vast majority.

Across the Asia Pacific and around the world, women and girls are at particular risk of gender-based violence and harassment. Many also experience discrimination in employment and unequal access to health services, education and the justice system.

In different countries, property and inheritance laws, as well as government policies, can entrench poverty among women and girls and, as a result, their dependence on men. Long-term change is also made more difficult while women in the region remain significantly underrepresented in political decision-making.

Advancing the human rights of women and girls is not something that will happen on its own accord. Nor will a “business as usual” approach deliver any genuine progress towards gender equality.

That is why it is important that national human rights institutions (NHRIs) play a prominent role to lead legislative, policy and attitudinal change.

In 2012, NHRIs from across the globe endorsed the Amman Declaration and Programme of Action. In the same year, APF members also approved the APF Action Plan on the Human Rights of Women and Girls. Both these documents set out concrete actions that NHRIs can take to promote gender equality and address discrimination, violence and other human rights violations against women and girls.

This Manual aims to support NHRIs as they carry out this vital work. It provides practical information on how NHRIs can use their monitoring, investigation, advisory, reporting and education functions to respond to human rights violations and promote gender equality. A number of “good practice” examples from APF member institutions are featured throughout.

In addition, NHRIs should demonstrate a commitment to the human rights of women and girls in the way they go about their own work. Accordingly, the Manual outlines a range of steps that NHRIs can take to “mainstream” gender equality and the human rights of women and girls across the full range of their activities and operations.

With NHRIs increasingly focused on the critical importance of promoting and protecting the human rights of women and girls, the APF will use this Manual in a new blended-learning course to provide key staff and leaders within NHRIs with the skills and knowledge to undertake this important work.

I trust this Manual will be a valuable resource to NHRIs in the Asia Pacific region and other parts of the world.



Kieren Fitzpatrick

Director

Asia Pacific Forum of National Human Rights Institutions

List of abbreviations

APF	Asia Pacific Forum of National Human Rights Institutions
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination on Discrimination against Women
CSW	Commission on the Status of Women
ICC	International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
ILO	International Labour Organization
NGO(s)	Non-governmental organization(s)
NHRI(s)	National human rights institution(s)
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
Paris Principles	Principles relating to the status of national institutions
UNICEF	United Nations Children's Fund
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UPR	Universal Periodic Review

Introduction for users

The human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on the grounds of sex are priority objectives of the international community.¹

[States are urged to] Strengthen and encourage the development of programmes to protect the human rights of women in the national institutions on human rights ... such as human rights commissions or ombudspersons, [and to accord] appropriate status, resources and access to the Government to assist individuals, in particular women, and ensure that these institutions pay adequate attention to problems involving the violation of the human rights of women.²

This Manual is based on an understanding, affirmed through experience, that national human rights institutions (NHRIs) have a critical role to play to ensure that the rights of women and girls are respected and protected. NHRIs can do this by integrating gender and the human rights of women and girls into their working methods, programmes and procedures. They can also seek to prioritize and highlight specific issues of concern to women.

The Manual aims to provide NHRIs, especially those established and operating in compliance with the Paris Principles,³ with a solid framework within which they can strengthen their capacity to contribute effectively to women's and girls' human rights in a range of areas. It includes examples and insights drawn from NHRIs, primarily from APF member institutions.⁴

Promoting and protecting the rights of women and girls can, in different countries, also fall under the responsibility of a specialized institution that works in parallel with the NHRI. Some Asia Pacific countries that have NHRIs also have specialized institutions that focus on issues related to women and girls, such as India (National Commission for Women), Indonesia (National Commission on Violence Against Women), Malaysia (National Advisory Council for the Integration of Women in Development) and Nepal (National Women Commission).

The information in this Manual may be valuable to these specialized institutions and the APF encourages them to use it. However, the Manual has been developed specifically for those NHRIs with a broad human rights mandate that are seeking to ensure that their work in the area of women's and girls' human rights is more systematic and effective. The Manual takes the position that the existence of a specialized institution dealing with women's and girls' issues does not permit the NHRI to avoid its mandated responsibilities to promote and protect the human rights of all persons. In fact, the existence of such an institution can increase the risk that issues related to the human rights of women and girls could become marginalized.

As discussed in Chapter 1, NHRIs have a responsibility to promote a vision of human rights as universal and indivisible. They also have a responsibility to promote two key tenets of international human rights law that are fundamental to the rights of women and girls: non-discrimination and equality. The Manual seeks to support NHRIs in their engagement with specialized institutions, where they exist, to ensure

1 Vienna Declaration and Programme of Action, part I, para. 18; available at www.ohchr.org/en/professionalinterest/pages/vienna.aspx.

2 Beijing Declaration and Platform for Action, s. 232(e); available at www.un.org/womenwatch/daw/beijing/platform/.

3 General Assembly resolution 48/134. Further information on the Paris Principles is available at www.asiapacificforum.net/members/international-standards.

4 The APF's 15 full member institutions are the NHRIs of Afghanistan, Australia, India, Indonesia, Jordan, Malaysia, Mongolia, Nepal, New Zealand, the Palestinian Territories, Philippines, Qatar, the Republic of Korea, Thailand and Timor Leste. The six associate member institutions are the NHRIs of Myanmar, the Maldives, Oman, Samoa, Sri Lanka and Bangladesh. Further information is available at www.asiapacificforum.net/members.

that their work to promote and protect the rights of women and girls is complementary and mutually supportive.⁵

RATIONALE

NHRIs are a vital part of strong national human rights protection systems. They also play a key role in linking the international and domestic human rights systems. Their mandate means that they can engage with all relevant actors at the national level, as well as interact with regional and international bodies and mechanisms, to advocate for laws, policies and practices that protect the human rights of vulnerable groups, including women and girls. The relationships that many NHRIs establish with the communities they serve also provides them with opportunities to help change the attitudes and behaviours that contribute to the many harms committed against women and girls.

There is a clear need for NHRIs to play close attention to the human rights of women and girls. In every country, women are at particular risk of gender-based violence; from the State, from the community and from intimate partners and family members. For example, rape in marriage is often not criminalized and domestic violence is still too rarely prosecuted and punished. In these areas, and in many others, women are denied equal access to justice and to remedies for crimes and violations committed against them.

Women experience direct discrimination in many areas of public and private life. They may be prevented from entering certain occupations or positions and may receive unequal pay for work that is of equal value to that done by men. They may lose their jobs when they have children and may experience sexual harassment in the workplace. Equal access to health and education is often denied to women, with serious consequences for their well-being and economic empowerment. Property and inheritance laws sometimes discriminate against women, entrenching poverty and dependence.

In the Asia Pacific region, as in most parts of the world, there is a marked absence of women in public life and in positions of power and influence.⁶ That situation is a reflection of entrenched gender discrimination and also contributes to perpetuating inequality and discrimination.

While explicitly addressing itself to the human rights of women, this Manual is also very much focused on the rights of girls. Girls suffer many of the same human rights violations as women. Similarly, laws, policies and practices that discriminate against women will inevitably include and affect girls. However, girls are subject to special vulnerabilities that reflect their sex, as well as vulnerabilities associated with childhood. Child marriage, discrimination in education and harmful traditional practices are examples of human rights violations that are particularly relevant to the lives of girls.

This Manual also makes the point that “business as usual” is not sufficient for advancing the rights of women and girls. The long-standing marginalization of women’s human rights in the international human rights system, described in Chapter 1, is just one example of this. To contribute to genuine change, NHRIs need to take proactive steps and “mainstream” the human rights of women and girls and a gender approach within their work.

As the United Nations Secretary-General explains:

Mainstream human rights approaches have long been based on the presumption that human rights norms are gender neutral or unaffected by gender. However, structural imbalances of power between women and men, the systemic nature of discrimination against women and the general absence of women in law creation and implementation processes continue to reflect disproportionately the experiences of men and exclude the experiences of women. These imbalances also influence the generally accepted understanding of international human rights

5 See the APF Action Plan on the Human Rights of Women and Girls: Promoting Gender Equality; 2012; para. 7; available at www.asiapacificforum.net/resources/apf-regional-action-plan-women-and-girls/.

6 United Nations Department of Economic and Social Affairs, *The World’s Women 2010: Trends and Statistics*, 2010, pp. 111-125 and Table 5.A (pp. 21-222).

law, whose structure and substance may present or preserve obstacles to women's equality. Many of the substantive norms of international law are defined in relation to men's experience and stated in terms of discrete violations of rights in the public realm. In addition, inattention to rights of particular interest to women in international human rights law and practice has resulted in neglect and pervasive denial of the rights of women, in particular in the private sphere. These factors have contributed to a lack of enjoyment of human rights by women that, at its roots, has gender-specific explanations.

A focus on gender recognizes that women's unequal status is based on, and is perpetuated by, structures of systemic inequality and discrimination against women. The standard of measurement in the realization of women's equality is not the current male standard of equality, which would simply be a reaffirmation of the status quo. Rather, a new standard of equality should be envisaged based on a reconsideration of current assumptions ...⁷

NHRI COMMITMENT TO WOMEN'S HUMAN RIGHTS

NHRIs in the Asia Pacific region have affirmed that promoting and protecting the human rights of women and girls is a priority for them.⁸ The examples of innovation and good practice included in this Manual are testimony to the important work that many NHRIs are doing in this area.

The representative bodies that NHRIs have established to further their interests and promote cooperation have also made important collective commitments to the human rights of women and girls and to adopting a gender-based approach. The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) is the global representative body of NHRIs. Every two years, the ICC hosts an international conference that focuses on an issue of specific concern to its member institutions. The theme of the 11th International Conference – held in November 2012 in Amman, Jordan – was “The human rights of women and girls: Promoting gender equality”. Representatives from NHRIs of all four regions, international and regional organizations, non-governmental organizations (NGOs) and States took part in the discussions.

The conference adopted the Amman Declaration and Programme of Action⁹ on the rights of women and girls, which has been an important reference in the development of this Manual. The Declaration sets out the key principles for NHRIs in both protecting and promoting the rights of women. The Programme of Action focuses on a number of priority areas, including: political and public participation; economic and social rights; violence against women; and health and reproductive rights.

The APF has a strong track record of engagement on the rights of women and girls, as well as on issues of special concern to women and girls. This work includes coordinating programmes on reproductive rights, trafficking in persons, the rights of migrant workers and sexual orientation and gender identity. In 2000, the APF organized its first major event on women's human rights, a conference which brought together representatives of NHRIs, Governments and NGOs from across the Asia Pacific region. In 2011, at its 16th Annual Meeting, the APF committed to mainstream gender equality into its objectives and work. It also established a Gender Focal Point within the APF secretariat at the senior level of Deputy Director. The following year, APF members concluded a comprehensive regional Action Plan to promote and protect the rights of women and girls in their respective countries.¹⁰ The APF agreed to report on its actions and developments under the Action Plan at its Annual Meetings, starting from 2013. Like the Amman Declaration and Programme of Action, the APF Action Plan has been important in shaping this Manual.

7 *Integrating the gender perspective into the work of United Nations human rights treaty bodies*, HRI/MC/1998/6, paras. 18-19.

8 OHCHR, *Survey on National Human Rights Institutions: Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide*, 2009, p. 48. See also A/HRC/23/L.15, especially paras. 21-24.

9 Available at www.asiapacificforum.net/human-rights/women-and-girls/.

10 The APF Action Plan on the Human Rights of Women and Girls: Promoting Gender Equality was adopted at the 11th International Conference of the International Coordinating Committee of National Institutions on the Promotion of Human Rights, Amman, Jordan, 5-7 November 2012; available at www.asiapacificforum.net/human-rights/women-and-girls/.

The APF has collaborated with a number of institutions and agencies on studies, training programmes and other initiatives related to the rights of women and girls. Its engagement at the international level on this matter has included leading an advocacy campaign to secure a formal role for NHRIs to participate at the United Nations Commission on the Status of Women, the major intergovernmental policy forum on women's issues. The APF's Advisory Council of Jurists has also been active on the issue of gender and the human rights of women and girls.

STRUCTURE OF THE MANUAL

The objective of the Manual is to provide NHRIs with tools and information that can help them to integrate the human rights of women and girls into their work and to engage effectively on issues that are of direct importance to the rights of women and girls.

The Manual contains 12 chapters, organized in four parts.

Part I introduces the human rights of women and girls. It outlines some of the many challenges facing women and girls and explains why their rights require separate and additional attention. It also explains the key international laws, mechanisms and procedures that have been developed to advance the human rights of women and girls.

Part II considers the practical ways in which NHRIs can protect and promote the human rights of women and girls. The chapters reflect the primary functions of NHRIs, including: to support a strong national legal and policy framework; to respond to allegations of human rights violations involving women and girls; to conduct inquiries into systemic violations of human rights; to promote awareness and understanding of human rights; and to engage with regional and international human rights bodies and mechanisms.

Part III examines in detail three issues that have been identified as priorities for many NHRIs in the Asia Pacific region: reproductive rights; violence against women; and the rights of female migrant domestic workers.

Part IV concludes the Manual with a review of the ways in which NHRIs can effectively integrate gender and the human rights of women and girls into different aspects of their work and organizational practice. It also includes a discussion on how NHRIs can effectively mainstream women's and girls' human rights into their general activities and programmes.

All parts of the Manual feature examples of good practice drawn from APF member institutions. Each chapter includes key questions, the legal basis for the involvement of NHRIs and a summary of the major issues.



Part I: The human rights of women and girls



Chapter 1: Why focus on women's and girls' human rights?

Chapter 2: The international framework around women's and girls' human rights

Chapter 3: The institutional framework for women's and girls' human rights

Chapter 1:

Why focus on women's and girls' human rights?

KEY QUESTIONS

- Don't human rights protect everyone? Why is it important to recognize special or different rights for women and girls?
- What are the main human rights issues and obstacles facing women and girls?



1.1. INTRODUCTION

Human rights are widely understood as fundamental entitlements that are inherent to all persons simply because they are human beings. While the idea of human rights has been around for a long time, it did not find universal expression until the establishment of the United Nations at the end of the Second World War. The Charter of the United Nations affirms one of the core purposes of the organization to be “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”.¹¹ This goal was given clear expression in the Universal Declaration of Human Rights, adopted in 1948, which recognizes “the inherent dignity and of the equal and inalienable rights of all members of the human family”.¹²

In the years since the adoption of the Universal Declaration of Human Rights, a wide range of international human rights standards and norms have been developed. Mechanisms to promote and protect these human rights have also been established. In addition, the international community has sought to clarify the key characteristics of human rights, set out below.

Inherent: Human rights flow from a person's humanity. They are not given to a person by a government, or any other kind of authority, and they cannot be taken away. They apply equally to all people – women and men, girls and boys – because humanity itself is equal.

Universal: Everyone, everywhere, has the same human rights, “without distinction of any kind such as race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.¹³ This idea of universality is important to women and girls because it demands that their interests and concerns be recognized and incorporated into how we understand human rights and into the work of all institutions that have a role to promote the enjoyment of those rights.

Inalienable: Human rights may not be abandoned, given up or taken away. For example, a person cannot enslave herself or himself; anyone in that position will be a slave and anyone who is exercising control over that person, even with that person's “consent”, will be violating that person's rights. Similarly, a decision to observe religious or cultural practices that discriminate against women does not take away from a person's right to not be discriminated against.

¹¹ Article 1(3)

¹² Preamble.

¹³ Article 2.

Indivisible: This concept expresses the idea that there is no priority among rights. In practice, however, women and girls can experience very real challenges when different rights come into conflict, such as religious freedom and the prohibition on sex-based discrimination. However, the idea behind “indivisibility” is very important. It acknowledges the complexity of the challenges that women face; it recognizes that all human rights contribute to dignity and well-being and that it is not possible to “pick and choose” which rights should be protected and which ones can be ignored.

Interdependent: The enjoyment and fulfilment of some rights may depend on other rights being respected and protected. For example, the right of women not to be discriminated against in laws is essential for them to realize the right to property and equal rights in marriage. Likewise, the right of women to exercise choice in relation to reproduction is essential for them to realize all aspects of the right to health.

1.2. WHY THE RIGHTS OF WOMEN AND GIRLS NEED SPECIAL ATTENTION

The description of human rights above makes clear that all human rights apply equally to women and girls and that certain rights, such as political or economic rights, cannot be reserved solely for men or otherwise protected and respected differently for women. This understanding was first recognized in the Universal Declaration of Human Rights, which proclaimed that everyone was entitled to enjoy human rights and fundamental freedoms “without distinction of any kind”, including distinction based on sex. The core international human rights treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, also affirm that the rights they contain apply to all persons, without distinction of any kind, and expressly guarantee the right of women and men to the equal enjoyment of those rights.¹⁴

However, from the earliest days of the human rights movement, it was apparent that forces within society – forces of culture and tradition, as well as the dominant economic, social and political interests – operate to prevent human rights from applying equally to women and girls. Those same forces have also had a direct impact on how human rights were conceived and how the international human rights system itself has evolved over time.

The main problems relating to the recognition of “women’s human rights” can be usefully summarized as follows.

- The process by which human rights were conceptualized and defined did not involve significant participation by women or consideration of violations of human dignity that particularly affect women. This exclusion, at such a crucial stage, at least partly explains the general failure to consider gender (see definition below) as a factor in defining the substantive content of rights.
- A widespread belief in and commitment to the underlying objectivity and “gender neutrality” of core human rights prevented recognition of the fact that equal treatment of persons in unequal situations will invariably perpetuate, rather than eradicate, injustices.
- Many issues of urgent concern to women – such as underdevelopment, extreme poverty, illiteracy, gender segregation, lack of reproductive choice and systemic violence – were either not defined as human rights issues at all or were not made the subject of legally binding norms. This has contributed to a failure of the main international human rights mechanisms to address these issues.
- The structure of international human rights law has traditionally excluded actions that occur in the private sphere and violations caused by non-State actors. This approach disadvantages women, who more often live outside the public domain, by rendering invisible many of the violations committed against them.

14 Articles 2(2) and 2(2) respectively.

- Discrimination against women and other violations of their rights – in areas such as family law, nationality, property, health, bodily integrity, movement and expression – have often been justified by Governments on the basis of culture, religion or ethnicity. This approach has helped to obscure violations committed against women, to perpetuate an ideological resistance to the notion of women's human rights and to inhibit a unified response from the international community.
- For much of its history, the international human rights system has dealt with women as a “special” category, occasionally identifying areas where women's interests are particularly affected but not integrating women into mainstream human rights activities and concerns. The situation has been somewhat different for girls, where the category of “children's rights” has been relatively more open to recognizing the distinct needs and vulnerabilities of girls. However, within the broader human rights system, there has been a marginalization of the rights of girls as well as women.

1.3. PROGRESS AND ACHIEVEMENTS IN WOMEN'S HUMAN RIGHTS

During the United Nations Decade for Women (1976–1985), women from all parts of the world joined forces to improve the status of women. A series of world conferences were held at which strategies for improving the situation of women and girls were developed. Towards the end of that period and into the 1990s, women began to use the human rights framework as a way to voice their concerns and describe violations against them, as well as to give shape and substance to the changes that were needed.

*The incorporation of women's perspectives and lives into human rights standards and practice forces recognition of the dismal failure of countries worldwide to accord women the human dignity and respect that they deserve simply as human beings. A woman's human rights framework equips women with a way to define, analyse and articulate their experiences of violence, degradation and marginality. Finally, and very importantly, the idea of women's human rights provides a common framework for developing a vast array of visions and concrete strategies for change.*¹⁵

The shortcomings of the human rights system with respect to the concerns of women were not publicly acknowledged until a worldwide global campaign for women's human rights forced the issue on to the agenda of the 1993 World Conference on Human Rights (the Vienna Conference). For the first time ever, the international community openly accepted that the body of international laws and mechanisms established to promote and protect human rights had not properly taken into account the concerns of over half the world's population. In the final document of the Vienna Conference, States formally recognized the human rights of women and girls to be “an inalienable, integral and indivisible part of universal human rights”.¹⁶ They further demanded that the “equal status of women and the human rights of women ... be integrated into the mainstream of United Nations system-wide activity” and “form an integral part of the United Nations human rights activities”.¹⁷ These calls were repeated in stronger terms and in greater detail at the Fourth World Conference on Women, held in Beijing in 1995.

*Human rights are women's rights ... And women's rights are human rights. ... As long as discrimination and inequities remain so commonplace around the world – as long as girls and women are valued less, fed less, fed last, overworked, underpaid, not schooled and subjected to violence in and out of their homes – the potential of the human family to create a peaceful, prosperous world will not be realized.*¹⁸

15 C. Bunch and S. Frost; “Women's Human Rights: An Introduction” in *Routledge International Encyclopaedia of Women*; 2000;., p. 1.

16 Vienna Declaration and Programme of Action; part I, para. 18.

17 Ibid; part II, para. 37 and part I, para. 18.

18 Speech by Hillary Rodham Clinton to the Fourth World Conference on Women; Beijing, China; 1995.

Since then, there have been numerous important developments in both recognizing and implementing the human rights of women and girls. For example, global literacy rates have risen dramatically and women and girls have shared fully in this change. More girls are being educated than ever before and, in many countries, more women than men are now attending university. Women have much greater opportunity and resources to plan their families and improved healthcare has made childbirth much less dangerous than it used to be.

These achievements are substantial and deserve to be celebrated. However, much remains to be done. Progress has been uneven and women in developed countries have benefited disproportionately from changes in laws, policies, practices and attitudes. Even at the international level, there is still disagreement around issues such as political participation, reproductive rights and action to address violence against women. As detailed below, the human rights situation of women and girls remains dire in many parts of the world.

1.4. HUMAN RIGHTS ISSUES OF SPECIAL CONCERN TO WOMEN

There is little disagreement today with the notion that “human rights are women’s rights”. Few would openly challenge the idea that core human rights – from political participation, to education, to criminal justice – apply equally to men and women, without discrimination on the basis of sex.

But the concept of “women’s human rights” takes this a step further. It recognizes that women experience their human rights – and experience violations of their human rights – in ways that are different to men. It also recognizes that women are vulnerable to human rights violations in ways that reflect the fact they are women and the structures and expectations that are built into the idea of what it is to be “female”.

“Sex” refers to the biological differences between men and women.

“Gender” refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women.¹⁹

“Gender equality” refers to the equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women’s and men’s rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration – recognizing the diversity of different groups of women and men. Gender equality is not a “women’s issue” but should concern and fully engage men as well as women. Equality between women and men is seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centred development.²⁰



¹⁹ Committee on the Elimination of Discrimination against Women; General Recommendation No. 28; 2010; para. 5

²⁰ United Nations Office of the Special Advisor on Gender Issues and Advancement of Women; *Gender Mainstreaming: Strategy for Promoting Gender Equality*; August 2001 (revised); p. 1.

Violence against women: The United Nations General Assembly and the Committee on the Elimination of Discrimination against Women (CEDAW Committee) have both defined violence against women as violence that is perpetrated against women because they are women or that affects women disproportionately. Women are subjected to different forms of violence, including physical, sexual, psychological and economic violence. Perpetrators of such violence are often intimate partners and, in many regions, culture and tradition, often reflected in inadequate laws, prevent women from seeking or receiving protection from domestic violence. Women are also subjected to targeted violence in war, armed conflict and post-conflict situations. As noted by the United Nations Secretary-General, “[t]he use of rape as a tool of war and atrocities targeting women are the most systematic expression of violence against women in armed conflict”.²¹

Discrimination in employment: In most countries, formal discrimination in employment on the basis of sex is not lawful. However, on almost every indicator, women continue to suffer the effects of discrimination. Worldwide, women earn less than men for work of equal value. The wage gap between women and men is particularly marked in Asia. More women than men are employed informally and, as a result, lack job security and other safety nets. Women are still very rarely employed in jobs with status, power and authority. Maternity is a major source of discrimination in employment. Even where it is prohibited in law, many pregnant women are dismissed from their jobs.

Discrimination in access to justice: Women are often denied access to justice, which means they cannot seek or receive redress for discrimination and violence committed against them. Examples include the failure of public authorities to investigate and prosecute cases of sexual assault and domestic violence and the failure to provide remedies to women who are discriminated against in employment. In some countries, access to justice is rendered impossible as women are explicitly denied equality before the law. More commonly, it is a combination of institutional and procedural obstacles, as well as discriminatory practices and attitudes that deny women access to justice.

Discrimination in access to education and resources: While the situation is improving in many countries, girls are more likely than boys to be kept away from school and to finish school earlier. At the individual level, women’s lack of access to or control over resources limits their economic autonomy. This lack of access and control is often made possible through discriminatory laws and cultural practices relating to property ownership and inheritance rights.

Reproductive health: In every part of the world, women and adolescent girls bear the brunt of sexual and reproductive ill-health. Globally, it is women and girls in developing countries who are at most risk of reproductive-related disease, disability and death. Many aspects of reproductive rights remain unsettled and controversial. As a result, reproductive rights have tended to occupy a marginalized position in international human rights law and practice.

Participation in public life and decision-making: Women continue to be poorly represented in public life at all levels and in most spheres. While the figures are improving, women make up only a small percentage of the heads of States or Governments around the world. Similarly, women comprise more than 30 per cent in the lower or single house of their national parliament in only a handful of countries. A 2012 report by the Inter-Parliamentary Union and UN Women found that, globally, women hold less than 20 per cent of seats in parliament. The figure in Asia is 17.9 per cent and in the Pacific it is 14.9 per cent, making women’s representation in the Asia-Pacific region one of the lowest in the world, second only to the Arab States. The countries of Asia and the Pacific have the lowest worldwide proportion of women government ministers.²²

Links, overlaps and multiple discrimination: Identifying individual issues of special concern should not obscure the strong links between violations of women’s human rights. These links, which reflect the indivisibility and interrelatedness of all human rights, were recognized in the Amman Declaration in the specific context of economic and social rights:

21 *In-depth study on all forms of violence against women: Report of the Secretary-General*; A/61/122/Add.1; para. 94.

22 Inter-Parliamentary Union and UN Women; *Women in Politics Map: 2014*; available at www.ipu.org/pdf/publications/wmnmmap14_en.pdf.

*Poverty and inequality are significant factors that increase vulnerability to discrimination, hunger and gender-based violence. Patriarchal structures, systems and macro-economic choices devalue the lives and the contributions of women, who also suffer disproportionately from the ensuing militarization, war, violence, unemployment and precarious employment. These choices impact negatively on women's and girls' time, health and safety and women and girls bear the brunt of austerity measures including through budget cuts on public services, such as health, education and social security. The worst impacts of the global and national financial crises are felt by those who are poor, the majority of whom are women and girls.*²³

Women from ethnic, racial, religious and cultural minorities often suffer “multiple discrimination”. The issue of disability provides another example of the links between rights and between violations of rights. The United Nations has confirmed that women and girls with disabilities experience “double discrimination”, which places them at higher risk of gender-based violence, sexual abuse, neglect, maltreatment and exploitation. According to the United Nations Development Programme (UNDP), the global literacy rate is as low as one per cent for women with disabilities.²⁴ Women with disabilities face greater difficulties in securing access to adequate housing, health, education, vocational training and employment. They are also more likely than men to be institutionalized. In addition, they experience inequality in hiring, promotion rates, pay for equal work and access to training, retraining, credit and other productive resources.

WOMEN'S HUMAN RIGHTS: A LONG WAY TO GO

- Women account for two-thirds of the world's 774 million illiterate adults.
- In 1995, women comprised ten per cent of members of parliaments globally. By 2009, the rate had increased to 17 per cent.
- Inadequate infrastructure and housing conditions, as well as natural hazards, disproportionately affect the health and survival of poor women. More than half of all rural households, and about a quarter of urban households in sub-Saharan Africa, lack ready access to potable water.
- In about half the countries in Asia, women are disadvantaged by discriminatory statutory and customary laws regarding inheritance and property rights.
- Customary laws restrict women's access to land or other property in about half the countries of Asia. Discriminatory inheritance laws are also widespread in the region.
- Worldwide, 67 million girls are forced into marriage before the age of 18 years.
- As many as seven out of every ten women will experience violence in their lifetime.
- Of the 500 largest corporations in the world, only 13 had a female Chief Executive Officer in 2009.
- Each year, around 80 million women have unintended pregnancies (45 million of which end in abortion) and more than half a million women die from complications associated with pregnancy, childbirth and the postpartum period.²⁵



23 Preamble; available at www.asiapacificforum.net/human-rights/women-and-girls/.

24 Conference of States Parties to the Convention on the Rights of Persons with Disabilities, “Discussion Paper for the Informal Session: Women with Disabilities, Note by the Secretariat”; CRPD/CSP/2012/CRP.5; para. 4, citing E. Helander, *Prejudice and dignity: An introduction to community based rehabilitation*; UNDP; 1998 (2nd edition).

25 United Nations Department of Economic and Social Affairs; *The World's Women 2010*. See also APF and UNFPA; *Integrating Reproductive Rights into the Work of National Human Rights Institutions of the Asia Pacific Region*; 2011.

1.5. HUMAN RIGHTS ISSUES OF SPECIAL CONCERN TO GIRLS

Within the larger movement for the realization of women's rights, history has clearly shown that it is essential to focus on the girl child in order to break down the cycle of harmful traditions and prejudices against women. Only through a comprehensive strategy to promote and protect the rights of girls, starting with the younger generation, will it be possible to build a shared and lasting approach and a wide movement of advocacy and awareness aimed at promoting the self-esteem of women and allowing for the acquisition of skills which will prepare them to participate actively in decisions and activities affecting them. Such an approach must be based on the recognition of human rights as a universal and unquestionable reality, free from gender bias.

There is a need to ensure that a woman's life-cycle does not become a vicious cycle where the evolution from childhood to adulthood is blighted by fatalism and a sense of inferiority. Only through the active involvement of girls, who are at the root of the life-cycle, is it possible to initiate a movement for change and betterment.²⁶

The human rights issues set out above are, of course, also relevant to girls. The structural discrimination and inequality that underlines and perpetuates a lifetime of poverty and disadvantage for many millions of women begins in childhood. Laws, policies and practices that discriminate against women will inevitably include and affect girls. However, it is important to recognize that girls are subject to special vulnerabilities that reflect their sex and gender, as well as vulnerabilities associated with childhood.



Primary school students in Gaza City. Photo by Arne Hoel/World Bank, reproduced under a CC BY-NC-ND 2.0 license.

26 Adapted from the Committee on the Rights of the Child; *Report of the 8th Session*; CRC/C/38; paras. 284-285.

Child marriage: Child marriage (defined as marriage before the age of 18 years) is widespread and affects tens of millions of girls. In some African and South Asian countries, half of all girls are married by the time they are 18.²⁷ Child marriage often has a devastating effect on girls, as well as on their families and communities. Girls who marry early are usually forced to leave school and move away from family and friends. Once married, they are at risk of domestic violence, sexual abuse and health complications associated with early sexual activity and childbearing. This in turn leads to high rates of maternal and child mortality. Conflict and post-conflict situations may impact marriage practices by exacerbating the factors that increase girls' vulnerability to child marriage (for example, girls displaced by war and girl refugees being married early to "protect" them from sexual violence in conflict situations or refugee camps).

Discrimination in education: Over the past decade there have been significant improvements in literacy and school attendance rates for girls in most regions and most countries. However, almost two thirds of the world's illiterate adults are women and this reflects continuing problems of discrimination.²⁸ In many developing countries, girls are still more likely than boys to not attend school or to drop out early. For those girls who are at school, discrimination can result in lack of access to opportunities, failure to progress and early withdrawal.

ASSESSING DISCRIMINATION IN EDUCATION: KEY QUESTIONS²⁹

- Is education *available* to girls and women, throughout the cycle, and not simply in terms of primary level enrolments?
- Is education *accessible*, in terms of the absence of financial, physical, geographical and other barriers?
- Is education *acceptable* for girls and women as well as boys and men, in terms of its content, form and structure – both what is being taught and learned, and how that teaching and learning happens?
- Is education *adaptable*, in terms of being responsive to girls' and boys' different needs and lives, taking into account phenomena such as girls' and women's labour, early marriage and pregnancy?



Violence and harmful traditional practices: Gender-based violence against girls is widespread and can take place in many different contexts: in their homes, at school, at the workplace or in the community. For example, the United Nations estimates that, worldwide, up to 50 per cent of all sexual assaults are committed against girls under 16 years.³⁰ Girls are also vulnerable to a number of harmful practices based on tradition, culture, religion and superstition. For example, according to the World Health Organization, about 140 million girls and women worldwide currently live with the consequences of female genital mutilation,³¹ a violation of their human rights that reflects deep-rooted inequality between the sexes and constitutes an extreme form of discrimination against women.

27 UNFPA; *Marrying Too Young: End Child Marriage*; 2012. See also International Center for Research on Women; "Child Marriage Facts and Figures"; available at www.icrw.org/child-marriage-facts-and-figures.

28 Global Campaign for Education; *Gender Discrimination in Education: The violation of the rights of women and girls*; 2012; p. 6. See also United Nations Department of Economic and Social Affairs; *The World's Women 2010: Trends and Statistics*; 2010; Chapter 3.

29 Global Campaign for Education; *Gender Discrimination in Education: The violation of the rights of women and girls*; 2012; p. 6.

30 UN Women; "Statistics on violence against women and girls"; available at www.endvawnow.org/en/articles/299-fast-facts-statistics-on-violence-against-women-and-girls-.html. See also United Nations Department of Economic and Social Affairs, *The World's Women 2010: Trends and Statistics*; 2010; Chapter 6.

31 World Health Organization; "Female genital mutilation: Fact sheet No. 241"; February 2013; and *Understanding and addressing violence against women: Female genital mutilation*; 2012.

VIOLENCE AGAINST CHILDREN AND THE GENDER DIMENSION

No violence against children is justifiable; all violence against children is preventable.

A child rights-based approach to child caregiving and protection requires a paradigm shift towards respecting and promoting the human dignity and the physical and psychological integrity of children as rights-bearing individuals rather than perceiving them primarily as 'victims'.

The concept of dignity requires that every child is recognized, respected and protected as a rights holder and as a unique and valuable human being with an individual personality, distinct needs, interests and privacy.

States parties should ensure that policies and measures take into account the different risks facing girls and boys in respect of various forms of violence in various settings. States should address all forms of gender discrimination as part of a comprehensive violence-prevention strategy. This includes addressing gender-based stereotypes, power imbalances, inequalities and discrimination which support and perpetuate the use of violence and coercion in the home, in school and educational settings, in communities, in the workplace, in institutions and in society more broadly. Men and boys must be actively encouraged as strategic partners and allies, and along with women and girls, must be provided with opportunities to increase their respect for one another and their understanding of how to stop gender discrimination and its violent manifestations.³²



KEY POINTS: CHAPTER 1

- Human rights are proclaimed to be inherent, universal, inalienable, indivisible and interdependent. In practice, however, these principles are not always respected when it comes to the human rights of women and girls.
- All human rights apply equally to women and girls. However, many different factors operate to prevent human rights from applying equally to women and girls. These factors have also had a direct impact on how human rights were conceived and how the international human rights system itself has evolved over time.
- The idea of “women’s human rights” recognizes that women and girls experience their human rights – and experience violations of their human rights – in ways that are different to men. It also recognizes that women are vulnerable to human rights violations in ways that reflect the fact they are women and the structures and expectations that are built into the idea of what it is to be “female”.
- Human rights issues of special concern to women include violence against women; discrimination in employment; discrimination in access to justice; discrimination in access to education and resources; discrimination in relation to family life; reproductive health; participation in public life and decision-making; the links between rights and between violation of rights; and instances of multiple discrimination.
- Human rights issues of special concern to girls include child marriage; discrimination in education; physical and sexual violence; and harmful traditional practices.



³² Committee on the Rights of the Child; General Comment No. 13; 2011; paras. 3(a)-(c) and 72(b).

Chapter 2:

The international legal framework around women's and girls' human rights

KEY QUESTIONS

- What do the concepts of “equality” and “discrimination” mean in relation to women and their rights?
- What are the main sources of obligation with regard to women's and girls' human rights?
- Can States be held responsible for the actions of private individuals and entities that harm women and girls and violate their rights?



2.1. INTRODUCTION: NON-DISCRIMINATION AND EQUALITY

Since the establishment of the United Nations, a body of international law has evolved that sets out the human rights that belong to all people: men, women and children. As noted by the Committee on the Elimination of Discrimination against Women (CEDAW Committee):

The Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities contain explicit provisions guaranteeing women equality with men in the enjoyment of the rights they enshrine, while other international human rights treaties, such as the International Convention on the Elimination of All Forms of Racial Discrimination, are implicitly grounded in the concept of non-discrimination on the basis of sex and gender.³³

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is the central and most important specialized instrument on the rights of women. It is sometimes described as an international bill of rights for women. It is supplemented by a number of other specialized instruments, such as International Labour Organization (ILO) conventions on discrimination in employment, equal remuneration and equal opportunities; by non-treaty standards of varying legal strength, such as the outcome documents of major world conferences; and by several regional treaties that seek to promote and protect the rights of women.

Two basic concepts underlie the legal framework around women's human rights:

Equality: The concept of equality means much more than treating all persons in the same way. For example, providing women with equal opportunities could lead to an equal outcome in some situations but it may also not have that result. This is because the equal treatment of persons in unequal situations will generally operate to perpetuate, rather than eradicate, injustice. Genuine (or “substantive”) equality usually only results from efforts that seek to address these situational disadvantages. It is this broader view of equality which has become the underlying principle and the ultimate goal in the struggle for the recognition and acceptance of the human rights of women and girls.

33 General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention, 2010, para. 3.

Non-discrimination: CEDAW clearly sets out the prohibition of all forms of discrimination against women. In this context, discrimination includes any difference in treatment on the grounds of sex which:

- Intentionally or unintentionally disadvantages women
- Prevents society as a whole from recognizing women's rights, in both the domestic and the public spheres
- Prevents women from exercising the human rights and fundamental freedoms to which they are entitled.³⁴

This broad definition is important for understanding the indirect nature of much discrimination. For example, a law or policy that appears to be gender neutral could have an adverse effect on women because of past discrimination or other factors. Therefore, it is the *impact* of such a law or policy that must be assessed in order to determine whether it or not it is discriminatory.

EQUALITY AND NON-DISCRIMINATION

The enjoyment of human rights on the basis of equality between men and women must be understood comprehensively. Guarantees of non-discrimination and equality in international human rights treaties mandate both *de facto* and *de jure* equality. *De jure* (or formal) equality and *de facto* (or substantive) equality are different but interconnected concepts. Formal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. Substantive equality is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.³⁵

... the overall object and purpose of the Convention [CEDAW] ... is to eliminate all forms of discrimination against women with a view to achieving women's *de jure* and *de facto* equality with men in the enjoyment of their human rights and fundamental freedoms. States parties to the Convention are under a legal obligation to respect, protect, promote and fulfil this right to non-discrimination for women and to ensure the development and advancement of women in order to improve their position to one of *de jure* as well as *de facto* equality with men.

The Convention goes beyond the concept of discrimination used in many national and international legal standards and norms. While such standards and norms prohibit discrimination on the grounds of sex and protect both men and women from treatment based on arbitrary, unfair and/or unjustifiable distinctions, the Convention focuses on discrimination against women, emphasizing that women have suffered, and continue to suffer from various forms of discrimination because they are women.

... three obligations are central to States parties' efforts to eliminate discrimination against women. These obligations should be implemented in an integrated fashion and extend beyond a purely formal legal obligation of equal treatment of women with men.



³⁴ Article 1 of the Convention states that "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

³⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights, 2005, para. 7.

Firstly, States parties' obligation is to ensure that there is no direct or indirect discrimination against women in their laws and that women are protected against discrimination – committed by public authorities, the judiciary, organizations, enterprises or private individuals – in the public as well as the private spheres by competent tribunals as well as sanctions and other remedies. Secondly, States parties' obligation is to improve the *de facto* position of women through concrete and effective policies and programmes. Thirdly, States parties' obligation is to address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions.

In the Committee's view, a purely formal legal or programmatic approach is not sufficient to achieve women's *de facto* equality with men, which the Committee interprets as substantive equality. In addition, the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences. Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming underrepresentation of women and a redistribution of resources and power between men and women.³⁶

Prohibition on discrimination: Sources of obligation³⁷

Treaty source

- Universal Declaration of Human Rights (article 2)
- International Covenant on Civil and Political Rights (articles 2(1), 3 and 26)
- Convention on the Elimination of All Forms of Discrimination against Women (article 2)
- Convention on the Rights of the Child (article 2)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 7)
- International Covenant on Economic, Social and Cultural Rights (articles 2(2), 3 and 7)
- Convention on the Rights of Persons with Disabilities (article 6)
- European Convention on Human Rights (article 14)
- American Convention on Human Rights (article 1)
- African Charter on Human and People's Rights (articles 2 and 18(3))

Non-treaty source

Cairo Declaration on Human Rights in Islam (article 1)

³⁶ CEDAW Committee, General Recommendation No. 25 on temporary special measures, 2004, paras. 4-8.

³⁷ Adapted from OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary*, 2010, p. 63.

2.2. THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

CEDAW was adopted by the United Nations General Assembly in 1979. Almost every country in the world is party to CEDAW. The current exceptions are Iran, Palau, Somalia, South Sudan, Sudan, Tonga and the United States of America.³⁸ The Convention is, in the words of the CEDAW Committee, “part of a comprehensive international human rights legal framework directed at ensuring the enjoyment by all of all human rights and at eliminating all forms of discrimination against women on the basis of sex and gender”.³⁹

CEDAW emerged out of a realization that additional means for protecting the human rights of women were necessary because the mere fact of their “humanity” had not been sufficient to guarantee women the protection of their rights. The preamble to CEDAW is very clear on this point. It explains that, despite the existence of other instruments, women still do not have equal rights with men and that discrimination against women continues to exist in every society.

The definition of discrimination set out in CEDAW was critical in establishing clarity and agreement around women’s human rights. By focusing on *effect* as well as *purpose*, the definition also affirms a clear prohibition against gender-based discrimination. As the CEDAW Committee has noted:

*... identical or neutral treatment of women and men might constitute discrimination against women if such treatment resulted in or had the effect of women being denied the exercise of a right because there was no recognition of the pre-existing gender-based disadvantage and inequality that women face.*⁴⁰

DISCRIMINATION AGAINST WOMEN IS

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.⁴¹



CEDAW consists of an introductory statement (or “preamble”) and 30 articles. Read together, articles one to five and article 24 establish the general framework for interpreting the substantive articles in the Convention. These articles also outline the key principles that underlie CEDAW and help guide the implementation of the substantive articles (although this is not a clear distinction). In addition to defining what constitutes discrimination against women, CEDAW establishes an agenda for national action to promote basic human rights, overcome barriers of discrimination against women and girls and achieve progress towards gender equality. It does not specify in detail how these goals are to be achieved. Rather, it recognizes that individual countries are best placed to determine how they will reform their laws and policies in order to end discrimination against women and promote genuine equality.

By ratifying or acceding to CEDAW, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including to:

- Incorporate the principle of equality of men and women in their legal system

38 As at June 2013. For current status information, see the United Nations Treaty Collection; available at https://treaties.un.org/Pages/Home.aspx?clang=_en.

39 General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention, 2010, para. 3.

40 Ibid; para. 5.

41 CEDAW; article 1.

- Abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women
- Establish tribunals and other public institutions to ensure the effective protection of women against discrimination
- Eliminate all acts of discrimination against women by private persons and entities.

CEDAW places obligations on States parties to respect, protect and fulfil the rights of women to non-discrimination and to the enjoyment of equality. In its General Recommendation No. 28, the CEDAW Committee explains these requirements in greater detail.⁴²

The obligation to *respect* requires that States parties refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights.

The obligation to *protect* requires that States parties protect women from discrimination by private actors and take steps directly aimed at eliminating customary and all other practices that perpetuate the notion of inferiority or superiority of either of the sexes and of stereotyped roles for men and women.

The obligation to *fulfil* requires that States parties take a range of steps to ensure that women and men enjoy equal rights *de jure* (in law) and *de facto* (in practice) including, where appropriate, the adoption of temporary special measures.⁴³



Australian Defence Force health personnel. Photo by U.S. Pacific Fleet, reproduced under a CC BY-NC 2.0 license.

42 See para. 16.

43 The CEDAW Committee clarifies the meaning and scope of temporary special measures in its General Recommendation No. 25, 2004, para. 1.

Under CEDAW, States parties have obligations of *means or conduct* and obligations of *results*. They are required to develop and implement policies, programmes and institutional frameworks that aim to fulfil the specific needs of women and lead to the full development of their potential on an equal basis with men.

Countries that have ratified or acceded to CEDAW are legally bound to put its provisions into practice. They are also required to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

SUMMARY OF ARTICLES

Article 1: Definition of discrimination

Defines discrimination against women to cover all aspects of human rights and fundamental freedoms.

Article 2: Obligations on Governments

States parties must eliminate discriminatory laws, policies and practices in their national legal frameworks.

Article 3: Equality

Women are fundamentally equal with men in all spheres of life. Governments must take measures to uphold women's equality in the civil, political, economic, social and cultural life of the country.

Article 4: Temporary special measures

Governments may implement temporary special measures to accelerate women's equality.

Article 5: Prejudice

Governments agree to modify or eliminate practices based on assumptions about the inferiority or superiority of either sex.

Article 6: Trafficking in persons

Governments agree to take steps to suppress the trafficking of women, their exploitation and prostitution.

Article 7: Political and public life

Women have an equal right to vote, to hold public office and to participate in civil society.

Article 8: International work

Women have the right to work at the international level without discrimination.

Article 9: Nationality

Women have equal rights with men to acquire, change or retain their nationality and that of their children.

Article 10: Education

Women have equal rights with men in education, including equal access to schools, vocational training and scholarship opportunities.

Article 11: Employment

Women have equal rights in employment, including to be free from discrimination on the basis of marital status or maternity.

Article 12: Health

Women have equal rights to affordable health care services.



Article 13: Economic and social life

Women have equal rights to family benefits, financial credit and participation in recreational activities.

Article 14: Rural women

Rural women have the right to adequate living conditions, participation in development planning and access to health care and education.

Article 15: Equality before the law

Women and men are equal before the law. Women have the legal right to enter contracts, own property and choose their place of residence.

Article 16: Marriage and family

Women have equal rights with men in matters related to marriage and family relations.

Articles 17–24: Role of the CEDAW Committee

Includes information on the reporting requirements for States parties.

Articles 25–30: Administration of CEDAW

Includes information on the procedure for ratification and date of entry into force.

2.3. THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

An optional protocol to a human rights treaty is a treaty in its own right. It is open to all States that are party to the main treaty. A number of the core human rights treaties have optional protocols. They may provide additional standards in relation to the human rights issues addressed by the different treaties. Alternatively, an optional protocol may provide an avenue for individual complaints to be brought or inquiries to be made with regard to possible violations of the rights protected in the main treaty.

In 1999, the General Assembly adopted the Optional Protocol to CEDAW⁴⁴ and called on all States parties to CEDAW to become party to the new instrument as soon as possible. By ratifying the Optional Protocol, a State party recognizes the competence of the CEDAW Committee – the treaty body responsible for monitoring compliance of States parties with their obligations under CEDAW (discussed in further detail in Chapter 3) – to receive and consider complaints from individuals or groups within that State's jurisdiction.

The Optional Protocol sets out two procedures for dealing with potential violations of women's human rights.

The first is a **communications (or complaints) procedure** that allows individual women, or groups of women, to submit claims of violations of rights protected under CEDAW for consideration by the CEDAW Committee. Certain criteria need to be met before complaints can be considered, including a requirement that domestic remedies have been exhausted.

The second is an **inquiry procedure** that enables the CEDAW Committee to initiate inquiries into situations of grave or systematic violations of women's rights. The inquiry procedure allows the CEDAW Committee to investigate widespread violations of human rights that may not be adequately addressed through the individual complaints procedure.

⁴⁴ More information about the Optional Protocol is available at www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx. See also Australian Human Rights Commission, *Mechanisms for advancing women's human rights: A guide to using the Optional Protocol to CEDAW and other international complaint mechanisms*, 2011; and the Optional Protocol to CEDAW website, available at <http://opcedaw.wordpress.com/about/>.

2.4. REGIONAL TREATIES ON THE RIGHTS OF WOMEN

The only regional human rights treaty dedicated specifically to the human rights of women is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.⁴⁵ This instrument, which entered into force in 2005, is open to all States parties to the African Charter on Human and People's Rights. It requires States parties to take specific steps to combat all forms of discrimination against women through appropriate legislative, institutional and other measures. It affirms the right of every woman to dignity, as well as the right to life, integrity and security of the person. It requires States parties to take steps in a number of areas, such as harmful traditional practices, family law, access to justice, political participation, education, housing, health and reproductive rights. Special protection is to be provided for especially vulnerable women, including widows, elderly women, women with disabilities and women in distress.

2.5. TREATIES ADDRESSING ISSUES OF PARTICULAR CONCERN TO WOMEN

As noted in Chapter 1, all human rights treaties are of relevance to women and girls. However, some treaties deal with matters that may be particularly relevant to the rights of women and girls.

Specialized treaties of particular relevance to women's human rights

- Convention on the Rights of the Child
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Convention on the Rights of Persons with Disabilities
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
- Council of Europe Convention on Action against Trafficking in Persons
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)
- Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention; not yet in force)

ILO Conventions

- No. 189 (2011) Convention concerning Decent Work for Domestic Workers
- No. 183 (2000) Convention concerning the revision of the Maternity Protection Convention (revised)
- No. 156 (1981) Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities
- No. 111 (1958) Convention concerning Discrimination in Respect of Employment and Occupation
- No. 100 (1951) Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value

45 Note also the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

WOMEN AND THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

The Convention on the Rights of Persons with Disabilities recognizes that women and girls with disabilities are often at greater risk – both within and outside the home – of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. It explicitly recognizes equality between men and women as a fundamental principle for the actions of States and includes an article specifically on the rights of women with disabilities.

Article 6: Women with disabilities

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.
2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.



2.6. TREATIES ADDRESSING ISSUES OF PARTICULAR CONCERN TO GIRLS

The Convention on the Rights of the Child is a critical instrument for realizing the rights of girls. The core provisions of the Convention, including its overarching principle to act in the “best interests of the child”, apply equally to boys and girls. The Convention obliges States parties to ensure that each child – girl or boy – within their jurisdictions has all the rights recognized by the Convention. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography has a particular gender dimension, reflecting the fact that certain forms of exploitation particularly affect girls.



Girls dressed in traditional clothing celebrate the Garangao festival in Qatar. Photo by Omar Chatriwala, reproduced under a CC BY-NC-ND 2.0 license.

2.7. NON-TREATY INSTRUMENTS FOCUSING ON THE RIGHTS OF WOMEN

Not all international instruments relevant to the rights of women are legally enforceable treaties. Declarations, final documents of international conferences, United Nations resolutions, the findings of human rights treaty bodies and the reports of the special procedures are all important sources of guidance for Governments. As “soft law” these instruments also help contribute to the development of new legal norms and standards. They are not directly binding in themselves but they have persuasive or moral authority. Further, they may affect the interpretation of binding treaties and so they can, in some instances, acquire indirect binding status.

Soft law is important in several areas that directly touch upon the issues raised in this Manual. For example, CEDAW does not mention “violence against women” as such. As explained in Chapter 10, it is through a resolution of the General Assembly and a general recommendation of the CEDAW Committee that violence against women has been explicitly recognized as a form of discrimination against women and, as such, a violation of women’s human rights. Another example is the right to a remedy. While the right to a remedy for violations of international human rights law is widely recognized, it has been given detailed and explicit guidance through several instruments that have been adopted as resolutions of the General Assembly, such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power⁴⁶ and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.⁴⁷

Outcome documents of major world conferences have also informed and influenced global understanding of women’s human rights. For example, the concept of reproductive rights that emerged from the International Conference on Population and Development has been critically important in shaping and reflecting international consensus on reproductive rights (see Chapter 9), while the 1995 Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women, set out a comprehensive understanding of violence against women and recognized the particular vulnerabilities of women belonging to minorities.

2.8. HOW ARE STATES HELD RESPONSIBLE FOR VIOLATIONS OF THE HUMAN RIGHTS OF WOMEN?

International human rights law is directed primarily at States as they are responsible for promoting and protecting the rights of all people within their jurisdictions.

States can be directly responsible for violations of women’s human rights. The torture of women in detention, for example, or passing a law preventing women from owning or inheriting property on an equal basis with men are acts undertaken by the State for which the State is legally responsible.

However, many violations of women’s human rights are committed by individuals and private entities. Companies and business owners discriminate against women in the workplace. Criminals sexually assault women, force them into prostitution and exploit their labour. Men beat their partners and entire communities may be involved in the perpetuation of harmful practices, such as forced marriage.

States do not escape responsibility for such violations. This is because international law places on States very specific obligations to protect, respect and fulfil human rights. In short, the State will generally be held responsible for a harmful outcome if it can be shown that:

46 General Assembly resolution 40/34.

47 General Assembly resolution 60/147.

- The State could have acted to prevent the violation and did not do so, or
- The State failed to respond to the violation (for example, by investigating and prosecuting offenders to the required standard of “due diligence”), or
- The State failed to provide victims with access to remedies.

Certain treaties will sometimes place specific obligations on States with regard to violations that are a result of private conduct. In such cases, the State will be held responsible when it fails to meet that obligation, as well as when it fails on one of the grounds set out above. For example, in addition to addressing public acts of discrimination, CEDAW requires States parties to take concrete steps to “eliminate discrimination against women by any person, organization or enterprise”.⁴⁸ States parties are also required to take steps to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”.⁴⁹ Both these obligations require States to directly engage with the conduct and attitudes of individuals and private entities that have a negative impact on women and their rights.⁵⁰

THE NATURE OF STATE PARTY RESPONSIBILITY UNDER CEDAW⁵¹

States parties have an obligation not to cause discrimination against women through acts or omissions; they are further obliged to react actively against discrimination against women, regardless of whether such acts or omissions are perpetrated by the State or by private actors. Discrimination can occur through the failure of States to take necessary legislative measures to ensure the full realization of women’s rights, the failure to adopt national policies aimed at achieving equality between women and men and the failure to enforce relevant laws.

Article 2 is not limited to the prohibition of discrimination against women caused directly or indirectly by States parties. Article 2 also imposes a due diligence obligation on States parties to prevent discrimination by private actors. In some cases, a private actor’s acts or omission of acts may be attributed to the State under international law. States parties are thus obliged to ensure that private actors do not engage in discrimination against women as defined in the Convention. The appropriate measures that States parties are obliged to take include the regulation of the activities of private actors with regard to education, employment and health policies and practices, working conditions and work standards, and other areas in which private actors provide services or facilities, such as banking and housing.



48 Article 2(e).

49 Article 5(a).

50 For determinations of the CEDAW Committee concerning State party obligations in relation to private actors see, for example: *A.T. v. Hungary*; Communication No. 2/2003, views adopted 26 January 2005; *Goekce (deceased) v. Austria*, Communication No. 5/2005, views adopted 6 August 2007; and *Jallow v. Bulgaria*, Communication No. 32/2011, views adopted 23 July 2012.

51 CEDAW Committee; General Recommendation No. 28, 2010, paras. 10 and 13

2.9. REMEDIES FOR VIOLATIONS OF WOMEN'S HUMAN RIGHTS

*The particular circumstances in which women and girls are made victims of crimes and human rights violations ... require approaches specially adapted to their needs, interests and priorities, as defined by them.*⁵²

All women and girls who have experienced violation of their human rights have an internationally recognized legal right to access fair and adequate remedies. Remedies are a practical means by which victims can both access and receive justice. States are under an international legal obligation to provide access to appropriate remedies. The International Covenant on Civil and Political Rights, for example, requires States parties to ensure “that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy”.⁵³

There has been extensive recognition at the international level of the right to remedies for women who are victims of gender-based violence. All major legal and policy instruments relating to violence against women affirm the importance of remedies, including the Organization of American States' Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women,⁵⁴ the United Nations General Assembly's Declaration on the Elimination of Violence against Women,⁵⁵ the CEDAW Committee's General Recommendation No. 19 on violence against women⁵⁶ and the Beijing Platform for Action.⁵⁷ An important, non-legal instrument that deals specifically with this issue, in the particular context of human rights violations in situations of conflict, is the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, adopted at a regional meeting of women's rights activists and advocates in 2007. It is also relevant to note that the CEDAW Committee has consistently affirmed that CEDAW includes an implied right to a remedy.⁵⁸

An important instrument for understanding the right to a remedy is the Basic Principles and Guidelines on the Right to a Remedy, adopted by the General Assembly in 2005. The Basic Principles affirm that:

- The general obligation on States to ensure respect for and to implement human rights law includes an obligation to ensure equal and effective access to justice and the availability of remedies
- The right to a remedy for gross violations of human rights, a term that would incorporate egregious violations of women's human rights, includes the right of access to justice *and* the right to reparation for harm suffered *and* access to information concerning violations and reparation mechanisms
- Reparation for victims of gross violations of human rights should be *full and effective*, while respecting the principles of appropriateness and proportionality.

52 Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, para. 7.

53 Article 2(3).

54 See article. 7(g) which requires women victims of violence to have “effective access to restitution, reparations or other just and effective remedies”.

55 See article 4(d) which requires States to provide women subjected to violence with “access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms”. The Declaration was adopted by General Assembly resolution 48/104.

56 See para. 24(i) which holds that States should provide “[e]ffective complaints procedures and remedies, including compensation”.

57 See para. 124(d) which encourages States to provide victims of violence against women with “access to just and effective remedies, including compensation and indemnification and healing of victims”. See also para. 124(h) which states that victims of violence against women should have access to the mechanisms of justice and effective remedies for the harms they have incurred and to be informed of their legal rights. Note also the Beijing+5 Outcome Document, para. 69(b) (Governments to take measures to provide victims with avenues for redress) and para. 98(a) (Governments and international organizations should “improve knowledge and awareness of the remedies available for violations of women's human rights”); adopted by General Assembly resolution S-23/3.

58 See further the discussion in A. Byrnes, “Article 2”; in M. Freeman, C. Chinkin and B. Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary*, 2012, pp. 71-97.

FORMS OF REMEDY FOR VIOLATION OF WOMEN'S HUMAN RIGHTS

While the form and extent of remedies required for violations of women's human rights will depend on the nature and circumstances of the breach, the CEDAW Committee has clarified that reparation should be proportionate to the physical and mental harm undergone and to the gravity of the violations suffered.⁵⁹ General international law further requires that the form or forms must reflect and advance the obligation on the offending State to, as far as possible, wipe out the consequences of the breach and re-establish the situation that existed prior to its occurrence.⁶⁰

The Basic Principles and Guidelines on the Right to a Remedy recognize the following forms of remedy:⁶¹

Restitution involves material, judicial or other measures aimed at restoring the situation that existed prior to the violation, as far as this is possible. For a workplace violation of women's rights, for example, this could involve reinstatement to a job or repayment of earnings owed.

Compensation is the most common form of remedy and is payable for damage caused by an intentionally wrongful act to the extent that such damage is economically assessable and not made good by restitution. In the case of violations of women's human rights, an adequate and appropriate remedy could include compensation for physical and psychological harm, lost opportunities, loss of earnings, moral damage and medical, legal or other costs incurred as a result of the violation.

Rehabilitation is a victim-centred notion that recognizes the need to ensure that the woman who has suffered violation of her human rights has her status and position "restored" in the eyes of the law, as well as with the wider community. Rehabilitation could include the provision of medical and psychological care and legal and social services.

Satisfaction is a remedy for injuries that are not necessarily financially assessable but can be addressed by ensuring that the violations of the victim's rights are properly acknowledged and addressed. Verification of the facts and full and public disclosure of the truth (to the extent that this will not cause further harm) are examples of remedies aimed at providing satisfaction to the victim.

Guarantees of non-repetition may be an important component of the right to a remedy for violations of women's human rights in situations where women are vulnerable to further harm.



59 See, for example, *A.T. v. Hungary*, Communication No. 2/2003, views adopted 26 January 2005, para. 9.6 II (vi).

60 Permanent Court of International Justice, *Factory at Chorzow (Merits)* [1929] PCIJ (Ser. A), No. 17, p. 47.

61 See section IX, especially paras. 19-23. See also A/HRC/14/22.

KEY POINTS: CHAPTER 2

- The concept of equality means more than treating all persons in the same way. Genuine equality will usually only result from efforts that seek to address and correct existing obstacles that create or exacerbate disadvantage and discrimination. This broader view of equality has become the underlying principle and the ultimate goal in the struggle for recognition and acceptance of the human rights of women.
- Under CEDAW, discrimination against women encompasses any difference in treatment on the grounds of sex which: intentionally or unintentionally disadvantages women; prevents society as a whole from recognizing women's rights in both the domestic and public spheres; or prevents women from exercising the human rights and fundamental freedoms to which they are entitled.
- States parties to CEDAW accept obligations to respect, protect and fulfil women's rights to non-discrimination and to the enjoyment of equality. They also commit themselves to undertake a series of measures to end all forms of discrimination against women and girls.
- The Optional Protocol to CEDAW sets out two procedures for dealing with complaints of violations of women's rights: a communications procedure and an inquiry procedure.
- International law places an obligation on States to *protect, respect* and *fulfil* human rights. A State will generally be held responsible for a harmful outcome if it can be shown that: the State could have acted to prevent the violation and did not do so; the State failed to respond to the violation; or the State failed to provide victims with access to remedies.
- All women and girls who have experienced violation of their human rights have an internationally recognized legal right to access fair and adequate remedies. Remedies are a practical means by which victims can both access and receive justice. Forms of remedy include restitution, compensation, rehabilitation, satisfaction and the guarantee of non-repetition.
- In addition to binding international law, non-treaty instruments can be important sources of guidance and interpretation on the human rights of women and girls.



Chapter 3:

The institutional framework for women's and girls' human rights

KEY QUESTIONS

- How do the United Nations human rights mechanisms help protect women's and girls' human rights?
- How does the CEDAW Committee function?
- What other specialized mechanisms identify and respond to violations of women's and girls' human rights?
- What avenues are available to complain about violations of women's and girls' human rights?



The international legal framework around women's and girls' human rights described in Chapter 2 is overseen by a range of different mechanisms and procedures, operating at both the international and the regional levels. Some of these procedures are specifically focused on the rights of women and girls, while others deal with the full range of human rights or with a particular issue or group that has special relevance for women and girls and their rights.

Part A: The international human rights system

3.1. HUMAN RIGHTS COUNCIL

The Human Rights Council is a subsidiary organ of the General Assembly. It is the principal intergovernmental body responsible for human rights within the United Nations system. The Council was established in 2006 by General Assembly resolution 60/251 to replace the former Commission on Human Rights. It is a political body, with its membership consisting of governmental representatives. The Council meets regularly in Geneva and is also able to hold special sessions. It is mandated to:

- Promote universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner
- Address situations of violations of human rights, including gross and systematic violations, and to make recommendations about them
- Promote the effective coordination and the mainstreaming of human rights within the United Nations system.

Human Rights Council resolution 6/30 – on integrating the human rights of women throughout the United Nations system – commits the Council to incorporate into its programme of work “sufficient and adequate time, at a minimum an annual full-day meeting, to discuss the human rights of women, including measures that can be adopted by States and other stakeholders [such as NHRIs], to address human rights violations experienced by women” and “an annual discussion on the integration of a gender perspective throughout its work and that of its mechanisms, including the evaluation of progress made and challenges experienced”.⁶² The first annual meeting took place in 2008 at the Council's seventh session and focused on the elimination of violence against women in all its forms and manifestations.

62 Human Rights Council resolution 6/30, paras. 20 and 22.

3.1.1. Universal periodic review

The Human Rights Council supervises the universal periodic review (UPR), a procedure through which it periodically reviews the fulfilment by United Nations Member States of their human rights obligations and commitments. As discussed further in Chapter 8, the UPR is an important process through which NHRIs can raise human rights concerns relevant to women and girls.

In addition to the UPR, the Council has various other monitoring and compliance mechanisms, including the special procedures, the complaint procedure and the Advisory Committee.

3.1.2. Special procedures

“Special procedures” are mechanisms working under the Human Rights Council to address either specific country situations (country mandates) or thematic issues in all parts of the world (thematic mandates). Mandate holders act as impartial experts. They can be individuals (“Special Rapporteur”, “Special Representative of the Secretary-General” or “Independent Expert”) or working groups comprised of up to five representatives. The working methods are specific to the mandate but usually involve studying the human rights situation, receiving information from a range of sources and conducting country visits. Many mandate holders are able to receive information on specific allegations of human rights violations, including from NHRIs, and to send urgent appeals or letters to Governments asking for clarification or resolution of a particular problem.

Country mandates will often consider issues of relevance to women and girls. The reports of the country rapporteurs often include a special section dealing with issues of particular concern to women and girls. A considerable number of thematic mandates have been established that are of direct relevance to women’s human rights (see section 3.4). Some thematic mandates are specific to women’s human rights issues – for example, the Special Rapporteur on violence against women, its causes and consequence and the Working Group on the issue of discrimination against women in law and in practice – while others have specifically incorporated women’s human rights as an element of their mandate; for example, the Special Rapporteur on the situation of human rights defenders. In addition, a number of special procedures consider the rights of women and girls within their broader mandates; for example, the Special Rapporteur on the right to food.



Special Rapporteur on violence against women and the Chair of CEDAW address the fifty-seventh session of the Commission on the Status of Women. UN Photo by Rick Bajornas.

NHRIs can use the studies and the reports of the special procedures as an important source of information on various conceptual issues, as well as on comparative situations in other countries.

3.2. HUMAN RIGHTS TREATY BODIES

A committee comprised of independent experts nominated by States parties has been established for each of the major human rights treaties. Each committee is charged with overseeing the implementation of its respective treaty and, depending on the treaty or any additional protocol, receiving and considering complaints of violations, conducting inquiries or exercising other functions given to it by the treaty.

HUMAN RIGHTS TREATY BODIES

Human Rights Committee

International Covenant on Civil and Political Rights

Committee on Economic, Social and Cultural Rights

International Covenant on Economic, Social and Cultural Rights

Committee on the Elimination of Racial Discrimination

International Convention on the Elimination of All Forms of Racial Discrimination

Committee on the Elimination of Discrimination against Women

Convention on the Elimination of All Forms of Discrimination against Women

Committee against Torture

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Subcommittee on Prevention of Torture

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Committee on the Rights of the Child

Convention on the Rights of the Child

Committee on Migrant Workers

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Committee on the Rights of Persons with Disabilities

Convention on the Rights of Persons with Disabilities

Committee on Enforced Disappearances

International Convention for the Protection of All Persons from Enforced Disappearance



All of the major human rights treaties require States parties to report regularly on their progress towards implementation of the relevant treaty. The treaty bodies consider these reports, along with information that may be received from other sources, including NHRIs, NGOs and relevant United Nations agencies.

State reports are required to conform to certain guidelines issued by the treaty body. Increasingly, these guidelines request States to provide specific information on the situation of women in relation to the rights protected by the relevant treaty. The reporting process usually involves a dialogue with the State during which issues raised by the committee or in the State report are discussed. At the conclusion of this process, the committee will release “concluding observations”, which set out their principal findings and recommendations.

Treaty bodies can also work on interpreting and clarifying the provisions of their treaties. This is usually done through issuing “general comments” or “general recommendations”. The CEDAW Committee’s general recommendations, discussed below, have been an important source of insight into key provisions of CEDAW.

As noted above, some committees have additional functions, usually given to them by the treaty or an optional protocol to the treaty. These can include considering complaints from individuals who claim that their rights have been violated by a State party; initiating confidential inquiries based on well-founded reports of serious, grave or systematic human rights violations of treaty provisions within a State party; and early warning or urgent action procedures that seek to prevent or respond to immediate concerns.

While all treaty bodies should – and increasingly do – have a gender dimension to their work, the subject area of some lends itself to more consistent and in-depth examination of the human rights of women and girls. One example is the Committee on the Rights of the Child, which very often considers the situation of girls in relation to the full set of rights enshrined in the Convention on the Rights of the Child. Many of the general comments issued by the Committee on the Rights of the Child include special consideration of the particular situation and vulnerabilities of girls.

Another treaty body whose work has demonstrated a strong understanding of gender is the Committee on Economic, Social and Cultural Rights, which oversees the International Covenant on Economic, Social and Cultural Rights. The Committee has issued a general comment on the equal right of men and women to the enjoyment of all economic, social and cultural rights.⁶³ It has also included consideration of the human rights of women in other general comments; for example, those dealing with the right to education, the right to adequate food, the right to the highest attainable standard of health, the right to water and the right to adequate housing.

The Human Rights Committee, which oversees implementation of the International Covenant on Civil and Political Rights, has also taken a regular and in-depth interest in the human rights of women. For example, in 2000, the Committee released a general comment on equality of rights between men and women that considered the parameters of the prohibition on sex-based discrimination and detailed how the major rights enshrined in the Covenant are to apply to women.⁶⁴

EQUALITY BEFORE THE LAW

The right of everyone under article 16 [of the International Covenant on Civil and Political Rights] to be recognized everywhere as a person before the law is particularly pertinent for women, who often see it curtailed by reason of sex or marital status. This right implies that the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground. It also implies that women may not be treated as objects to be given, together with the property of the deceased husband, to his family. States must provide information on laws or practices that prevent women from being treated or from functioning as full legal persons and the measures taken to eradicate laws or practices that allow such treatment.⁶⁵



63 General Comment No. 16; 2005.

64 General Comment No. 28. The Human Rights Committee has often addressed issues related to the human rights of women through its complaint procedure. See, for example: *L.N.P. v Argentine Republic*, Communication No. 1610/2007, views adopted 16 August 2011; *L.M.R. v Argentina*, Communication No. 1608/2007, views adopted 28 April 2011; and *K.L. v Peru*, Communication No. 1153/2003, views adopted 22 November 2005.

65 Human Rights Committee, General Comment No. 28 on the equality of rights between men and women, 2000, para. 19.

The Committee on the Elimination of Racial Discrimination, which oversees the International Convention on the Elimination of All Forms of Racial Discrimination, has increasingly acknowledged the gender dimensions of racial discrimination and the vulnerability of women to multiple forms of discrimination.

GENDER AND RACIAL DISCRIMINATION

The Committee notes that racial discrimination does not always affect women and men equally or in the same way. There are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men. Such racial discrimination will often escape detection if there is no explicit recognition or acknowledgement of the different life experiences of women and men, in areas of both public and private life.

Certain forms of racial discrimination may be directed towards women specifically because of their gender, such as sexual violence committed against women members of particular racial or ethnic groups in detention or during armed conflict; the coerced sterilization of indigenous women; abuse of women workers in the informal sector or domestic workers employed abroad by their employers. Racial discrimination may have consequences that affect primarily or only women, such as pregnancy resulting from racial bias-motivated rape; in some societies women victims of such rape may also be ostracized. Women may also be further hindered by a lack of access to remedies and complaint mechanisms for racial discrimination because of gender-related impediments, such as gender bias in the legal system and discrimination against women in private spheres of life.⁶⁶



3.3. INTERNATIONAL CRIMINAL COURT

The Rome Statute, adopted on 17 July 1988, established the permanent International Criminal Court. The Statute is the first international treaty to identify crimes against women as crimes against humanity, war crimes and, in some situations, genocide, when occurring in the context of an international or internal armed conflict and satisfying other criteria. These crimes against women include rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilizations, sexual violence, gender-based persecutions and trafficking in persons.⁶⁷

The Court is based on individual criminal responsibility. As such, it complements the responsibility of States under the international human rights treaties by holding individuals accountable for the crimes they commit. In practice, the Court is an important mechanism to redress human rights violations by holding individuals accountable for their acts and omissions.

NHRIs can contribute to the International Criminal Court regime by:

- Encouraging ratification of the Rome Statute
- Providing advice on incorporating the Rome Statute into national law
- Developing strategies and providing advice on improving national compliance
- Conducting credible investigations and gathering documentation relating to crimes against humanity, war crimes and genocide, including crimes against women.

⁶⁶ Committee on the Elimination of Racial Discrimination, General Recommendation No. 25 on the gender-related dimensions of racial discrimination, 2000, paras. 1-2.

⁶⁷ See www.haguejusticeportal.net/index.php?id=12400.

In 2012, the APF co-hosted an international conference on the role and performance of the International Criminal Court in achieving gender justice. It also examined the participation of States the Asia Pacific region in the Court's regime.⁶⁸

The conference addressed questions such as:

- How effective has the Court been in ensuring that gender justice informs its mandate, practice and procedure?
- What factors explain the limited engagement of States in the Asia Pacific region with the Court
- How does advocacy around the Court fit into broader strategies for achieving gender justice and equality at the global, regional and national level?
- What is the future of the Court and similar tribunals in ending impunity for perpetrators of crimes and contributing to the prevention of such crimes?



3.4. MECHANISMS DEALING SPECIFICALLY OR PRIMARILY WITH THE HUMAN RIGHTS OF WOMEN

3.4.1. Committee on the Elimination of Discrimination against Women

The Committee, established in 1982, is the primary international body for implementation of the international legal framework around women's human rights.

The Committee is composed of 23 experts on women's issues from around the world. Committee members are nominated and elected by States parties. The Committee's primary functions and general mode of work is the same as the other treaty bodies. It monitors the performance of States parties in meeting their obligations under CEDAW, principally through the review of national reports submitted every four years. The Committee discusses the reports with representatives of States parties and sets out its findings and recommendations in concluding observations.

The Committee also makes recommendations on matters relating to the implementation or interpretation of CEDAW or, more generally, on issues affecting the human rights of women and girls. As of July 2013, the Committee had issued 29 general recommendations.

Under the Optional Protocol to CEDAW, the Committee can receive and consider complaints from individuals or groups about violations of the rights protected in CEDAW within the jurisdiction of a State party to the Optional Protocol. The Committee has delivered a number of important decisions under this procedure on matters that have included domestic violence, sterilization, sexual and reproductive health, employment, nationality and conditions of detention. In 2011 the Committee issued the first-ever international decision which found a State responsible for a preventable maternal death.⁶⁹

Along with NGOs, NHRIs have made important contributions to the work of the CEDAW Committee. The role that NHRIs can play in this regard is explored in more detail in Chapter 8.

⁶⁸ See www.asiapacificforum.net/news/international-criminal-court-conference-and-workshop.

⁶⁹ *Teixeira (deceased) v. Brazil*, Communication No. 17/2008, views adopted 27 September 2011. See Chapter 9 of this Manual for further discussion of this case.

General recommendations adopted by the CEDAW Committee⁷⁰

- | | |
|--|---|
| <ul style="list-style-type: none"> • General Recommendation No. 1
on reporting guidelines (1986) • General Recommendation No. 2
on reporting guidelines (1987) • General Recommendation No. 3
on education and public information programmes (1987) • General Recommendation No. 4
on reservations (1987) • General Recommendation No. 5
on temporary special measures (1988) • General Recommendation No. 6
on effective national machinery and publicity (1988) • General Recommendation No. 7
on resources (1988) • General Recommendation No. 8
on article 8 (1988) • General Recommendation No. 9
on statistical data (1989) • General Recommendation No. 10
on the tenth anniversary of the adoption of the Convention (1989) • General Recommendation No. 11
on technical advisory services for reporting (1989) • General Recommendation No. 12
on violence against women (1989) • General Recommendation No. 13
on equal remuneration for work of equal value (1989) • General Recommendation No. 14
on female circumcision (1990) • General Recommendation No. 15
on women and AIDS (1990) | <ul style="list-style-type: none"> • General Recommendation No. 16
on unpaid women workers in rural and urban family enterprises (1991) • General Recommendation No. 17
on measurement and quantification of the unremunerated domestic activities of women and their recognition in the GNP (1991) • General Recommendation No. 18
on disabled women (1991) • General Recommendation No. 19
on violence against women (1992) • General Recommendation No. 20
on reservations (1992) • General Recommendation No. 21
on equality in marriage and family relations (1994) • General Recommendation No. 22
on article 20 (1995) • General Recommendation No. 23
on women in political and public life (1997) • General Recommendation No. 24
on article 12 (women and health) (1999) • General Recommendation No. 25
on article 4, paragraph 1 (temporary special measures) (2004) • General Recommendation No. 26
on women migrant workers (2008) • General Recommendation No. 27
on older women and protection of their human rights (2010) • General Recommendation No. 28
on the core obligations of States parties under article 2 (2010) • General Recommendation No. 29
on article 16 (economic consequences of marriage, family relations and their dissolution) (2013) |
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3.4.2. Special procedures dealing with the human rights of women

The work of many, if not all, special procedures will have a distinct gender dimension. However, a number of the thematic special procedures deal with issues that are specifically or primarily focused on women and girls and their rights.

⁷⁰ All general recommendations adopted by the CEDAW Committee are available at www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx.

The very first special procedure created focused explicitly on the human rights of women. The Special Rapporteur on violence against women, its causes and consequences was established in 1994, a direct result of activism around women's human rights at the 1993 World Conference on Human Rights.

This mandate has played a critical role in confirming violence against women as a violation of human rights and in establishing the parameters of States' responsibility to protect women from violence and to respond effectively.

THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN, ITS CAUSES AND CONSEQUENCES

Mandate⁷¹

- (a) Seek and receive information on violence against women, its causes and consequences from Governments, treaty bodies, specialized agencies, other special rapporteurs responsible for various human rights questions and intergovernmental and non-governmental organizations, including women's organizations, and to respond effectively to such information
- (b) Recommend measures, ways and means at the local, national, regional and international levels to eliminate all forms of violence against women and its causes, and to remedy its consequences
- (c) Work closely with all special procedures and other human rights mechanisms of the Human Rights Council and with the treaty bodies, taking into account the request of the Council that they regularly and systematically integrate the human rights of women and a gender perspective into their work, and cooperate closely with the Commission on the Status of Women in the discharge of its functions
- (d) Adopt a comprehensive and universal approach to the elimination of violence against women, its causes and consequences, including causes of violence against women relating to the civil, cultural, economic, political and social spheres.



Method of work

The Special Rapporteur:

- Transmits urgent appeals and communications to States regarding alleged cases of violence against women
- Undertakes fact-finding country visits
- Submits annual thematic reports.

The other special procedure to deal directly and exclusively with women's human rights is the Working Group on the issue of discrimination against women in law and practice, which commenced work in 2011. The role of the Working Group is to identify, promote and exchange views, in consultation with States and other actors, on good practices related to the elimination of laws that discriminate against women. It is also required to establish a dialogue with States and other actors on laws that have a discriminatory impact where women are concerned. As part of its role, the Working Group is required to undertake a study on the ways and means in which it can cooperate with States to fulfil their commitments to eliminate discrimination against women in law and in practice. NHRIs are to be consulted as part of this process.

⁷¹ The mandate of the Special Rapporteur was last renewed in 2011 by General Assembly resolution 16/7. See A/HRC/RES/16/7; para. 3.

The Working Group is required to submit an annual report focusing on best practices related to the elimination of laws that discriminate against women or are discriminatory to women in terms of their implementation or impact.

Other special procedures with strong relevance to the rights of women and girls include:

- Special Rapporteur on sale of children, child prostitution and child pornography
- Special Rapporteur on trafficking in persons, especially women and children
- Special Rapporteur on contemporary forms of slavery, its causes and its consequences.

A number of other special procedures, including those focused on migrants, health, housing, food, poverty and education, have a strong gender dimension to their work.

3.4.3. Commission on the Status of Women

The Commission on the Status of Women was established by the United Nations Economic and Social Council (ECOSOC) in 1946 to prepare recommendations and reports to ECOSOC on promoting women's rights in political, economic, civil, social and educational fields. The Commission also makes recommendations to the ECOSOC on urgent problems requiring immediate attention in relation to women's rights. It may also receive communications from individuals and groups concerning discrimination against women.

The Commission is the principal global policy-making body dealing with gender equality and the advancement of women and girls. It meets annually in New York to evaluate progress on gender equality, identify challenges, set global standards and formulate policies to promote gender equality and women's empowerment worldwide. The Commission consistently engages in issues that are directly related to the human rights of women and girls and, while outside the human rights system, it plays a central role in guiding and promoting the United Nation's broader agenda around the rights of women and girls.

The Commission on the Status of Women has played a significant role in the development of international conventions. In contributing to the drafting of the Universal Declaration of Human Rights, the Commission successfully argued against references to “men” as a synonym for humanity, and succeeded in introducing more inclusive language. The Commission drafted the early international conventions on women's rights, as well as CEDAW and its Optional Protocol.

The Commission helped bring violence against women to the forefront of international debates. These efforts resulted in the Declaration on the Elimination of Violence against Women adopted by the General Assembly on 20 December 1993.

The Commission also served as the preparatory body for the 1995 Fourth World Conference on Women, which adopted the Beijing Declaration and Platform for Action. After the conference, the Commission was mandated by the General Assembly to play a central role in monitoring implementation of the Beijing Declaration and Platform for Action and advising the Economic and Social Council accordingly.⁷²



NHRIs contribute to the work of the Commission but do not yet have formal participation rights, as they currently do with the Human Rights Council. NHRI involvement in the Commission is explored in more detail in Chapter 8.

⁷² UN Women, “A Brief History of the CSW”; available at www.unwomen.org/en/csw/brief-history.

Part B: Regional mechanisms dealing with the human rights of women

As is the case with their international equivalents, regional human rights bodies, along with regional courts and tribunals, have an important role to play in protecting and clarifying the human rights of women and girls. The **European Court of Human Rights**, for example, has considered cases of gendered-related violations in areas such as trafficking in persons, forced sterilization, abortion, domestic violence and domestic servitude. The **Inter-American Commission on Human Rights** has established a position of Rapporteur on the Rights of Women and has generated a significant body of case law in relation to the human rights of women, as has the **Inter-American Court of Human Rights**. The Americas also boasts the first intergovernmental agency established to ensure recognition of women's human rights: the **Inter-American Commission of Women**, established in 1928.

The only regional human rights mechanism in Asia and the Pacific – albeit one without an underlying regional human rights treaty – is the **ASEAN Intergovernmental Commission on Human Rights**.⁷³ Composed of State representatives, it was established in 2009 as “the overarching human rights institution in ASEAN with overall responsibility for the promotion and protection of human rights in ASEAN”.⁷⁴

The **ASEAN Commission on the Promotion and Protection of the Rights of Women and Children** was established in 2010. The Commission, which is one of very few standing human rights bodies in the Asia region, works to promote implementation of international standards on the rights of women and children, as well as relevant ASEAN instruments, such as the ASEAN Declaration on the Elimination of Violence Against Women.⁷⁵ It also seeks to build knowledge and capacity among those who are critical to promoting and protecting the rights of women and girls, including legislatures, criminal justice agencies, relevant statutory institutions, civil society groups and community leaders. This is principally done by providing technical assistance, training and workshops.

ASEAN COMMISSION ON THE PROMOTION AND PROTECTION OF THE RIGHTS OF WOMEN AND CHILDREN⁷⁶

Purposes

- To promote and protect the human rights and fundamental freedoms of women and children in ASEAN, taking into consideration the different historical, political, socio-cultural, religious and economic context in the region and the balances between rights and responsibilities.
- To uphold, promote, protect, respect and fulfil the rights of women and children in ASEAN to live in peace, equality, justice, dignity and prosperity.
- To promote the wellbeing, development, empowerment and participation of women and children in the ASEAN Community building process, which contribute to the realization of the purposes of ASEAN, as set out in the ASEAN Charter.
- To enhance regional and international cooperation with a view to complementing national and international efforts on the promotion and protection of the rights of women and children.



73 For further information, see APF, *International Human Rights and the International Human Rights System: A Manual for National Human Rights Institutions*, 2012, pp. 100-101.

74 The Terms of Reference for the ASEAN Intergovernmental Commission on Human Rights are available at <http://aichr.org/about/>.

75 Adopted at the 23rd ASEAN Summit; Bandar Seri Begawan, Brunei Darussalam; 9–10 October 2013; available at <http://asean-summit-2013.tumblr.com/>.

76 The Terms of Reference for the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children are available at www.asean.org/storage/images/2012/Social_cultural/ACW/TOR-ACWC.pdf.

- To uphold human rights as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, CEDAW, the Convention on the Rights of the Child, the Beijing Platform for Action, World Fit for Children, International Humanitarian Law and other international human rights instruments and regional declarations related to women's and children's rights to which ASEAN Member States are parties.
- To promote stability and harmony in the region, friendship and cooperation among ASEAN Member States.

Mandate and functions

- To promote the implementation of international instruments, ASEAN instruments and other instruments related to the rights of women and children.
- To develop policies, programs and innovative strategies to promote and protect the rights of women and children to complement the building of the ASEAN Community.
- To promote public awareness and education of the rights of women and children in ASEAN.
- To advocate on behalf of women and children, especially the most vulnerable and marginalised, and encourage ASEAN Member States to improve their situation.
- To build capacities of relevant stakeholders at all levels, e.g. administrative, legislative, judicial, civil society, community leaders, women and children machineries, through the provision of technical assistance, training and workshops, towards the realisation of the rights of women and children.
- To assist, upon request by ASEAN Member States, in preparing for periodic reports under CEDAW and the Convention on the Rights of the Child, the Human Rights Council's Universal Periodic Review and reports for other treaty bodies, with specific reference to the rights of women and children in ASEAN.
- To assist, upon request by ASEAN Member States, in implementing the concluding observations of the CEDAW Committee, the Committee on the Rights of the Child and other treaty bodies related to the rights of women and children.
- To encourage ASEAN Member States on the collection and analysis of disaggregated data by sex, age, etc., related to the promotion and protection of the rights of women and children.
- To promote studies and research related to the situation and well-being of women and children with the view to fostering effective implementation of the rights of women and children in the region.
- To encourage ASEAN Member States to undertake periodic reviews of national legislations, regulations, policies, and practices related to the rights of women and children.
- To facilitate sharing of experiences and good practices, including thematic issues, between and among ASEAN Member States related to the situation and well-being of women and children and to enhance the effective implementation of CEDAW and the Convention on the Rights of the Child through, among others, exchange of visits, seminars and conferences.
- To propose and promote appropriate measures, mechanisms and strategies for the prevention and elimination of all forms of violation of the rights of women and children, including the protection of victims.
- To encourage ASEAN Member States to consider acceding to, and ratifying, international human rights instruments related to women and children.
- To support the participation of ASEAN women and children in dialogue and consultation processes in ASEAN related to the promotion and protection of their rights.
- To provide advisory services on matters pertaining to the promotion and protection of the rights of women and children to ASEAN sectoral bodies upon request.
- To perform any other tasks related to the rights of women and children as may be delegated by the ASEAN Leaders and Foreign Ministers.

KEY POINTS: CHAPTER 3

- The institutional framework around women's and girls' human rights includes a range of different mechanisms and procedures, operating at both international and regional levels.
- The Human Rights Council is the principal intergovernmental body responsible for human rights within the United Nations. The Council oversees the UPR process and the special procedures, as well as the system of human rights treaties and their implementation.
- NHRIs can raise human rights concerns relevant to women and girls at the international level through their participation in the UPR process and the work of the treaty bodies. The activities of the special procedures can also support NHRIs in promoting and protecting the rights of women and girls.
- The Rome Statute of the International Criminal Court identifies certain crimes against women, including sexual violence and gender-based persecutions, as crimes under its jurisdiction. NHRI investigations, research and reports could contribute to a brief of evidence for the Court.
- The CEDAW Committee is the primary international body for implementation of the international legal framework around women's human rights. It monitors the performance of States parties in meeting their obligations under CEDAW. It also makes recommendations on matters relating to the implementation or interpretation of CEDAW or on broader issues affecting the human rights of women and girls.
- The work of many special procedures will have a distinct gender dimension. However, several thematic special procedures deal with issues that are specifically or primarily focused on women and girls, including the Special Rapporteur on violence against women, its causes and consequences and the Working Group on the issue of discrimination against women in law and practice.
- The Commission on the Status of Women is the principal global policy-making body dealing with gender equality and advancement of women. It prepares recommendations and reports to the Economic and Social Council on promoting women's rights in political, economic, civil, social and educational fields; makes recommendations on urgent problems requiring immediate attention; and may also receive communications from individuals and groups concerning discrimination against women.
- Regional human rights bodies, as well as courts and tribunals, also have an important role to play in protecting and clarifying the human rights of women and girls.





Part II: Protecting and promoting the rights of women and girls: NHRIs in action



Chapter 4: Supporting a strong national legal and policy framework

Chapter 5: Responding to complaints of violations of women's and girls' human rights

Chapter 6: Conducting inquiries into systemic violations of women's and girls' human rights

Chapter 7: Promoting and monitoring the human rights of women and girls

Chapter 8: Engaging with international and regional mechanisms

Chapter 4:

Supporting a strong national legal and policy framework

KEY QUESTIONS

- How can NHRIs work to promote adoption and implementation of international human rights standards around the rights of women and girls?
- What type of reforms to laws, policies and practice can NHRIs promote in the area of women's and girls' human rights?
- What strategies might be effective in promoting legal and policy reform?
- What good practice examples can NHRIs draw on for inspiration and guidance?



BASIS FOR NHRI INVOLVEMENT

PARIS PRINCIPLES

Competence and responsibilities

3. A national institution shall, *inter alia*, have the following responsibilities:
 - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
 - (ii) Any situation of violation of human rights which it decides to take up;
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;



- (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
- (b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation.

AMMAN DECLARATION

NHRIs agree to the following broad principles and areas of work:

- Monitor States' fulfilment of their human rights obligations and, where the NHRI mandate permits, non-State actors' compliance with human rights standards, including those relating to the human rights of women and girls and gender equality (paragraph 3).
- Support efforts to ensure the right of women to *de jure* and *de facto* or substantive equality with men, recognizing this may require special measures and differential treatment. These efforts can include integration of the human rights of women and girls and gender equality in Human Rights National Action Plans and other relevant laws and policies. The Beijing Platform for Action and its twelve areas of critical concern should serve as the guiding framework for assessing State action to ensure women's and girls' human rights (paragraph 3).
- Promote the realization of the human rights of women and girls, including as found in CEDAW, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, and other human rights norms and standards, into national law and policies (paragraph 7).
- Encourage the withdrawal of reservations to [such] treaties with a view to strengthening the implementation of all human rights treaties (paragraph 8).
- Develop guidelines, where applicable, relating to the human rights of women and girls and monitor State compliance with such guidelines (paragraph 13).

AMMAN PROGRAMME OF ACTION

In relation to women's public and political participation NHRIs agree to:

- Advocate for the removal of any discriminatory laws which inhibit women's ability to participate in public and political life (paragraph 1).
- Promote measures, including through education and the adoption of laws and practices, to eliminate traditions and social and cultural barriers and stereotypes that discourage or prevent women from exercising their right to vote or from otherwise participating in public, peace and political processes (paragraph 2).

In relation to women's economic, social and cultural rights, NHRIs agree to:

- Monitor and evaluate laws, public policies and budgets, including macroeconomic and trade policies, as well as poverty reduction strategies, population strategies and other strategies aimed at the achievement of the Millennium Declaration and Goals, and engage with relevant sectors, with a view to promoting the removal of provisions which are discriminatory against or have a discriminatory effect on women, and promoting corrective action, if and as appropriate (paragraph 8).



In relation to violence against women and girls, NHRIs agree to:

- Promote and support the adoption of laws against domestic and family violence, sexual assault and all other forms of gender-based violence, in accordance with international human rights standards (paragraph 16).
- Support the adoption of National Action Plans to address violence against women that include provision for the National Action Plans to be independently monitored and evaluated (paragraph 17).

In relation to reproductive rights, NHRIs agree to:

- Review national laws and administrative regulations relating to reproductive rights such as those governing family, sexual and reproductive health, including laws which are discriminatory or criminalize access to sexual and reproductive health services, and propose recommendations to assist States in meeting their human rights obligations (paragraph 27).

**APF ACTION PLAN ON THE HUMAN RIGHTS OF WOMEN AND GIRLS:
PROMOTING GENDER EQUALITY****APF member institutions agree to:**

- Promote the implementation of international treaty commitments into domestic legislation, policy and practice (paragraph 11).
- Encourage States to adopt and implement a national human rights action plan, which should mainstream and prioritise the rights of women and girls (paragraph 10).

4.1. INTRODUCTION

A country's legal framework should provide the foundation for ensuring that the human rights of all persons within its jurisdiction or under its control are promoted and protected.

International law recognizes that the protection of women's and girls' human rights requires a strong legislative and policy framework. Indeed the central obligation of CEDAW is that States parties eliminate discriminatory laws, policies and practices in the national legal framework. CEDAW also requires States parties to review policies and practices in a range of areas with the aim to address discrimination against women and promote gender equality.

As explained in Chapter 2, other human rights treaties also impose obligations on States to ensure that legislation, policies and practices do not discriminate against women or have a discriminatory outcome. For example, the International Covenant on Civil and Political Rights requires States parties to reform domestic legislation to give effect to that treaty's prohibition on sex-based discrimination.

It is very rare that laws, policies and practices fully reflect the needs of women and girls and fully protect their rights. NHRIs can contribute to strengthening these important aspects of the national legal framework in a number of different ways.

Firstly, NHRIs can encourage their Government to ratify or accede to key human rights treaties. They also have an important role to play in monitoring and promoting compliance with those human rights treaties that their Government has ratified or acceded to. This may involve analysing existing legislation and policies and assessing whether they meet the standards set out in the treaties. Based on this assessment, NHRIs may propose changes to existing laws or policies or the development of new legislation.

NHRIs can also help to develop tools, such as indicators and national action plans, to assist States in implementing their treaty obligations. These tools can be used to monitor progress in respecting, protecting and fulfilling the rights of women and girls.

4.2. ADVOCATING FOR THE ADOPTION OF INTERNATIONAL STANDARDS AND REMOVAL OF RESERVATIONS

All NHRIs should be aware of:

- Those human rights treaties that their State is party to
- Any reservations or declarations that are attached to those treaties by their State⁷⁷
- Their State's position on the human rights treaties to which it is not party
- Issues, problems and obstacles with respect to the domestic implementation of the human rights treaties.

This information should guide NHRIs in all their work and should be used to identify priorities, develop strategies and inform planning. It should be regularly reviewed and updated as required.

Countries that have established an NHRI often display a commitment to the international human rights system and the standards outlined in the human rights treaties. Almost every country in which an NHRI has been established is party to the human rights treaties of most direct and immediate significance to the rights of women and girls, including: CEDAW, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.

However, in most countries, there will be opportunities for NHRIs to advocate for the State to ratify other international instruments that are central to the legal framework for promoting and protecting the rights of women and girls. Two relevant examples are the:

- **Optional Protocol to CEDAW**, which establishes procedures for the CEDAW Committee to receive and consider complaints from individuals or groups within the State party's jurisdiction⁷⁸
- **ILO Convention concerning Decent Work for Domestic Workers**, which entered into force on 3 September 2013 and provides protection in an area of great concern to many NHRIs.⁷⁹

Other treaties that provide important protections to women and girls include the:

- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol)
- Convention on the Rights of Persons with Disabilities and its Optional Protocol
- Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.

NHRIs can play an important role in promoting awareness about these human rights instruments and their value amongst various groups within the community. They can also support the ratification process by undertaking research to identify any changes in laws and policies that may be required prior to or on ratification.

77 For information on reservations or declarations, see <https://treaties.un.org/Pages/Home.aspx?clang=en>.

78 At the time of writing, 83 States parties to CEDAW had not yet become party to the Optional Protocol.

79 At the time of writing, the Convention had been ratified by very few States.

Specific strategies to promote ratification might include:

- Advocacy and awareness raising initiatives involving Government ministers, parliamentarians and key officials of relevant ministries and departments
- Using formal mechanisms, such as NHRI reports or submissions to government or other inquiries, to explain the importance of ratification and to address any potential obstacles
- Using training and outreach activities to share information with the community, NGOs and other civil society stakeholders about the importance of ratifying a particular human rights treaty
- Identifying opportunities to promote ratification through the engagement with the international human rights system; for example, submitting information to the universal periodic review process.

The advocacy work of NHRIs to promote ratification can be further strengthened if the public and organized groups within the community also exercise pressure in the same direction. Accordingly, NHRIs may consider implementing targeted community awareness activities with a broad range of NGOs and other civil society groups.

States will occasionally attach “reservations”, “statements” or “declarations” to their ratification or accession to a particular human rights treaty. The intention behind them and their legal effect can differ. Statements and declarations often seek to clarify the State’s understanding of a particular obligation. However, reservations generally seek to exclude or modify the legal effect of a certain provision, or provisions, of the treaty. The rules around reservations are very clear. They must be permitted under the treaty and they must not operate to defeat the object and purpose of the treaty. However, States rarely challenge each other on this point, with the result that even the most egregious reservations may go formally unchallenged.

RESERVATIONS TO CEDAW

Human rights treaties are subject to more reservations than any other type of treaty and CEDAW is one of the most heavily reserved of the human rights treaties.

Some States parties have made a general reservation to CEDAW. These general reservations purport to exempt the State party from any obligation that is not in accordance with what it sets out as a higher authority, such as the national constitution, the code of family law or the principles of *Shariah* law.

General reservations to CEDAW clearly undermine its object and purpose to eliminate discrimination against women and promote genuine equality between men and women.



NHRIs are often very well placed to understand the reasons behind a particular reservation and to work with their Government to consider whether it is possible to withdraw a reservation that cannot be reasonably justified.

In addition to promoting the adoption of international standards and the removal of reservations, NHRIs should also work to ensure that those treaties that have been ratified or acceded to are implemented in practice. This task cuts across all areas of work done by NHRIs and is addressed at appropriate points in each of the following chapters.

4.3. PROMOTING REFORM OF DOMESTIC LAWS AND POLICIES

The protection of women's and girls' human rights at the national level requires a strong legislative and policy framework. NHRIs have an important role to play in monitoring the domestic legal system, especially to identify weaknesses in national laws and policies that affect women and girls and the realization of their human rights.

The key question to be asked in relation to any analysis is **whether certain laws or policies impact negatively on women and girls and their rights**. The international human rights framework provides the basis for this analysis. It sets out the human rights of women and girls, as well as the obligations on States to respect, protect and fulfil those rights.

Consideration and analysis can potentially include the following areas.

The general legal framework including anti-discrimination laws: Is there a general prohibition on discrimination and recognition of gender equality in the national constitution or a similar higher law? Do anti-discrimination laws apply to government agencies and officials, private entities and individuals? Are any exceptions in these laws (e.g. for religious institutions, customary or traditional law) reasonable and justifiable in terms of the broader goals of non-discrimination and equality? Is the burden of making and pursuing a complaint of sex-based discrimination placed on the victim?

Election laws: Is there equal access for women candidates to stand in elections? Is it appropriate to argue for quotas or other methods by which women's representation in the political process could be advanced? Is gender a factor in deciding the composition of electoral bodies, including supervisory and management bodies?



Women parliamentarians of the Afghan Lower House (Wolesi Jirga or "House of the People"). UN Photo by Eric Kanalstein.

Laws and policies on marriage and the family:⁸⁰ Do women have equal rights at the time of marriage, during marriage and at its dissolution, by divorce or death? Are there any negative economic consequences for women in marriage and at the dissolution of marriage? Do multiple family law systems impact negatively on women? Do widows and widowers have equality in relation to inheritance laws? Is child marriage prohibited?

Laws related to violence against women: Is violence against women prohibited and, if so, what is the scope of the prohibition? For example, does it extend to domestic violence and to rape in marriage? What is the national policy for responding to complaints of violence against women? What policies are in place to ensure women are not further traumatized during the investigation and prosecution of offenders? Are there laws that determine the rights of the victim to access social services, health care and legal support? Is there a national action plan on violence against women or a similar clear policy to guide the national response?

Laws and policies on trafficking in persons: Is trafficking in persons criminalized and appropriately penalized? Does the definition of trafficking in the national law reflect the internationally agreed definition (which recognizes that women, men and children can be victims and that people are trafficked for a range of purposes, including labour exploitation as well as sexual exploitation)? Is there a national action plan on trafficking or a similar clear policy to guide the national response?

Labour and workplace laws: Do labour laws, including laws that apply to the public service, protect women from discrimination in the workplace? For example, do they mandate equal pay for equal work? Are women protected from sexual harassment in the workplace? Are they protected from discrimination in relation to breastfeeding and family responsibilities? What legal and/or policy provisions apply to pregnancy and maternity leave? Are there national policies that seek to promote gender parity within certain industries or workplaces?

Laws and policies affecting minority groups: Are minorities – such as ethnic minorities and sexual minorities – protected under existing laws and policies? Are those protections sufficient to guarantee them the rights to which they are entitled under national and international human rights law?

Social security laws: Does the national social security framework entrench or challenge gender stereotyping and unequal distribution of power and resources? More specifically, do social security laws discriminate against women? For example, does access to social security depend on men in any way? Are widows and widowers treated differently? Does the scope of coverage and schedule of entitlements take account of women's different involvement in the formal and informal labour sectors?

Laws and policies on disability: Does national law and policy provide a strong foundation for recognizing and protecting the rights of people with disabilities? To what extent do these laws and policies integrate an understanding of gender? For example, do they acknowledge that disabled women experience violations of their rights in different ways to men?

Areas for NHRI advocacy on laws and policies may emerge from other NHRI activities, such as issues raised during a national inquiries or from analysing complaints data, that reveal specific “protection gaps” or problems in implementation.

For example, the **National Human Rights Commission of India** held a special meeting to discuss custodial deaths and custodial rapes after a rise in the number of such incidents being reported to the Commission. The outcome of the meeting was a letter addressed to the Chief Secretaries and Administrators of all State and Union Territories with a recommendation that a directive be issued to the District Magistrates and Superintendents of Police of all districts stipulating that custodial deaths and custodial rapes be reported within 24 hours.

80 See CEDAW Committee, General Recommendation No. 29, 2013; Human Rights Committee, General Comment No. 19, 1990; and General Comment No. 28, 2000, especially paras. 23-27; and Committee on Economic, Social and Cultural Rights, General Comment No. 16, 2005, especially para. 27.

LAW REFORM IN JORDAN

Following advocacy by the [Jordan National Centre for Human Rights](#), amendments have been made to the:

- Elections Law, Municipalities Law and Parties Law; to improve representation of women in government
- Penal Code; to provide greater protection against violence and sexual assault
- Personal Status Law; to strengthen rights in marriage and divorce
- Labour Law; to specifically include female domestic helpers
- Social Security Law; to provide better protection and coverage for women workers
- Anti-trafficking in Humans Law; to include trafficking of women in the law and the national strategy
- Constitutional Law; to protect families against abuse and exploitation.

The Centre contributed to the issuance of the:

- 2013 Regulation regarding the bureaus of family reconciliation and reform; which seeks to settle domestic disputes before resorting to filing judicial suits
- 2013 Regulation regarding the exemptions of persons with disabilities; which provides people with disabilities with customs duties exemptions enabling better protection and enhancement of the rights of women with disabilities.

The Centre was instrumental in advocating for:

- Jordan's ratification of the Trafficking Protocol to the United Nations Convention against Transnational Organized Crime
- Withdrawal of Jordan's reservation to article 15(4) of CEDAW concerning freedom of movement and choice of residence.



LAW REFORM IN INDIA

The [National Human Rights Commission of India](#) was successful in positively influencing amendments to and/or played a significant role in formulating the:

- Protection of Women from Domestic Violence Act, 2005
- Mahatma Gandhi National Rural Employment Guarantee Act, 2005
- Prohibition of Child Marriage Act, 2006
- Right of Children to Free and Compulsory Education Act, 2009
- Criminal Law (Amendment) Act, 2013, which included new sections on sexual harassment, voyeurism, causing grievous hurt by use of acid, stalking and trafficking in persons.

The Commission has and continues to pursue reform of a number of other laws that concern the human rights of women and girls, including: the Immoral Traffic (Prevention) Act, 1956; Dowry Prohibition Act, 1961; Mental Health Act, 1987; Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; Child Labour (Prohibition and Regulation) Act, 1986; and Juvenile Justice (Care and Protection of Children) Act, 2000.



The Commission was instrumental in advocating for India's ratification of the:

- Optional Protocols to the Convention on the Rights of the Child
- Convention on the Rights of Persons with Disabilities
- Trafficking Protocol to the United Nations Convention against Transnational Organized Crime.

4.4. ENGAGING AND COLLABORATING WITH STAKEHOLDERS

The ability of NHRIs to influence changes in law and policy around the human rights of women and girls will depend, to a great extent, on their willingness and capacity to engage and collaborate with a range of stakeholders. This includes government stakeholders (for example, agencies and departments dealing with issues of concern to women, such as health, labour, migration and justice, as well as agencies and departments dealing specifically with women's issues) and civil society stakeholders (for example, organizations working on human rights, women's rights, women's empowerment, children's rights and issues of particular concern to women, such as traditional practices and domestic violence).

Such engagement can be valuable on a number of fronts, including in helping NHRIs to:

- Identify priorities for action in relation to legal and policy reform
- Gather information and perspectives that can inform their advocacy, research, training and other work
- Secure broad-based support for specific proposals related to the reform of laws or policies or for the adoption of international standards
- Ensure that the voices of women and girls are adequately heard and their views taken into account in all aspects of their work.

Business and industry are also important stakeholders who can add significant value to the work of NHRIs in advancing women's human rights, particularly in areas within their sphere of responsibility. These may include issues around pay and work conditions: sexual harassment; pregnancy and maternity/paternity leave; and women in leadership.



A girl lights incense at the Haedong Yonggungsa Temple, Busan, Korea. Photo by Justin De La Ornellas, reproduced under a CC BY-NC 2.0 license.

KOREA: INFLUENCING POLICY REFORM THROUGH COLLABORATION

During the course of investigating a complaint involving a girl who was forced to drop out of high school because she was pregnant, the **National Human Rights Commission of Korea** realized that it was common practice for pregnant teenagers to be forced to drop out of school, transfer to another school, take a break from school or leave their school because they feared disciplinary action. In the Commission's view, and as it found in the case of the complainant, such practices violate the right of pregnant students to education. The Commission felt that the issue required further inquiry and therefore decided to undertake a review of the relevant policies.

As part of the review process the Commission collaborated and consulted with relevant stakeholders, including:

- Experts, to formalize the Commission's position on the protection of the right of pregnant teenagers to education
- Government agencies and departments, including the Ministry of Education, the Ministry of Welfare and provincial Offices of Education, to build a consensus on the need to guarantee right of pregnant teenagers to education
- Committee for Women of the National Assembly and the National Education, Science and Technology Committee, to hold an open discussion on the issue.



Based on its findings, the Commission recommended in 2010 that the Ministers of Education, Gender Equality and Family, and Health and Welfare, as well as the School Superintendents of the provincial Offices of Education, work together to develop policies that protect the right of pregnant teenagers to education.

4.5. NATIONAL HUMAN RIGHTS ACTION PLANS

*The World Conference on Human Rights recommends that each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights.*⁸¹

*NHRIs should support efforts to the right of women to de jure and de facto or substantive equality with men, recognizing this may require special measures and differential treatment. These efforts can include integration of the human rights of women and girls and gender equality in Human Rights National Action Plans and other relevant laws and policies.*⁸²

The fundamental purpose of a national human rights action plan is to improve the promotion and protection of human rights in the country. This is done “by placing human rights improvements in the context of public policy, so that governments and communities can endorse human rights improvements as practical goals, devise programmes to ensure the achievement of these goals, engage all relevant sectors of government and society, and allocate sufficient resources”.⁸³

81 Vienna Declaration and Programme of Action, part II, para. 71.

82 Amman Declaration, para. 3.

83 OHCHR, *Handbook on National Human Rights Plans of Action*, Professional Training Series No. 10, 2002, p. 9.

A national action plan will generally include objectives and activities to strengthen:

- The national legal and policy framework
- Civil and political rights
- Economic, social and cultural rights
- Rights protection of vulnerable groups
- Human rights education
- The role of stakeholders, including NHRIs, civil society and business.

A national action plan is a vital tool that can establish a roadmap for realizing positive change over time in all areas of human rights, including the rights of women and girls.

NHRIs are a valuable source of independent and credible information, analysis and advice on human rights issues at the national level. They can therefore play a vital role in contributing to the planning and development of their country's national human rights action plan.

NHRIs can ensure that the national action plan integrates an appropriate gender perspective and explicitly commits to promoting and protecting the human rights of women and girls. Through their relationships with multiple stakeholders, NHRIs can also help to ensure that the perspectives and concerns of women and girls are heard, acknowledged and taken into consideration as the national action plan is being developed.

In addition, NHRIs can seek to ensure that gender and the rights of women and girls figure prominently in each area of the national action plan. They can also use their knowledge and experience to promote the adoption of objectives and actions that are realistic and reflect the genuine needs and priorities of women and girls.

NHRIs have an important role to play in monitoring the implementation of the national action plan. According to OHCHR, “[t]he role of NHRIs should be essentially to monitor implementation, to provide expertise and to make recommendations to government regarding appropriate action”.⁸⁴

In undertaking their independent monitoring role, NHRIs can remind government and other stakeholders of their specific obligations and undertakings in the national action plan, especially those that relate to and impact on the human rights of women and girls. They can also provide advice and recommendations aimed at securing the goals of the national action plan in these areas.

The monitoring role of NHRIs should extend to evaluating the implementation of the national action plan. For example, to what extent are the commitments being realized? What indicators are there to measure progress? What are the obstacles to effective implementation and how can these be overcome?

Over time, NHRIs can also assess the quality and relevance of the national action plan. Does it adequately address the issues of most concern to women and girls? In what areas could the national action plan be usefully revised to strengthen it as a tool for advancing the rights of women and girls?

Some countries have developed multiple national plans of action; for example, on education, in accordance with the United Nations World Programme for Human Rights Education, and on human trafficking. Some countries have also developed specific national action plans to advance the human rights of women and girls. For example, the Philippines has the Strategic Plan of the Interagency Council on Violence against Women and their Children (2007–2010)⁸⁵ and Australia has adopted a National Plan to Reduce Violence against Women and their Children (2010–2022).⁸⁶

84 Ibid, p. 51.

85 Available at www.evaw-global-database.unwomen.org/en/countries/asia/philippines/2007/strategic-plan-of-the-inter-agency-council-on-violence-against-women-and-their-children-2007-2010.

86 Available at www.fahcsia.gov.au/sites/default/files/documents/05_2012/national_plan.pdf.

Where a specialized plan to promote the rights of women and girls is needed, NHRIs should take a leadership role to advocate for its development. They can also play a key role in conception, planning, drafting and then monitoring its implementation.

HANDBOOK FOR NATIONAL ACTION PLANS ON VIOLENCE AGAINST WOMEN⁸⁷

Published by UN Women, this Handbook brings together current knowledge on effective policy for the prevention of, and response to, violence against women. It sets out guidelines to help policy makers and advocates, including NHRIs, formulate effective plans. It draws on a number of good practice examples and includes advice from experts from different countries and regions.

The Handbook outlines the international and regional legal and policy frameworks requiring States to adopt and implement national action plans to address violence against women. It then presents a model framework for national action plans, including explanatory commentaries and examples.



More generally, NHRIs can play a critical role in ensuring that the appropriate links are made between these various specialized plans and their implementation. The human rights of women and girls are generally a cross-cutting issue in specialized national plans and it is crucial that they complement and reinforce one another.

THE AUSTRALIAN NATIONAL ACTION PLAN ON WOMEN, PEACE AND SECURITY⁸⁸

The purpose of the *Australian National Action Plan on Women, Peace and Security 2012–2018* is to:

- Articulate Australia's ongoing commitment to implement United Nations Security Council Resolution (UNSCR) 1325 on Women, Peace and Security and the broader UN Security Council agenda on this issue
- Establish a clear framework for a coordinated, whole-of-government approach to implementing UNSCR 1325 and related resolutions
- Identify strategies and actions that Australia will undertake, both domestically and overseas, to implement UNSCR 1325 and related resolutions, and measure the effectiveness of this work over the life of the action plan
- Highlight the important work that Australia is doing in partnership with the international community to respond to women's needs, recognize their roles, promote equal participation and protect women's and girls' human rights in fragile, conflict and post-conflict settings.



⁸⁷ UN Women, *Handbook for National Action Plans on Violence against Women*, 2012; available at www.unwomen.org/en/digital-library/publications/2012/7/handbook-for-national-action-plans-on-violence-against-women.

⁸⁸ Australian Government, *Australian National Action Plan on Women, Peace and Security 2012–2018*, p. 15; available at www.fahcsia.gov.au/sites/default/files/documents/05_2012/aus_nap_on_women_2012_2018.pdf.

KEY POINTS: CHAPTER 4

- A country's legal framework should provide the foundation for ensuring that the human rights of all persons within its jurisdiction are promoted and protected.
- National laws and policies should fully reflect the needs of women and girls and fully protect their rights. NHRIs can contribute to strengthening national laws and policies by:
 - Encouraging ratification or accession by the State to key human rights treaties to which it is not yet party
 - Promoting compliance with the human rights treaties to which the State is party
 - Encouraging the withdrawal of reservations to treaties to which the State is party
 - Helping develop tools, such as human rights indicators and national action plans, to assist States implement their obligations and monitor the situation with respect to the rights of women and girls
 - Promoting community awareness about national laws and policies and practices, as well as relevant international laws, policies and good practices.
- NHRIs can examine the national legal framework to identify weaknesses in national laws and policies that affect women and girls and the realization of their human rights. This involves asking whether laws and policies have the purpose or effect of impacting negatively on women and their rights.
- Areas for analysis may include: the general legal framework, including anti-discrimination laws; election laws; laws and policies on marriage and the family; laws related to violence against women; laws and policies on trafficking in persons; labour and workplace laws; laws and policies affecting minority groups; social security laws; and laws and policies affecting people with disabilities.
- NHRIs should seek to engage and collaborate with a range of stakeholders, including government, civil society, business and industry. This can enhance the NHRI's ability to influence changes in law and policy around the human rights of women and girls.
- NHRIs can help ensure that national human rights action plans integrate a gender perspective and explicitly commit to promoting and protecting the human rights of women and girls. They can also play an important role in monitoring the implementation of these commitments.



Chapter 5:

Responding to complaints of violations of women's and girls' human rights

KEY QUESTIONS

- What steps can NHRIs take to make sure that women and girls are aware of and able to access their complaint handling procedures?
- What steps can NHRIs take to integrate a gender perspective into their procedures for the investigation and resolution of complaints?
- What special considerations are there in relation to interviewing women and girl victims of human rights violations?
- What good practice examples can NHRIs draw on for inspiration and guidance?



BASIS FOR NHRI INVOLVEMENT

PARIS PRINCIPLES

Competence and responsibilities

3. A national institution shall, *inter alia*, have the following responsibilities:
 - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government.



Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:



- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

AMMAN DECLARATION

NHRIs agree to the following broad principles and areas of work:

- Respond to, conduct inquiries into and investigate allegations of violations of women's and girls' human rights, including all forms of discrimination against women and girls, gender-based violence, violations of economic, social and cultural rights, violations of reproductive rights and discrimination in public and political life, and identify systemic issues which may perpetuate these violations. These investigations and reports should result in recommendations to the State to meet their obligations to ensure women's and girls' human rights, and to combat impunity (paragraph 4).
- Facilitate women's and girls' access to justice, including judicial and non-judicial remedies, in accordance with their mandate (paragraph 5).
- Where NHRIs have quasi-judicial powers, exercise them fully to provide relief to the women and girl victims and press for administrative action against or the criminal prosecution of offenders (paragraph 6).
- Work with women human rights defenders, and devote particular attention to the gender-specific violations that women human rights defenders suffer for being women or because of the gender-specific causes that they defend, and promote their access to remedies in case of violations (paragraph 10).

AMMAN PROGRAMME OF ACTION

In relation to women's economic, social and cultural rights, NHRIs agree to:

- Support and facilitate access to remedies for women who have suffered violations of their economic, social and cultural rights, and advocate for the justiciability of economic, social and cultural rights in countries where necessary (paragraph 10).

In relation to violence against women and girls, NHRIs agree to:

- Assist women and girl victims in accessing complaints procedures and remedies, including compensation and ensure the use of NHRIs' quasi-judicial powers to address complaints of violence against women and girls (paragraph 20).

In relation to reproductive rights, NHRI agree to:

- Support the establishment of accountability mechanisms for the effective application of the laws and the provision of remedies when obligations have been breached (paragraph 28).



Young girl from Oman. Photo by Claude Florin, reproduced under a CC BY-NC-SA 2.0 license.

5.1. INTRODUCTION

It is not sufficient for human rights to be protected in laws and upheld in policies. Effective implementation of human rights standards requires that there are procedures and systems in place to identify and respond to violations and complaints of violations.

NHRIs are a critical part of the national system of human rights implementation, not least through their role to investigate allegations of human rights violations. The mandate of most NHRIs allows them to investigate complaints lodged by an individual, by someone else on behalf of an affected individual or by an interested group. Some NHRIs are also able to initiate their own investigations into issues brought to their attention.

Investigating allegations of human rights violations can help NHRIs to achieve a number of important goals. For example an effective complaint handling mechanism can promote access to justice and provide practical redress for individuals who have had their rights violated.

Receiving and resolving complaints can also have a powerful educative effect and promote greater understanding of national and international human rights standards within government, detaining authorities, business and industry, civil society and the broader community.

The investigation powers of an NHRI will normally be set out in its establishing legislation. These powers may be a combination of any of the following:

- To consider individual complaints and make recommendations for redress and remedies to appropriate authorities.
- To consider individual complaints (including through mediation and conciliation) and issue legally enforceable orders and binding decisions, including the payment of compensation to victims by respondents.
- To seek redress on behalf of complainants through courts and tribunals or by referring complaints to other competent complaint handling bodies, such as government departments, the parliament, the judiciary and prosecuting authorities.
- To initiate investigations on their own motion (i.e. *suo moto*) into human rights violations.
- To advise courts and tribunals as *amicus curiae* or by intervening in relevant cases.⁸⁹

89 UNDP and OHCHR, *Toolkit for Collaboration with National Human Rights Institutions*, 2010, p. 32.

AUSTRALIA: AMICUS INTERVENTION IN CORONIAL INQUEST INTO DOMESTIC VIOLENCE

In 2012, the [Australian Human Rights Commission](#) intervened in the coronial inquest into the death of an indigenous woman who was murdered by her abusive former partner. The Commission's written and oral submissions identified relevant human rights issues, links between human rights and the circumstances surrounding the victim's death and human rights obligations related to gender-based violence against women. Importantly, the intervention supported a broadening of the initial terms of reference to include systemic issues in relation to the handling of domestic violence matters by the various state government departments.

The Commission appeared at the inquest, examined witnesses and made oral and further written submissions in relation to the relevance of human rights to the inquest, the obligations of the Government of Western Australian in relation to domestic violence and the elimination of discrimination against women in the form of domestic violence, including articulating the nature of the due diligence obligations on the Government.

The Coroner did not specifically mention human rights or the Commission in his findings. However, it was clear from the Commission's participation in the hearing, and the conduct of both the Coroner and counsel for all parties, that, in addition to directing the Court to various human rights issues, there was a significant educative impact on all those participating in and observing the proceedings.⁹⁰



Women and girls experience a range of human rights violations. As individuals and as a group, women and girls can benefit significantly when NHRIs operate effective and accessible complaint handling mechanisms.

5.2. THE COMPLAINT HANDLING FUNCTION: EFFECTIVENESS AND ACCESSIBILITY⁹¹

The value of the NHRI's complaint handling function for women and girls will depend heavily on how accessible it is to women and girls and to those who support women and girls to defend their rights.

The NHRI should examine its complaint handling procedures from a gender perspective, paying special attention to:

- **accessibility**, with a view to identifying any obstacles that women and girls might experience in lodging or pursuing a complaint with the NHRI
- **effectiveness**, with a view to identifying how the complaint handling process can be made more effective in dealing with violations of women's and girls' human rights and bringing about positive results.

Some specific suggestions around accessibility and effectiveness are provided below. The broader issue of integrating a gender-based approach into the work of NHRIs is considered in Chapter 12.

⁹⁰ The Commission's submission and the Coroner's findings are available at [www.humanrights.gov.au/sites/default/files/content/legal/submissions_court/guidelines/Submissions%2025%20June%202012%20\(2\).pdf](http://www.humanrights.gov.au/sites/default/files/content/legal/submissions_court/guidelines/Submissions%2025%20June%202012%20(2).pdf) and www.humanrights.gov.au/sites/default/files/content/legal/submissions_court/guidelines/Pickett_finding.pdf.

⁹¹ This section, as well as sections 5.3-5.6, is adapted from APF, *Promoting and Protecting the Rights of Migrant Workers: The Role of National Human Rights Institutions*, 2012, pp. 85-102.

The NHRI should not expect that it will receive complaints from women and girls in proportion to the scope and seriousness of violations committed against them. Women and girls whose rights have been violated may face many obstacles to approaching the NHRI and submitting a complaint. These obstacles often reflect the social, economic and cultural challenges faced by women and which directly impact on their ability to access different services, including those provided by the NHRI.

Accordingly, the NHRI should actively consider ways in which it can encourage complaints from women and girls generally, as well as from groups who are particularly vulnerable to human rights violations, such as:

- Migrant women and girls
- Women and girls from racial, religious and ethnic minorities
- Women and girls working in the informal sector, including export houses, domestic service, entertainment and the sex industry
- Women and girls with disabilities.

The NHRI can adopt different strategies to encourage women and girls to complain about human rights violations. Firstly, it is important to build awareness about the work of the NHRI: what it is, what it does and, specifically, its role to receive and investigate allegations of human rights violations against any individual in the country, regardless of their sex, nationality, migration status, age or any other difference.

When providing information about its complaint handling procedures – for example, in brochures, radio programmes, public meetings and the like – the NHRI should explain:

- The type of human rights violations that they are able to investigate under their mandate
- How complaints can be lodged and any procedural or time requirements attached to the lodging of a complaint
- How a complaint will be investigated and the options for resolution and/or referral
- Any remedies that may be available as a result of the NHRI's involvement
- The advantages and disadvantages of pursuing a complaint through the NHRI.

Some vulnerable women – for example, undocumented migrants – will be understandably cautious about engaging with an “official” body, such as the NHRI. Likewise, NHRIs must be cautious about their ability to protect and defend those in a vulnerable situation (e.g. vulnerable to arrest or to reprisals from perpetrators of violence) and not make any promises about protection or support that they cannot keep.

When considering ways to encourage more communication with – and complaints from – women, the NHRI may need to look internally at the type of work it has been doing, its capacity and its composition. For example, a lack of complaints on a particular issue or from a particular group can reflect limited knowledge, understanding or commitment on the part of the NHRI. Chapter 12 examines this issue in the context of a broader discussion on strengthening NHRI capacity in the area of women's human rights.

While potential complainants should rightly be the primary audience of the NHRI's communications and outreach regarding its complaint handling function, a broader approach will often be necessary. The NHRI should consider extending its communication strategies to include NGOs working with women and girls and government agencies whose work puts them in contact with vulnerable women and girls. It should also seek to reach out to potential respondents to such complaints – such as law enforcement agencies, public and private sector employers and the business community – and provide information about its complaint handling function and how it operates with respect to women and their rights.

The physical accessibility of the NHRI is another important factor that can encourage or prevent people – including women and girls – from making use of its complaint handling procedure. Most NHRIs have an office located in the country's capital or one of its major cities. However, women who need the services of the NHRI's complaints mechanism may not live or work near the NHRI. The NHRI's hours of operation may also hinder accessibility for some women, such as those with family or work responsibilities.

IMPROVING COMPLAINT RATES ABOUT VIOLATIONS OF WOMEN'S HUMAN RIGHTS

A 2011 APF study on the work of NHRIs in the area of reproductive rights (see further in Chapter 9) found that most NHRIs had never received a complaint on the issue. Of those NHRIs that did report receiving such complaints, the complaint numbers were generally very low. Only two of 17 NHRIs reported a high number of complaints on reproductive rights. In one case, the complaints related exclusively to pregnancy-based discrimination. In the other case, the extremely high number of complaints related principally to harmful practices and gender-based violence.

The report concluded that the low number of complaints was due to a combination of factors. However, a major factor was the lack of knowledge about reproductive rights within NHRIs. Institutional confusion and uncertainty about reproductive rights often meant that NHRIs did not contribute to raising awareness about the issue among rights-holders and duty-bearers. As a result, those who may have suffered a violation of their reproductive rights were not sufficiently informed to bring that violation to the attention of their NHRI.⁹²



The establishment of satellite or provincial offices is one option that may be open to some NHRIs. However, accessibility can also be improved through other measures. For example, NHRIs can develop alternative systems to receive and investigate complaints, without the need for a complainant to physically attend an office.

INDIA: IMPROVING ACCESSIBILITY FOR COMPLAINANTS

The **National Human Rights Commission of India** has developed an online complaints submission and registration system, linked to its website. The Commission also operates a 24 hour phone service for receiving complaints and responding to general queries. A complainant can use the online or phone service to find out the status of their complaint and can also approach the Commission to obtain information about their complaint.



As a general rule, the process for submitting a complaint should be as simple and as straightforward as possible. It should not involve any cost to the person lodging the complaint and there should be a capacity to receive both oral and written complaints. Information about the complaint handling procedure and the complaint lodgement forms should be available in appropriate languages so that they are accessible to the widest possible range of people. Where necessary, the NHRI should ensure that interpretation services are available to complainants or people making a complaints-related enquiry.

The NHRI should also ensure that its complaint handling procedure is flexible enough to take into account the different experiences and situations of women and girl complainants. For example, migrant and refugee women may be transient and therefore unable to meet a requirement to provide a permanent address. NHRIs should be able to accommodate and respond appropriately to these situations, both in how complaints are handling and in their strategies for communicating information about women's rights and how they can be protected. Social media, websites and toll-free telephone numbers are all potential options in this regard.

92 APF and UNDP, *Integrating Human Rights into the Work of National Human Rights Institutions of the Asia-Pacific Region*, 2011, p. 16.

KOREA: PROMOTING AWARENESS OF AND ACCESS TO ITS COMPLAINT HANDLING FUNCTION

The [National Human Rights Commission of Korea](#) translates all its complaint forms into the main languages of migrant worker communities in South Korea. Information brochures on the Commission, its complaint handling function and the rights of migrant workers are also produced in multiple languages and distributed in the suburbs and communities where migrant workers live. The Commission undertakes its awareness raising work in partnership with migrant associations and migrant communities.⁹³

The Commission also explores proactive ways for marginalized groups to make complaints. Commission staff will visit those who may not easily be able to access its office – such as migrant workers and people with disabilities – and has established partnerships with translation agencies so that interpreting services are available to people who may wish to make a complaint.

In 2013, the Commission opened a special counselling centre dedicated to victims of discrimination on the grounds of marriage, pregnancy or childbirth to create an environment where victims and others can easily source information, access counselling or lodge a complaint.



5.3. INTEGRATING GENDER INTO COMPLAINT HANDLING PROCEDURES

NHRIs with a strong, well-structured complaint handling procedure are well placed to support women and girls whose rights have been violated.⁹⁴ In other words, the integration of a gender perspective will be most effective when the complaint handling procedure itself is robust. Integration of a gender perspective into a poorly organized and poorly functioning complaint handling procedure is likely to yield little value to women and girls whose rights have been violated.

The integration of a gender perspective into the NHRI's complaint handling procedure should be based on a thorough understanding of how the procedure is currently working. This understanding can best be gained through reviewing the procedure from the perspective of the NHRI's capacity to meet the needs of women and girls. There are a range of issues and questions to consider.

Accessibility: To what extent does community awareness about the NHRI's complaint handling procedure, and the requirements for lodging and handling complaints, support or prevent women from lodging a complaint? For example, in some countries, women do not have the same physical mobility as men. As such, they may require a range of options for making contact with the NHRI. There may also be cultural constraints on women and girls "complaining" of wrongs committed against them. This may require a carefully calibrated outreach program that specifically focuses on women and girls and explains the type of complaints that can be considered by the NHRI and the support that can be provided.

Conducting interviews (adult women): Gender may be a relevant consideration in deciding how an interview is conducted. Women who are victims of human rights violations such as domestic violence and sexual assault may be highly traumatized and the NHRI must take this into account in deciding when, where and how the interview will take place.

⁹³ APF, *Promoting and Protecting the Rights of Migrant Workers: The Role of National Human Rights Institutions*, 2012, p. 89.

⁹⁴ For information on effective complaint investigation and handling procedures, see APF, *Undertaking Effective Investigations: A Manual for National Human Rights Institutions*, 2013; and *Protecting and Promoting the Rights of Migrant Workers: The Role of National Human Rights Institutions*, 2012; pp. 85-102. See also OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No. 4 (Rev. 1), 2010.

Some women complainants may hold genuine fears for their safety and that of their children. They may therefore have a heightened need for privacy and reassurance. Often women will prefer to be interviewed by another woman but the NHRI should be careful about making assumptions on this point. If possible, a woman complainant should be given the choice. The NHRI should also assess the immediate needs of any woman complainant and ensure that the necessary referrals – for example to a medical facility or shelter – are made.

Conducting interviews (girls): The NHRI is required to abide by the rules and principles that apply when dealing with children, including children who may be victims of human rights violations. Respect for the best interests of the child must be upheld at all times. This principle should guide decisions on whether an interview is to take place at all; who is to conduct that interview and how; and who else is to be present. Girls are entitled to special protection measures, both as victims and as children, in accordance with their specific rights and needs. This may include the right to have a guardian appointed for the duration of any proceeding, until a durable solution that is in her best interests has been identified and implemented.

INTERVIEWING GIRL COMPLAINANTS⁹⁵

When interviewing girls, the following **basic rights** should be kept in mind:

- **Respect for the views of the child:** A child victim who is capable of forming her views has the right to express those views freely in all matters affecting her. The views of the child victim shall be sought and given due weight in accordance with her age and maturity.
- **Right to information:** Child victims shall be provided with accessible information regarding their situation and their rights. Information shall be provided in a language that the child victim is able to understand.
- **Right to confidentiality:** All necessary measures shall be taken to protect the privacy and identity of child victims to ensure the safety and security of the victim and her family.

In relation to the **conduct of an interview** with a girl, a human rights-based approach requires that:

- A parent or guardian should be present when girl complainants are interviewed.
- Girls are to be questioned in a manner that respects their dignity and capacity.
- Only specially trained members of the NHRI should question girls, particularly with regard to traumatic experiences. If a specially trained NHRI official is not available then the NHRI should seek and obtain the services of such a professional **prior** to the commencement of the interview.
- Interviews with a girl should assess if she is in need of any form of assistance or protection and the NHRI should take responsibility to ensure such assistance or protection is provided.



⁹⁵ Adapted from UNICEF, *Guidelines on the Protection of Child Victims of Trafficking*, 2006; and UNICEF and United Nations Office on Drugs and Crime, *Justice in Matters Involving Child Victims and Witnesses of Crime*, 2009.



A young victim of abuse at a safe house in Monrovia, Liberia. UN Photo by Staton Winter.

5.3.1. General considerations for conducting ethical and safe interviews

NHRI staff should be aware that women and girls with whom they are in contact can be suffering from **trauma** related to the human rights violations they have experienced. Trauma will affect how the victim understands and communicates what has happened to her. For example, victims of trafficking often display an inability to recall events in a chronological or sequential way. In an interview situation, they may even invent plausible answers to questions about incidents that are traumatic to recall or cannot be remembered. NHRI staff should have at least basic training in recognizing and dealing with signs of trauma.

Women and girls should be encouraged to **talk at their own pace** and in their own words, without being rushed or interrupted. While the primary purpose of the interview is to collect information, this process can also help to strengthen and empower victims.

The interview should be conducted **in a place where the person feels safe** and provides them with privacy. It is especially important that victims of human rights violations do not perceive the interview as an interrogation and they should be reassured on this point as often as necessary.

The issue of **privacy and confidentiality** should also be discussed before the interview begins and the interviewer should ensure that the interviewee provides her full and informed consent to the manner in which the information will be used. Women may have particular concerns about retaliation or reprisals and these concerns should be kept in mind at all times. The issue of confidentiality is not straightforward; while this may be in the interests of the victim, confidentiality can also impact on the rights of persons alleged to have committed human rights violations. As OHCHR has noted, the NHRI will need to balance these different and legitimate interests.⁹⁶ The most important point, however, is that the complainant fully understands the process and agrees to participate on those terms.

⁹⁶ OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No. 4 (Rev. 1), 2010, p. 87.

Practical measures that can be taken **to protect a victim** or a witness who agrees to make a statement to the NHRI include:

- Interviewing the person in a place where she feels safe or, if in a place of detention or a shelter, where surveillance is minimal
- Asking what security precautions the person believes should be taken at the start and end of the interview
- Providing a way for the person to remain in contact with the NHRI following the interview, taking into account issues of accessibility discussed above
- Never referring explicitly during interviews to statements made by others and never revealing the identity of other witnesses
- In places of detention or shelter, conducting a follow-up visit shortly after the interview.⁹⁷

NHRIs should ensure that the **services of an interpreter** are available to those women and girls who require one. Interpreters must be trustworthy and be seen to be trustworthy by the person being interviewed. They must fully understand their role and not exceed it. A woman may prefer to have a female interpreter and this should be established prior to the interview. In some circumstances, a trusted family member of the woman may be able to take on this role.

MALDIVES: INVESTIGATION INTO THE CASE OF TWO INNOCENT UNDERAGE GIRLS HELD AT MAAFUSHI PRISON

The **Human Rights Commission of the Maldives** has always closely monitored the State Children's Centre, both through its mandate as the country's national preventive mechanism (NPM) and in response to complaints the Commission receives with regard to the Shelter. Both girls at the centre of this investigation had been victims of sexual and physical abuse. They were supposed to be housed at the State Children's Shelter for psychological and social rehabilitation and treatment. However, the Commission's investigation found that the two girls escaped from the facility. The Gender Ministry had sought the assistance of the police to find the girls and, when they were found, they were first kept at the police custodial and then transported by boat to the main prison on Maafushi Island with a group of convicted felons.

The Commission began its enquiries when it heard that the two girls had escaped from the State Children's Centre. It sought the assistance of Gender Ministry to find out more about their situation. At first the Commission was told the girls were housed in a residential area of Maafushi Island and were well looked after. However, a team from the Commission went to Maafushi Prison for an independent check and, upon inquiry, it was revealed that the girls were being held in the prison for want of a place to house them.

The Commission at once launched an investigation, both publicly and through dialogue, which was eventually picked up by the Parliament. After several deliberations, which included an audience with the President, the girls were moved to an annex at the shelter. The Commission argued that the girls should under no circumstance be placed in the prison because it had no legal mandate to oversee underage girls with no criminal records. In addition, the decision to place the two girls in the prison constituted unlawful disappearance since their whereabouts had been withheld from the Commission. The legal aspect of the case is ongoing but the two girls are now in legally-obligated state care.



97 APF, APT and OHCHR, *Preventing Torture: An Operational Guide for National Human Rights Institutions*, 2010, p. 45.

As noted previously, the sex of the NHRI staff member conducting the interview may also be relevant. NHRIs should not make any assumptions in this regard but rather offer a choice of interviewer, if that is possible.

Following an investigation, it is usual practice for the NHRI to complete a report⁹⁸ that outlines the facts, identifies the relevant human rights provisions, analyses the evidence and sets out conclusions and recommendations. If there is a finding that a human rights violation has occurred, the NHRI will determine what steps should be taken to resolve the matter.⁹⁹ This requires a consideration of remedies, which is discussed below.

5.4. REMEDIES FOR VIOLATIONS OF WOMEN'S HUMAN RIGHTS

All women and girls who have experienced violation of their human rights have a legal right to access fair and adequate remedies. It is the obligation of the State to ensure this access. The NHRI may be an important partner in this process but this does not remove that responsibility from other organs of the State, such as the executive, legislature or judiciary. The issue of remedies is examined in Chapter 2 of this Manual, along with information on the relevant international legal requirements.

While the form and extent of remedies required for violations of women's and girls' human rights will depend on the nature and circumstances of the breach, the general standard requires that the remedy must give effect to the obligation on the offending State to, as far as possible, remove the consequences of the breach and re-establish the situation that existed prior to its occurrence. The CEDAW Committee has clarified that reparation should be proportionate to the physical and mental harm experienced and to the gravity of the violations suffered.¹⁰⁰

Under these standards a wide range of remedies could be considered for violations of women's and girls' human rights. In some situations, the NHRI may be in a position to deliver an appropriate remedy. For example, in a case of discrimination in employment, the NHRI may be able to order or recommend reinstatement or the payment of back wages. In a case of discrimination in a school, the NHRI may be able to help mediate a solution. However, in other circumstances, the NHRI may need to recommend or refer the matter on to those who are in a position to deliver an effective and appropriate remedy. For example, violations of human rights involving violence against women are generally also criminal offences. Subject to requirements of security and confidentiality, these violations should generally be referred to the relevant criminal justice agencies, who are themselves under an international legal obligation to investigate and prosecute violence against women with due diligence.

5.5. ALTERNATIVE DISPUTE RESOLUTION

Some NHRIs seek to resolve complaints by using alternative dispute resolution processes, such as mediation or conciliation. This approach, which is usually less adversarial than formal investigations, allows the parties to a complaint to talk through the issues and settle the matter on mutually agreeable terms.

In many countries, NHRIs have successfully used alternative dispute resolution to address complaints related to discrimination in employment, access to goods and services and discriminatory laws and policies. Alternative dispute resolution can also be a very effective tool for bringing about sustained changes in attitudes and behaviour.

98 APF, *Undertaking Effective Investigations: A Manual for National Human Rights Institutions*, 2013; pp. 162-170.

99 APF, *Promoting and Protecting the Rights of Migrant Workers: The Role of National Human Rights Institutions* (2012), p. 94.

100 *A.T. v. Hungary*, Communication No. 2/2003, views adopted 26 January 2005, para. 9.6 II (vi).

HONG KONG: RESOLVING SEX DISCRIMINATION IN EMPLOYMENT COMPLAINT

The **Hong Kong Equal Opportunities Commission** handled Hong Kong's first legal challenge to sex discrimination related to dress codes in the workplace. Upon receiving the complaint, the Commission case officer investigated the matter and tried to facilitate a settlement by way of conciliation. However, this attempt was unsuccessful. The Commission subsequently granted legal assistance on the basis that the case raises the question of sex discrimination in the field of employment, where a restriction affects members of one sex less favourably than members of the other. Under the Sex Discrimination Ordinance, it is unlawful for an employer to treat a person less favourably than another person in comparable circumstances because of a person's sex. In this case, female teachers were subjected to a stricter dress code than male teachers. It was determined that any dress code should be reasonable and necessary, according to the nature of the job, and that it should be applied in an even-handed manner between both sexes. After a writ was issued, the school agreed to settle the matter by giving an apology and monetary payment to the complainant. The school also undertook to review its dress code.



Alternative dispute resolution may be particularly suited to some matters involving women and allegations of violations of the human rights of women. For example, disputes involving family matters and community-based discrimination may be more quickly and effectively resolved in an informal setting. Where a change in attitudes or behaviour is required, alternative dispute resolution can, as noted above, be an important way forward.

However, it should not be assumed that violations of women's and girls' human rights are more amenable to being addressed in this way. A decision to engage in alternative dispute resolution should be made on the basis that it is the best way to resolve the matter. The complainant should, as far as possible, be involved in weighing up the different options available and deciding which one best suits her particular needs and circumstances.

It is critically important to note that alternative dispute resolution will, in fact, be an unsuitable for dealing with complaints of human rights violations when the complaint involves very serious or gross violations, criminal offences or a significant power imbalance between the parties. In some instances, the respondent to the complaint may be unwilling to engage constructively in the process. Under such circumstances it will be important to make other alternatives known and available to the complainant.

The alternative dispute resolution processes will generally be facilitated by an officer of the NHRI. He or she will provide information about the relevant laws and human rights standards; help ensure that each party is heard; help maintain an equal power balance between the parties; and support the discussions so that an agreed solution can be reached.

Where a mutually acceptable solution can be reached, the NHRI will record the outcome in a settlement agreement. The terms of the agreement should "be consistent with international and national human rights law, should resolve the grievances of the parties, and should be sustainable ... Settlement agreements that result from conciliation should be in the public interest".¹⁰¹

¹⁰¹ OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No. 4 (Rev. 1), 2010, p. 95.

Outcomes will vary depending on the nature of the complaint. However, they can include an apology (public or private); reinstatement to employment; compensation for lost wages; changes to workplace, industry or government policies; or a requirement for human rights training involving the respondent organization. Integration of a gender perspective into alternative dispute resolution processes will involve consideration of the available outcomes and whether they meet the particular requirements of cases involving violation of women's and girls' human rights. Of course, a settlement agreement should not represent the last step in the process. It is important that the NHRI monitors the situation to ensure that the agreement is implemented by the parties.

5.6. REFERRING COMPLAINTS AND PROMOTING LINKS WITH SERVICE PROVIDERS

It is important for NHRIs to recognize that they will not be in a position to address every issue or complaint relating to violations of women's human rights brought to them. This could be because the complaint:

- Falls outside the mandate of the NHRI
- Involves criminal behaviour that is beyond the NHRI's investigative authority
- Does not involve a clear violation of human rights.

NHRIs should have the capacity to help all complainants, even if the complaint falls outside the mandate of the NHRI. Usually this will involve ensuring that the complainant is referred to the appropriate authority or service. In the case of criminal violence, for example, this will likely involve referral to the police. The NHRI may also refer complainants to legal advice services and/or to government departments under whose responsibility the complaint falls.

To be effective, referrals of this kind must be detailed and substantive. The NHRI should provide the victim with clear reasons why the complaint cannot be dealt with by the NHRI, as well as a description of the steps involved in making a complaint to the most appropriate body.

Of course, referrals may also be necessary even when the NHRI has accepted a complaint for investigation. The NHRI should be aware that they are unlikely to be in a position to meet the full needs of the women and girl complainants. For example, the NHRI may need to refer these complaints to victim support agencies, counselling services or health services that can provide immediate assistance and protection.

A strong referral capacity must be developed within the NHRI; it will not grow of its own accord. The NHRI should ensure that it is in contact with the departments, agencies and services that can support women and girls who have experienced violation of their human rights. It should identify what services are available and which organization is responsible for delivering them, as well as having up-to-date contact information for each.

KEY POINTS: CHAPTER 5

- NHRIs should ensure that their complaint handling procedures are effective; that they promote access to justice; and that they provide practical redress for women and girls who have been treated unlawfully.
- Complaint handling procedures are an important vehicle for promoting and protecting the human rights of women, including by fostering greater understanding of national and international human rights standards within government, business, civil society and the broader community.
- NHRIs should ensure their complaint handling procedures are accessible to women and to those who support women to defend their rights. NHRIs should consider the ways in which they can encourage complaints from women generally, as well as from groups of women who are particularly vulnerable to human rights violations. Strategies may include:
 - Building awareness about their own work amongst vulnerable communities
 - Reflecting on their own knowledge, understanding and commitment to particular issues or a particular group
 - Extending communication strategies to NGOs and government agencies working with vulnerable women
 - Improving the accessibility of their NHRIs and complaint handling procedures.
- Integrating a gender perspective into NHRI complaint handling procedures will be most effective when the procedure itself is robust and accessible.
- Alternative dispute resolution processes can be an effective tool for resolving complaints and helping change attitudes and behaviour. However, it will not be appropriate for complaints that involve very serious violations, criminal offences or a significant power imbalance between the parties.
- NHRIs will not be able to address every issue or complaint involving violations of the human rights of women and girls. They should develop the capacity to make referrals to appropriate complaint handling and support agencies.



Chapter 6:

Conducting inquiries into systemic violations of women's and girls' human rights

KEY QUESTIONS

- What factors should NHRIs consider when deciding whether to conduct a public inquiry into violations of women's and girls' human rights?
- What steps are involved in establishing and conducting a public inquiry?
- What evidence should be collected during the course of a public inquiry?
- How can NHRIs encourage and facilitate the involvement of women in public inquiries, most particularly women whose rights are directly affected?
- What good practice examples can NHRIs draw on for inspiration and guidance?



BASIS FOR NHRI INVOLVEMENT

PARIS PRINCIPLES

Competence and responsibilities

3. A national institution shall, *inter alia*, have the following responsibilities:
- (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (ii) Any situation of violation of human rights which it decides to take up;
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government.



Methods of operation

Within the framework of its operation, the national institution shall:

- (b) Hear any person and obtain any information and any document necessary for assessing situations falling within its competence.



AMMAN DECLARATION

NHRIs agree to the following broad principles and areas of work:

- Respond to, conduct inquiries into and investigate allegations of violations of women's and girls' human rights, including all forms of discrimination against women and girls, gender-based violence, violations of economic, social and cultural rights, violations of reproductive rights and discrimination in public and political life, and identify systemic issues which may perpetuate these violations. These investigations and reports should result in recommendations to the State to meet their obligations to ensure women's and girls' human rights, and to combat impunity (paragraph 4).
- Facilitate women's and girls' access to justice, including judicial and non-judicial remedies, in accordance with their mandate (paragraph 5).
- Where NHRIs have quasi-judicial powers, exercise them fully to provide relief to the women and girl victims and press for administrative action against or the criminal prosecution of offenders (paragraph 6).
- Work with women human rights defenders, and devote particular attention to the gender-specific violations that women human rights defenders suffer for being women or because of the gender-specific causes that they defend, and promote their access to remedies in case of violations (paragraph 10).

AMMAN PROGRAMME OF ACTION

In relation to violence against women and girls, NHRIs agree to:

- Encourage and aid the compilation of an evidence base (e.g., data, inquiries, research) on the nature, extent, causes and effects of all forms of gender-based violence, and on the effectiveness of measures to prevent and address gender-based violence (paragraph 15).

In relation to reproductive rights, NHRI agree to:

- Encourage and aid the compilation of an evidence base (e.g., data, inquiries, research) concerning the exercise of reproductive rights and the right to sexual and reproductive health, including but not limited to cases of *de jure* and *de facto* discrimination in access to sexual and reproductive health care information and services, forced sterilization, forced abortion, child marriage, forced marriage, female genital mutilation/cutting, biased sex selection and other harmful practices (paragraph 26).

6.1. INTRODUCTION

By their very nature, many violations of women's human rights are widespread and systemic. They emerge from and reflect trends, attitudes and behaviours that are often deeply entrenched in laws, institutions and social practices. While individual complaint handling mechanisms are a valuable tool for responding to individual cases of human rights violations, they are unlikely to expose these broader forces and contribute to substantial, systemic change.

A public inquiry – sometimes known as a “national inquiry” – is an open, comprehensive and focused process that examines a systemic human rights problem in detail. These inquiries draw together a number of the core functions of the NHRI, including research, investigation, policy development and raising public awareness.

A major strength of the public inquiry model is that it allows NHRIs to go beyond the investigation of individual complaints. By gathering information and evidence from a variety of sources – including victims, experts and, possibly, alleged perpetrators – the NHRI can identify the underlying factors that contribute to systemic patterns of human rights violations and propose recommendations for positive change.

Because the inquiry process is public, it can also help to introduce, expose and explain a complex human rights issue to the broader community and build understanding and support for the findings and recommendations made by the NHRI.

The NHRI can develop recommendations that are wide-ranging and addressed to the Government, private sector bodies, the judiciary, NGOs, trade unions, professional associations, academic institutions and other civil society bodies. They can also be directed to individuals who are in a position to influence or effect positive human rights changes within the community.

SPECIALIZATION AND INTEGRATION: TWO VALUABLE OPTIONS

A public inquiry does not need to be *about* women and girls or violations of their human rights in order to make an important contribution towards promoting the rights of women and girls. Of course, NHRIs may decide to conduct an inquiry into an issue of specific concern to women. However, they must ensure that a gender perspective is fully integrated into any inquiry it is undertaken.

For example, an inquiry into homelessness could consider how homelessness impacts differently on women and men, as well as girls and boys, and then seek to identify ways in which the particular vulnerabilities and needs of women and girls can best be addressed. An inquiry into access to health care could establish how discriminatory laws, attitudes and practices affect women's and girls' access to health care. It may also consider health care issues from the perspective of rights that are of particular relevance to women, such as reproductive rights.



Detailed information on establishing and undertaking public inquiries is available in the *Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights Violation*,¹⁰² jointly published by the APF and the Raoul Wallenberg Institute of Human Rights and Humanitarian Law in 2012. The following information summarizes a number of the key themes and issues presented in the manual.

6.2. DECIDING WHETHER TO HOLD A PUBLIC INQUIRY

Every NHRI has a responsibility to engage with serious human rights violations that occur within the country, to identify the factors contributing to those violations and to develop practical and effective solutions. If it fails to do so, the credibility of the NHRI and public confidence in the institution can be undermined.¹⁰³

A public inquiry can be a powerful tool to draw attention to systemic patterns of discrimination or violations and generate positive change. It can also be a particularly useful approach if the NHRI is unable to adequately address a particular human rights issue through its monitoring, advisory or complaints processes. For example, certain violations affecting women may be too sensitive to attract many complaints under the NHRI's regular complaint handling procedure. Alternatively, some issues or violations may affect very large numbers of women and are therefore more suited to a broadly focused inquiry. As noted above, violations that are systemic in nature or rooted in discriminatory practices and attitudes may not be adequately addressed at the individual level.

¹⁰² Available at www.asiapacificforum.net/support/professional-resources/.

¹⁰³ Amnesty International, *National Human Rights Institutions: Amnesty International's Recommendations for Effective Protection and Promotion of Human Rights*, 2001, pp. 11-12.

In recent years, NHRIs in the Asia Pacific region have undertaken public inquiries on a broad range of issues including: mental health and human rights; freedom from torture; forcible removal of indigenous children from their families; access to public transport for persons with disabilities; the right to health; and the right to food. In the area of women's human rights, NHRIs worldwide are increasingly using public inquiries to expose widespread violations.

AFGHANISTAN: NATIONAL INQUIRY INTO VIOLENCE AGAINST WOMEN

In Afghanistan, traditional customs and practices – including women's seclusion; their domination by husbands, fathers or brothers; judicial recognition and enforcement of moral crimes; dominance of traditional discriminatory practices over religious principles; early and forced marriage and sexual assault; and low levels of education and women's security – result in women being kept under men's control and at risk of violence. These issues have come regularly to the [Afghanistan Independent Human Rights Commission](#) through its complaints work and investigations.

The Commission has specialist women's rights units and staff and seeks to protect and promote women's human rights through all its regional and provincial offices and nationally. It has investigated violations of women's rights since its establishment and reported regularly on the situation of women in Afghanistan. In undertaking its work, the Commission became convinced of the need for a more systemic investigation of violence against women, with a view to drawing public and political attention to women's experience of these grave human rights violations and to developing recommendations for governmental and community action to address and eliminate the violence.

The Commission commenced a national inquiry into violence against women in 2012, focusing in particular on so-called “honour killings” and rape. Work on the inquiry began with internal planning and preparation. A special inquiry team of a Commissioner and staff was appointed. Internal workshops were conducted to explain the inquiry and its methodology to staff, including eight workshops over six weeks involving 250 staff. During this period, the Commission also consulted and briefed senior government authorities at national and provincial levels, civil society, the media and other stakeholders to gain their support and cooperation.

The Commission sought broad public involvement in the national inquiry, especially the participation of women affected by violence. It adopted a number of complementary strategies to enable this. During the last months of 2012 and the first month of 2013, the inquiry team and other Commissioners and staff documented 124 cases of violence against women, 41 cases of killings and 83 cases of rape. They collected other evidence and heard the views of many of those involved with the issues, including victims and their families, government officials, community leaders, NGOs and others.

As part of the inquiry, the Commission:

- Interviewed victims and victims' families, using standard form questionnaires
- Conducted interviews in detention centres and prisons with accused and convicted abusers
- Organized 61 focus group discussions
- Held a number of public hearings, including three at the national level and in 14 provinces with 470 speakers and over 1000 participants.



Each public hearing involved the provincial governor or deputy governor, the head of the provincial judiciary, the chief prosecutor, the provincial chief police commander, relevant ministries and departments, including Islamic affairs, education, women's affairs and social security, members of provincial council, members of clergy council, psychologists and health experts, and civil society. Victims and members of their families were also provided with opportunities to speak. At these public hearings, comments centred on misleading practices and mismanagement in the judicial departments, on impunity given to abusers and on insecurity and other social disordering. Very constructive recommendations were made from the floor for the prevention of so-called honour killings and rape.

In June 2013, the Commission released the findings of its inquiry and recommendations to address violence against women.¹⁰⁴



Women and child in Farah, Afghanistan. UN Photo by Eric Kanalstein.

Experience has shown that NHRIs should consider a range of factors before deciding to conduct a public inquiry. These factors are briefly summarized below.

¹⁰⁴ Available at www.aihrc.org.af/en/research-reports/1571/national-inquiry-on-rape-and-honor-killing-in-afghanistan-report-summary.html.

6.2.1. Selecting the issue

National inquiries are able to address human rights violations that affect a significant number of people within a country. They can consider both contemporary and historical issues. Both these factors may be particularly important in the context of women's human rights where violations are often long-standing and widespread.

A national inquiry is a good way to examine a situation that is recognized as serious, whether or not it is recognized as a human rights problem. Where there is broad consensus about an issue that needs to be addressed, but a lack of understanding of the issue itself or political hostility towards resolving it, the national inquiry process assists in developing broad consensus on the nature of the problem, its human rights dimensions, the urgency in addressing it and the best ways to do so. It is a process that promotes a political response because it builds community consensus, and therefore political pressure, for a solution. The capacity of the inquiry to attract media and public attention is therefore a critical issue in deciding whether to undertake one. Without media and public attention it will not be possible to build the necessary community support for addressing the issue and, as a result, the necessary political will to do so. But, if it is to attract media attention, it must be able to be conducted in public. Many human rights issues are sensitive and evidence has to be collected confidentially. An issue that primarily requires confidential evidence is not well suited to being addressed through a national inquiry process.¹⁰⁵

Other considerations when selecting the issue that may be of special relevance to women's and girls' human rights include the following:

- A national inquiry is useful in relation to issues of human rights violations where there is shared responsibility. The structure of an inquiry makes it easier to identify responsible actors and to allocate responsibility in a fair and transparent manner.
- A national inquiry may be particularly suited to a human rights issue that has a low level of public and political recognition or acceptance. The process of the inquiry, as well as the outcome, can have a strong educative element and can help change entrenched social attitudes and behaviour. This can be particularly valuable for addressing *de facto* discrimination (i.e. where the law may not be discriminatory but discrimination still persists).
- National inquiries can be particularly well suited to an examination of discrimination and inequality in relation to economic, social and cultural rights. This is an area of profound significance for the lives of many women. These situations are often complex and generally not as well suited to an individual complaint procedure.

6.2.2. The capacity of the NHRI¹⁰⁶

Public inquiries are complex and resource intensive, requiring a substantial commitment on the part of the NHRI. The NHRI must have the capacity and resources, both financial and personnel, to undertake the inquiry effectively. It is important that an assessment of the resources required is undertaken prior to any decision being taken.

Firstly, there should be confirmation that the necessary resources will in fact be available to undertake all aspects of the inquiry. The NHRI should keep in mind that a poorly planned or executed inquiry can seriously undermine the credibility of the institution, especially among victims, witnesses and other key stakeholders who have supported the inquiry and given evidence. It may also negatively affect public perception of the inquiry's subject matter and make it difficult for the NHRI to progress the issue through other means.

105 APF and RWI, *Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights Violation*, 2012, p. 9 (hereafter "Manual on Conducting a National Inquiry").

106 Ibid, p.11. Criteria for deciding whether to conduct a national inquiry were developed by the Australian Human Rights Commission and the Uganda Human Rights Commission in 2000 and expanded at a workshop in Kampala, Uganda, in 2003.

Capacity also includes expertise on the inquiry subject. While the NHRI may be able to call on external advisers, it is important that those directly involved in the inquiry have a general understanding of the issue, as well as the broader context, including its social, political and economic dimensions. In the case of inquiries related to women's human rights, the NHRI should be confident that it possesses – or can readily acquire – expertise in all relevant areas of the subject.

The NHRI must also consider the question of effectiveness. In other words, what is the likelihood of an inquiry actually having a positive impact on the human rights of women and girls? Realization of human rights is a long-term effort and no inquiry can, by itself, be expected to solve long-standing and entrenched problems. However, it is important to assess the prospect of the inquiry leading to recommendations that can be implemented and that will make a difference.

Finally, the NHRI must consider whether it is the most appropriate body to conduct the inquiry. Will an effective inquiry enhance the profile of the NHRI and its reputation within the community? Is the subject better suited to investigation by a governmental or even quasi-judicial body? Is there another agency – for example, one that has a closer connection to the issue or that deals specifically with women – that would be better suited to lead the inquiry, with the NHRI playing a supporting role?

6.3. ESTABLISHING THE INQUIRY

The *Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights Violation* sets out a number of steps that need to be taken to establish any national inquiry including:

- Choosing the issue
- Preparing a background or scoping paper
- Identifying, consulting and engaging stakeholders
- Drafting objectives and terms of reference
- Appointing Inquiry Commissioners and staff
- Gathering other resources
- Finalizing an inquiry plan.

These steps are necessary for any inquiry and the Manual should be consulted for detailed guidance on what is required under each of them.¹⁰⁷ The following section focus specifically on those steps that have a gender dimension or that may otherwise require particular consideration when the inquiry relates to the human rights of women and girls.

Choosing the issue: Identifying the subject and scope of the inquiry is a critical decision and one that must not be taken lightly. The NHRI should ensure that any decision is based on a thorough initial review of information from all available sources, including those of the NHRI itself, such as its complaints data, training programmes and outreach activities. Experience from NHRIs in all regions of the world, including the Asia Pacific, confirms the following are important points to consider:

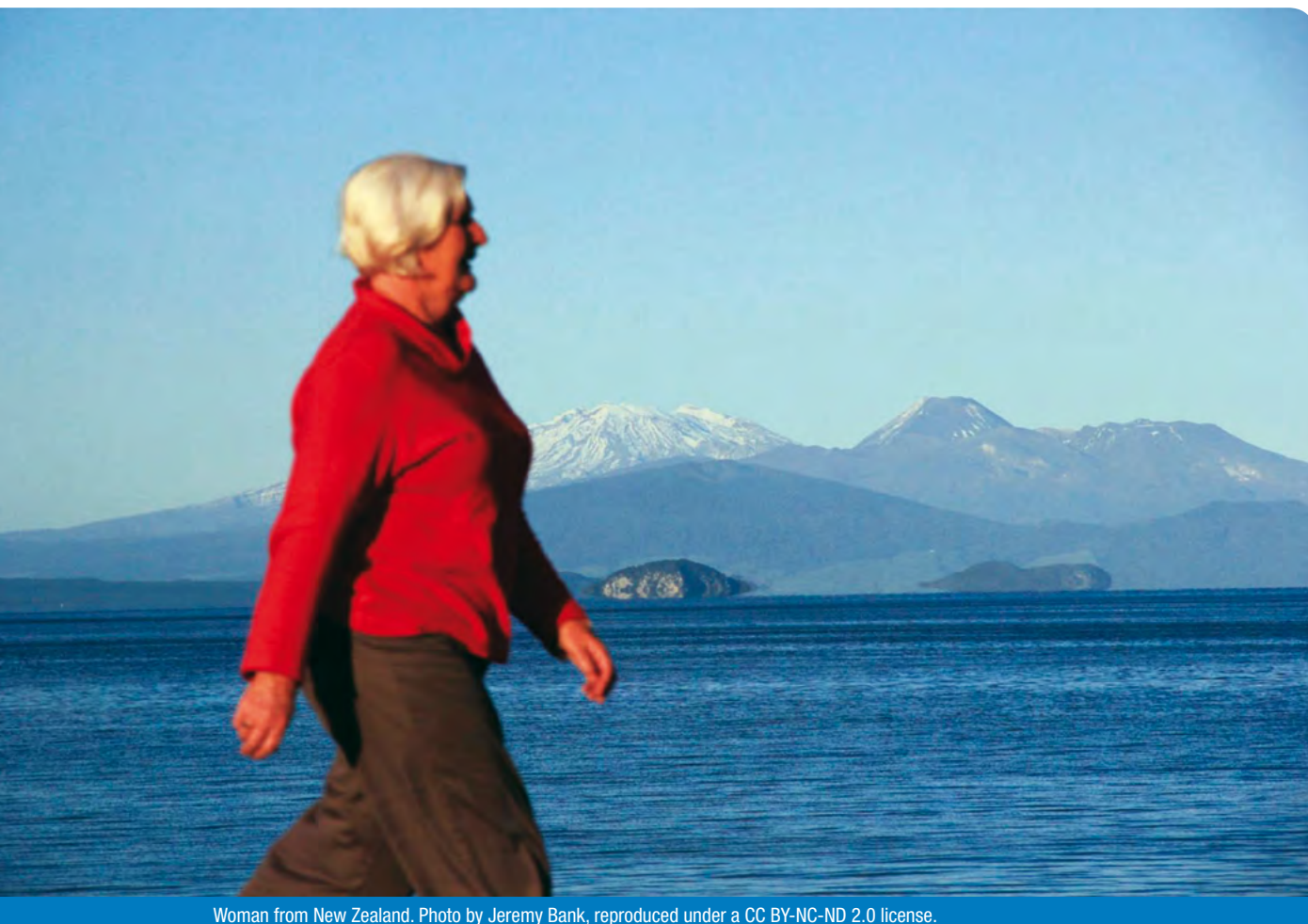
- The issue should be objectively significant in the country, considering the numbers of people affected, the severity of the violations or the widespread nature of the violations.
- The issue should have the potential to build broad, long-term public understanding and support for significant change.
- The issue should ideally be one that will attract the support and engagement of civil society groups that have the capacity and willingness to collaborate effectively and advocate for the recommendations.
- The inquiry should seek to break new ground. It should not cover issues that have been the subject of previous inquiries, undertaken either by the NHRI or other bodies.

¹⁰⁷ See Chapters 3–9 of the *Manual on Conducting a National Inquiry*.

In relation to the human rights of women and girls, the NHRI should consider addressing an issue that is either highly significant for one group of women – for example, migrant women, girls in school or pregnant women – or one that has broad and general significance for all or most women, such as discrimination in employment or access to justice.

Consultations with key target groups: The NHRI should ensure that the subject and scope of the inquiry are supported by those communities that are most affected. Part of the preparatory phase should involve consultation with relevant communities and community leaders in order to better understand the issues and ensure that the terms of reference for the inquiry are appropriate. Consultations may also be useful in identifying special requirements – for example, around language, literacy, confidentiality and security – that need to be taken into account when developing the consultation process for the inquiry. The NHRI should use the pre-inquiry consultations to explain the concept and process of a national inquiry to the groups most directly affected, as well as provide information on the inquiry's goals and how it will be conducted.

Consultation with other stakeholders: It is good practice for the NHRI to identify and consult with those who have a stake in the inquiry and its outcomes. As noted above, such consultations can help build understanding about and support for the inquiry. It can facilitate the process of the inquiry itself by ensuring that those with information and insights are able to contribute. Consultations can also help the NHRI in its own preparation; for example, by ensuring that the terms of reference for the inquiry and the staffing of the inquiry team are appropriate to the task. The key stakeholders will be different for each inquiry. In relation to inquiries involving the human rights of women and girls, stakeholders may include government departments and agencies, employer groups, trade unions, NGOs and academic experts.



Woman from New Zealand. Photo by Jeremy Bank, reproduced under a CC BY-NC-ND 2.0 license.

Ensuring gender expertise on the inquiry team: NHRIs should appoint Inquiry Commissioners and staff with the necessary skills and experience to undertake the research, collect the evidence, lead the public hearings, engage the media, analyse the evidence and draft the inquiry report and its recommendations. All members of the inquiry team should have a strong understanding of the issue being considered and the international legal framework around the human rights of women and girls. The inquiry team should also include substantial gender expertise, preferably among all or most team members. Attention to gender and the human rights of women should be a general responsibility, not something that is designating to a single person as a “gender focal point” or “women’s rights expert”. That approach can, in fact, risk marginalizing gender issues and compromising the outcome of the inquiry.

NEW ZEALAND: INQUIRY INTO THE AGED CARE WORKFORCE

In 2011 and 2012 the **New Zealand Human Rights Commission** used its inquiry powers to investigate equal employment opportunities in the aged care sector. The inquiry was prompted by two concerns. One related to the low pay and undervaluing of work in the aged care sector, where over 90 per cent of New Zealand’s aged care workforce is female. The other related to the link between the value that society places on the aged care workforce and the respect and dignity of older people.

A marked feature of the inquiry was the high degree of participation by stakeholders. Almost 900 people participated in the inquiry, including carers, older people receiving care and their families, residential and home support care providers, funders, politicians, unions and civil society.

A consensus emerged during the course of the inquiry that caring work was extremely demanding and skilled work that was very poorly paid. A summit was held to bring together stakeholder representatives to consider how the recommendations could be implemented. The consensus about the inadequacy of pay rates for workers in the aged care sector was transformed into a shared commitment to address the issue.

A draft of the inquiry report was sent to all those who participated, with feedback incorporated in the final version.¹⁰⁸ The recommendations were developed by the Equal Employment Opportunities Commissioner and the inquiry team after the feedback process and then endorsed by the New Zealand Human Rights Commission. The report also included the account of the Equal Employment Opportunities Commissioner working “undercover” in a rest home. This proved to be a compelling story and the report received nation-wide media attention over an extended period.



¹⁰⁸ The inquiry report – *Caring Counts: Report of the Inquiry into the Aged Care Workforce* – is available at www.neon.org.nz/agedcareinquiry/.

6.4. CONDUCTING THE INQUIRY

The *Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights Violation* sets out the two steps involved in conducting a national inquiry: sharing information, undertaking research and collecting evidence; and conducting public hearings¹⁰⁹ These steps are necessary for any inquiry and the Manual should be consulted for detailed guidance on each of the steps. The following section focuses specifically on those aspects that have a gender dimension or that may otherwise require particular consideration when the inquiry relates to the human rights of women and girls.

Communication and information: Public exposure is essential for an effective national inquiry. It helps ensure that the right people and organizations know about the inquiry and are encouraged to participate. It also helps generate public understanding about the inquiry and support for its goals. Communication and information are critical at all stages of the inquiry, ensuring that stakeholders are engaged, cooperative and supportive. When conducting a national inquiry on the human rights of women and girls, the NHRI must ensure that its communication strategy is specifically targeted to reach those who are most affected. This may involve researching how specific women's groups communicate and how the NHRI can tap into these networks. The consultation process discussed previously is likely to provide important insights to develop a communication strategy that is relevant and effective. For example, it may reveal a need for information to be provided in different languages, in a different format or using different communication channels to those normally used by the NHRI.

Collecting research and evidence: Conducting research and collecting evidence is critical to the national inquiry process. The preparatory work undertaken by the NHRI should identify what information will be necessary for the inquiry and where it may be obtained. Some information may already exist and can be easily gathered, such as reports of NGOs, government departments and international organizations. Recommendations made by the human rights treaty bodies, the special procedures and other international human rights mechanisms, particularly those working on women's human rights or on issues of high relevance to women, are also crucial sources of information. All relevant national laws and regulations should be compiled, as well as international and regional human rights standards and accompanying jurisprudence. This will provide a clear framework for identifying the responsibilities of the State and other stakeholders, as well as their compliance with those standards. The NHRI should identify those individuals with specific information or expertise in relation to the inquiry topic who could be invited to provide information to the inquiry, either in person or through a formal submission. For inquiries dealing with issues relating to the human rights of women, or issues affecting women differently or disproportionately, subject matter experts could be usefully supplemented by experts who are able to document and explain the gendered impact of laws, policies and practices.

The NHRI should keep in mind that some victims and witnesses, both women and men, may be reluctant to engage with the national inquiry, particularly if it involves issues that are sensitive or controversial. The NHRI can try to overcome this by developing a range of options for engagement, such as community meetings, small group meetings and individual interviews. Attention to culture, as well as language, communication needs and the location of affected populations, can help ensure the success of these meetings.

When conducting interviews, in particular, the NHRI should keep in mind the importance of not "re-victimizing" or "re-traumatizing" an individual. Members of the inquiry team should follow the general principles for conducting ethical and safe interviews with women and girls set out in Chapter 5 of this Manual.

Public hearings: Public hearings are central to the methodology and success of any national inquiry. They are a critical way of collecting evidence and insight into the actual experiences of those who may have suffered human rights violations. They also help to place the inquiry firmly within the public domain, which is essential for community education purposes and for securing broad support for the inquiry's findings and recommendations.

109 See Chapters 10–11 of the *Manual on Conducting a National Inquiry*.

The inquiry team should plan public hearings carefully to ensure that it can hear from all relevant stakeholders and experts, including, if necessary, through the careful selection of witnesses at each hearing. The individual situation of each witness should be taken into account so that the hearings can proceed as smoothly as possible and are respectful of those who give evidence. Women and girl witnesses may require special attention in this regard.

Public hearings are generally open to the public, including the media and representatives of government agencies, NGOs, trade unions, civil society groups and other interested stakeholders. The NHRI may need to make a special effort to ensure that women are aware of the inquiry and that they are able to attend and participate. Children are not often involved in public inquiries but the NHRI may wish to consider ways that enable girls and young women to safely provide evidence or otherwise participate.

6.5. FINALIZING THE INQUIRY

The *Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights Violation* sets out five steps involved in finalizing a national inquiry:

- Developing recommendations
- Preparing the report
- Releasing the report
- Following up
- Evaluating.¹¹⁰

These steps are necessary for any inquiry and the Manual should be consulted for detailed guidance on what is required under each step. The following section focus specifically on those aspects that have a gender dimension or that may otherwise require particular consideration when the inquiry relates to the human rights of women and girls.

Developing recommendations: A national inquiry should result in a detailed set of recommendations. These are generally aimed at acknowledging – and perhaps redressing – past violations of human rights and preventing future ones from occurring. When formulating recommendations, the NHRI should value quality over quantity and carefully prioritize those actions they believe are most important in securing a genuine change in the human rights situation for women and girls. Recommendations can be addressed to all relevant actors, not only the Government. They can be directed to any body, organization or even individual that has a role in addressing the violations or improving human rights compliance. They should be firmly based on the information and evidence collected by the inquiry and reflect national and international human rights standards. Recommendations that emerge from an inquiry relating to the human rights of women may be as broad as the terms of reference of the inquiry. For example, they might propose changes to laws, policies and practices of the Government or recommend training and education to improve understanding and respect for women’s human rights within the community or within a specific sector.

Preparing and releasing the report: The inquiry report is an opportunity for the NHRI to build public understanding of women’s human rights and how these rights can be both protected and violated. It should tell a clear, evidence-based and persuasive story that generates broad community support for change and, more specifically, for implementing the inquiry’s recommendations. Experience has demonstrated the value of reports that foreground the experiences of victims of human rights violations. In the case of a report dealing with the human rights of women, it is essential that the stories and experiences of women shape the report and feed into its final recommendations. Consideration should also be given to supplementing the official report with a plain-language summary and reports in other formats, such as audio and video, in order to make the inquiry’s findings and recommendations accessible to women, girls and other stakeholders.

110 See Chapters 12–16 of the *Manual on Conducting a National Inquiry*.

Similarly, the launch of the inquiry report can be supplemented by events that actively involve women and girls, such as workshops, conferences, online discussions and social media forums. The inquiry launch and these supplementary events should be geared towards securing support for the inquiry's findings and implementation of its recommendations. For that reason, it is essential that those who have a role to play in implementing the recommendations are involved as much as possible.

Follow up: Once the report has been released, the NHRI should focus on building support for the inquiry's recommendations among organizations and individuals responsible for their implementation, as well as those who are in a position to encourage and support positive change among the relevant organizations and individuals. Experience has demonstrated the importance of developing a detailed follow-up strategy that sets out how this will happen and how the NHRI will monitor the implementation of recommendations and any other related changes. Further, the NHRI should consider publicizing information about the implementation of recommendations, either through its normal reporting procedures or through special follow-up reports. An evaluation should also be conducted to look at the effectiveness of the inquiry process. The evaluation should consider a range of questions, including whether the inquiry's objectives were appropriate and whether they were met; whether women and girls were properly engaged and involved in the inquiry process; and what could be done better in the future.

KEY POINTS: CHAPTER 6

- A public or national inquiry is an open, comprehensive and focused process that examines a systemic human rights problem in detail.
- For those NHRIs that are empowered to conduct such inquiries, these can be an important tool for addressing the systemic issues that often lie at the heart of violations of women's and girls' human rights.
- A number of steps need to be taken to establish any national inquiry. Some of these steps may have a gender dimension or may require particular consideration of gender if the inquiry relates to the human rights of women and girls.
- When inquiries deal with the rights of women, or issues that affect women differently or disproportionately, NHRIs should ensure that their information and communication strategy is specifically targeted to reach those who are most affected.
- All national inquiries should result in a set of detailed and specific recommendations. They should acknowledge past violations and aim to prevent future ones from occurring.
- The inquiry report provides an opportunity to build public understanding of women's human rights, how they are violated and how they can be protected. The report should tell a clear, evidence-based and persuasive story that generates broad community support for change and for implementing the inquiry's recommendations.
- The NHRI should develop a follow-up strategy to promote the inquiry's findings and build broad community support for its recommendations.
- An evaluation of the inquiry should be conducted to assess the effectiveness of the inquiry and to inform future work to promote the rights of women and girls.



Chapter 7: Promoting and monitoring the human rights of women and girls

KEY QUESTIONS

- What strategies can NHRIs use to promote the human rights of women and girls?
- What professional groups could be prioritized for engagement?
- What good practice examples can NHRIs draw on for inspiration and guidance?



BASIS FOR NHRI INVOLVEMENT

PARIS PRINCIPLES

Competence and responsibilities

3. A national institution shall, *inter alia*, have the following responsibilities:
 - (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
 - (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

AMMAN DECLARATION

NHRIs agree to the following broad principles and areas of work:

- Promote the realization of the human rights of women and girls, including as found in CEDAW, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities and other human rights norms and standards, into national law and policies (paragraph 7).
- Undertake education, promotion and awareness-raising activities on the human rights of women and girls, gender equality and relevant international standards. Particular attention should be paid to eliminating prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. NHRIs will work to eliminate stigma attached to women and girls who come forward when their rights are violated (paragraph 12).



- Monitor and work with individuals and entities in the private sector and non-governmental sphere to ensure that they do not discriminate against women and girls (paragraph 14).
- Monitor the activities of businesses, from local to global, and report on any adverse impacts on women's and girls' enjoyment of their human rights (paragraph 15).

AMMAN PROGRAMME OF ACTION

In relation to women's public and political participation NHRIs agree to:

- Promote measures, including through education and the adoption of laws and practices, to eliminate traditions and social and cultural barriers and stereotypes that discourage or prevent women from exercising their right to vote or from otherwise participating in public, peace and political processes (paragraph 2).
- Provide assistance or support to women who face social and economic barriers to public and political participation, such as illiteracy, language, poverty, and impediments to women's freedom of movement, in order that these barriers may be overcome (paragraph 3).
- Encourage the adoption of temporary special measures to ensure that women are sufficiently represented in elected as well as appointed positions within the executive, legislative and judicial arms of government, and work with political parties to adopt affirmative measures to support more women candidates (paragraph 4).
- Promote mechanisms to ensure that girls' voices are heard in matters affecting their well-being (paragraph 5).

In relation to women's economic, social and cultural rights, NHRIs agree to:

- Support efforts to analyse whether States are spending the maximum of available resources on the progressive realization of women's economic, social and cultural rights through encouraging government use of a gender perspective in their planning processes, and human rights and gender budgeting tools. NHRIs should share their findings with parliaments as a contribution to decision-making on budgeting and promote the use of human rights budgeting and gender budgeting tools by parliaments (paragraph 7).
- Facilitate training of lawyers, prosecutors, judges, parliamentarians and government officials on women's economic, social and cultural rights (paragraph 9).
- Undertake awareness raising activities with women to educate them about their rights and mechanisms at their disposal for claiming their economic, social and cultural rights (paragraph 11).
- Monitor or support efforts to monitor women's rights to decent work, including equal remuneration and equal access to education, training and professional development, as well as ensuring women's health, safety and well-being in all workplaces (paragraph 13).
- Monitor or support efforts to monitor women's unpaid work and provide recommendations for support to women who have caring responsibilities, such as ensuring adequate child care, paid parental leave and flexible working arrangements among other measures, while promoting equal division of labour in the home (paragraph 14).

In relation to violence against women and girls, NHRIs agree to:

- Encourage and aid the compilation of an evidence base (e.g. data, inquiries, research) on the nature, extent, causes and effects of all forms of gender-based violence, and on the effectiveness of measures to prevent and address gender-based violence (paragraph 15).



In relation to violence against women and girls, NHRIs agree to:

- Where their mandate permits, conduct training of judicial and law enforcement officers, medical professionals, and other public officials on responding to violence against women, gender equality and women's human rights (paragraph 18).
- Promote measures, including penal provisions, preventive and rehabilitation measures to protect women and girls subject to trafficking and other forms of sexual exploitation (paragraph 19).
- Develop programmes to prevent and combat sexual harassment, and measures to protect women from sexual harassment and other forms of gender-based violence in the workplace, schools, or in other institutions such as places of detention (paragraph 21).
- Establish or support adequately resourced critical services for victims of domestic and family violence, sexual assault and other forms of gender-based violence, including refugees, specially trained health workers, rehabilitation, counselling and legal services, and ensure these services are accessible to particularly disadvantaged groups of women (paragraph 22).

In relation to reproductive rights, NHRI agree to:

- Encourage and aid the compilation of an evidence base (e.g. data, inquiries, research) concerning the exercise of reproductive rights and the right to sexual and reproductive health, including but not limited to cases of *de jure* and *de facto* discrimination in access to sexual and reproductive health care information and services, forced sterilization, forced abortion, child marriage, forced marriage, female genital mutilation/cutting, biased sex selection and other harmful practices (paragraph 26).
- Promote measures to ensure access to comprehensive sexual and reproductive health information and services and to remove barriers which hinder such access, and support the establishment of accountability mechanisms for the effective application of the laws and the provision of remedies when obligations have been breached (paragraph 28).

**APF ACTION PLAN ON THE HUMAN RIGHTS OF WOMEN AND GIRLS:
PROMOTING GENDER EQUALITY****APF member institutions agree to:**

- Monitor the promotion and protection of the full range of women's human rights at the national level (paragraph 6).
- Work in cooperation with non-governmental organizations and other civil society organisations to promote and protect women's and girl's human rights (paragraph 8).
- Give particular attention to the needs and problems of women who are human rights defenders or who suffer discrimination because of the human rights issues they raise (paragraph 9).
- Monitor the promotion and protection of the full range of women's economic, social, cultural, civil and political rights at the national level using benchmarks such as the Millennium Development Goals and the UNDP Gender Empowerment Index to assess the progress made by States (paragraph 12).

7.1. INTRODUCTION

To promote the human rights of women and girls and contribute to positive changes in their enjoyment of those rights, NHRIs should adopt a two-fold approach: specialization and integration.

Specialization requires NHRIs to develop programmes and initiatives that are directly targeted to the needs of women and girls and which specifically aim to improve the human rights situation for them. This specialized focus on a group of people, based on their sex, can be viewed as being similar to a “special measure” (or a form of positive discrimination). As a public institution, NHRIs are bound by national and international human rights law. Designing and implementing a specialized programme of this type can be a strategy for NHRIs to meet their legal duty to contribute to substantive (or “*de facto*”) equality between men and women.

Integration requires NHRIs to ensure that their programmes and activities take account of gender and respond to the human rights issues facing women and girls. Integration is an important tool for NHRIs in their work to challenge negative stereotypes about women and girls that lie at the heart of many human rights violations they experience. Successful integration will invariably require NHRIs to analyse their programmes and their methods of work to ensure that they are giving proper consideration to the needs and rights of women and girls. Such a review can help NHRIs identify areas to further promote and strengthen their focus on the human rights of women and girls.

The Amman Declaration recognizes that NHRIs have a responsibility to “[p]romote the realization of the human rights of women and girls”.¹¹¹ This responsibility places an obligation on NHRIs to develop programmes and initiatives that are directly targeted to the needs of women and girls. However, it also requires that NHRIs integrate gender and the human rights of women into their general programme of work. These two strategies go hand in hand. They should build on and reinforce each other. For example, NHRIs may:

- Revise their training programmes for public officials to ensure greater attention to women’s human rights and to issues relevant to the work of the target audience that have or should have a gender perspective (integration)
- Develop a public awareness programme on human rights and disability that highlights the special needs of particularly vulnerable group of people with disabilities, such as migrants, indigenous people and women (integration)
- Launch a media campaign to highlight the issue of violence against women and girls (specialization)
- Develop a training programme for officials involved in preparing the State’s report to the CEDAW Committee (specialization).

As with all other aspects of its work, the NHRI’s efforts to promote the human rights of women and girls should be built on a strong foundation of knowledge and evidence. In other words, the NHRI should set out to acquire a solid understanding of the major human rights issues facing women and girls and the obstacles that impede the full realization of their rights. It should then use this information to develop activities and interventions that reflect identified needs and address specific obstacles. Sometimes it may be necessary for the NHRI to undertake a specific study of what is required. However, the NHRI should be aware that many of its day-to-day activities – from complaint handling to research and training – will provide valuable insights that can be used to refine the institution’s strategies and plans.¹¹²

¹¹¹ Amman Declaration, para. 7.

¹¹² Useful online resources on promoting the rights of women and girls and advancing gender equality include the UN Women Watch website (www.un.org/womenwatch/directory/human_rights_of_women_3009.htm) and the International Women’s Rights Action Watch Asia Pacific website (www.iwraw-ap.org/).

7.2. BUILDING COMMUNITY AWARENESS ABOUT WOMEN'S AND GIRLS' HUMAN RIGHTS

Community awareness programmes are essential to help women and girls understand their human rights and how they are and can be protected. They can also help build a community-wide culture that rejects discrimination and the negative stereotyping of women and girls. A well-informed community should support women and girls and their human rights.

Building community awareness is often not a standalone activity of NHRIs but part of a broader strategy or area of work. For example, changes to national laws and policies will not be fully effective until those who benefit from those changes – and those who are responsible for ensuring them – are aware of what has changed and what their new rights and responsibilities actually are. In addition, pressure for changing laws and policies can often start at the community level, with NHRIs taking a leading role to build community knowledge and support around a particular issue. For example, activities such as a national inquiry can have a powerful community awareness effect, placing the spotlight on a serious human rights issue in the country and identifying practical strategies to bring about positive change.

NHRIs have an important role to play in promoting community awareness of women's and girls' human rights. When building awareness about women's human rights, NHRIs should adopt both integrated and specialized strategies. In other words, they should:

- Ensure that their general community awareness activities include and reflect the human rights of women and girls
- Identify ways to directly build community awareness about the rights of women and girls.



The Gerakan5jari (Five Finger Movement) campaign in Indonesia. The 'five fingers' symbolize five steps that everyone can take to stop violence against women and girls. Photo by Say No – UNITE/Matari Advertising, reproduced under a CC BY-NC-ND 2.0 license.

NEW ZEALAND: MONITORING WOMEN'S PARTICIPATION IN LEADERSHIP

The saying “what gets counted, gets done” was a key motivation for the [New Zealand Human Rights Commission](#) when it produced its first benchmark report on women in leadership in 2004, as part of its statutory role to monitor human rights in New Zealand. *The New Zealand Census of Women's Participation*¹¹³ is published every two years by the Commission. The most recent census, in 2012, was the fifth.

The Census benchmarks progress – or the lack of it – in women's participation in leadership in a number of key areas of public life. It includes time-series data so that progress and regression, as well as trends and patterns, can be identified. The Census provides information and analysis of the participation levels of women on the boards of publicly listed companies and state sector boards, in senior academic positions in universities, in legal partnerships and judicial appointments, in senior management positions in the public service, within sporting bodies, in trade unions and in politics, to name some of the areas covered.

The methodology employed is robust, with data supplied by a number of agencies and organizations and attributed to them. Additional data is collected, analysed and verified by the Commission. As a result, the Census is highly regarded as an authoritative source of information about women's progress in leadership in New Zealand. It provides an objective picture of the progress that women have made and an evidence-based platform for public debate about what should be done.



JORDAN: MONITORING THE HUMAN RIGHTS OF WOMEN

In 2012, the [Jordan National Centre for Human Rights](#) established a national observatory for the rights of women.¹¹⁴ The observatory aims to monitor and follow-up the situation of the human rights of women in Jordan.

INDIA: BUILDING GREATER AWARENESS OF THE HUMAN RIGHTS OF WOMEN

The [National Human Rights Commission of India](#) has developed a number of publications and education materials in Hindi, English and regional languages in order to build community awareness about the human rights of women. For example, under its “Know Your Rights” series, the Commission has published and distributed booklets on sexual harassment in the workplace, human rights and HIV/AIDS, bonded labour, child labour and rights of persons with disabilities, as well as a guidebook for the media on sexual violence against children. Other Commission publications include a handbook for teachers and teacher's educators on discrimination based on sex, caste, religion and disability; and dossiers on the rights of women and children (for example, “Women's right to health”, “Dalit rights”, “Rights of home-based workers” and “Children in India and their rights”). The Commission has also produced short films on sexual harassment of women at the work place, bonded labour, manual scavenging and trafficking in women and children.¹¹⁵

113 Available at www.neon.org.nz/census2010/.

114 Available at www.nchr.org.jo/english/Home.aspx.

115 Available at www.nhrc.nic.in.

Some general strategies around community awareness and engagement may be useful to NHRIs as they seek to strengthen this aspect of their work in relation to the human rights of women and girls:

- Key messages about women's and girls' human rights can be easily built into the regular promotion work of NHRIs, such as media interviews, public speeches and when launching reports or research studies
- NHRIs can review the public information materials about their role and functions to ensure that their work to promote and protect the human rights of women and girls is properly highlighted.
- Public service announcements addressing issues of concern to women and girls can be developed or co-sponsored with one or more partner organizations and promoted through both traditional and social media outlets
- Journalists are an important resource for NHRIs and can be an appropriate target for awareness raising activities around the human rights of women and girls.

NHRIs can also develop broad-based public education campaigns¹¹⁶ on a specific issue or theme relevant to women, such as political participation, gender stereotyping, pregnancy-related discrimination at work or violence against women.

All public education campaigns by NHRIs should be built around a simple, powerful and positive message that clearly sets out the issue or “problem”, proposes a positive vision for the community and describes practical actions that groups and individuals can take to make this vision a reality.

An effective campaign will be based on a detailed communication strategy, which should specify the campaign's objectives, the target audience, the main methods of communication, the campaign's key message and the actions that people can take to demonstrate their support. The NHRI should also identify the financial and human resources that will be required and the timeframe for the campaign.

Consistent with a human rights-based approach, any public education campaign developed by the NHRI should be guided by consultations with those who are the focus of its efforts. It should also accurately reflect their concerns and experiences. For example, a campaign on the rights of indigenous women should be developed in close collaboration with indigenous women and those working with them. Information from these groups can be drawn from community forums and other means of consultation. The NHRI should also ensure that women are involved as spokespersons in the delivery of the campaign and its key messages.

The effectiveness of a community education campaign will often be enhanced by working in partnership with other organizations. NHRIs seeking to develop a community education campaign on violence against women, for example, may decide to partner with NGOs working on the issue, a relevant government department, police authorities or perhaps an international organization, such as UN Women. Such partnerships can widen the scope and reach of the campaign and increase its impact.

The visibility of any campaign, and the level of community engagement it generates, can often be improved through involving public figures, opinion leaders, employers and others. NHRIs should also explore ways to involve women who have first-hand experience of the human rights issue being highlighted, as long as this can be done in a safe and non-exploitative way.

Any public campaign should be evaluated to assess whether it has met its objectives and whether it was a productive use of resources.

Other strategies that NHRIs can use to raise community awareness and build public engagement around issues related to the human rights of women and girls include:

116 This section is adapted from APF, *Promoting and Protecting the Rights of Migrant Workers: The Role of National Human Rights Institutions*, 2012, pp. 131-146.

- Drawing special attention to the rights of women and girls in annual reports and other thematic reports and publications¹¹⁷
- Holding, sponsoring or participating in conferences, workshops and seminars
- Supporting human rights education in schools, either by integrating the rights of women and girls into general human rights education materials or developing specific programmes or modules focusing on the rights of women and girls
- Initiating or collaborating on research projects that provide NHRIs with information on the human rights issues facing women and girls and thereby enhance their advisory, advocacy and awareness programmes
- Organizing exhibitions and other special events to mark key dates in the human rights calendar, such as International Women's Day (8 March).

KEY RESOURCE FOR NHRIs ON HUMAN RIGHTS EDUCATION

In 2013, the APF published *Human Rights Education: A Manual for National Human Rights Institutions*.¹¹⁸ The Manual is a resource for NHRIs and human rights educators to use when planning any human rights education programme or activity. It aims to support both new and experienced human rights educators by offering a theoretical and practical approach to human rights education. The Manual does not propose a template for human rights education, nor does it suggest that there is a correct way to “do” human rights education. Rather, it suggests that there are multiple ways of undertaking effective human rights education and that any activity should be informed by the views and needs of those towards whom the activity is directed.

The Manual is divided into four sections. The first introduces the concept of human rights, human rights education and the role and mandate of NHRIs to provide human rights education. The second section provides an overview of the theoretical background to human rights education, its philosophy and principles. The third section focuses on conducting human rights education, including planning and designing an education activity, implementing an activity and evaluating its outcomes. It includes a chapter on working with the media, as well as a specific focus on formal education of children and young people in schools and human rights education in conflict and post-conflict settings. The final section offers a variety of tools that can be used for human rights education activities.



7.3. ENGAGING WITH BUSINESS AND EMPLOYERS

Business and employers play a critical role in the realization of women's human rights. Workplaces that are respectful of human rights empower women. However, they can also be sites of harassment, discrimination and inequality. As recognized in the Amman Declaration, NHRIs have a responsibility to “[m]onitor the activities of businesses, from local to global, and report on any adverse impacts on women's and girls' enjoyment of their human rights”.¹¹⁹

¹¹⁷ For example, the New Zealand Human Rights Commission's most recent major publication on the state of human rights in New Zealand (*Human Rights in New Zealand 2010*), which guides the Commission's five-year programme of action for human rights, includes a chapter on the rights of women. Similarly, the annual reports of the National Human Rights Commission of India, which are tabled before Parliament, include a chapter on the rights of women and children.

¹¹⁸ Available at www.asiapacificforum.net/support/professional-resources/.

¹¹⁹ Amman Declaration, para. 15.

However, the relationship between NHRIs and business should be about much more than monitoring their actions and inactions. NHRIs can help business and employers to improve their understanding of human rights, including the rights of women, and to improve the realization of women's human rights in and around the work environment. This can be done by providing information and advice on relevant laws and policies, as well as examples of good practice in promoting and protecting the rights of women at work.

AUSTRALIA: PREGNANCY GUIDELINES FOR EMPLOYERS

Discrimination in relation to pregnancy status has been identified by several NHRIs as a major issue of concern. For example, women may be refused employment if their prospective employer believes that they are, or are likely to become, pregnant. They may lose their jobs once their pregnancy becomes known. Women who have taken leave to have a baby can find that their employment conditions have been unfairly changed once they seek to return to work. In 2001, the [Australian Human Rights Commission](#) published *Pregnancy Guidelines*,¹²⁰ which set out in plain language the legally enforceable rights of employees and the legally enforceable obligations of employers in relation to pregnancy. The Guidelines, which were prepared after consultation with unions and employers, examine issues of pregnancy discrimination at all stages of the employment relationship, including recruitment, employment and dismissal. They also address the overlap between discrimination and industrial and occupational health and safety obligations.



HONG KONG: GUIDEBOOKS ON EQUAL PAY BETWEEN MEN AND WOMEN

The [Hong Kong Equal Opportunities Commission](#) has developed a set of guidebooks¹²¹ for employers, workers and the public to strengthen community understanding around the concepts of “equal pay for equal work” and “equal pay for equal value”, for the purpose of eliminating pay discrimination on the ground of sex. The main guidebook, directed towards employers, provides practical guidance on how to achieve pay equity between men and women and explains their obligations under the Sex Discrimination Ordinance. Three supplementary guidebooks provide tools and examples that can assist employers and workers to assess their own operations and circumstances.

In seeking to engage with business and employers, NHRIs should understand that:

- Certain employment sectors, and certain categories of women employees, will be more vulnerable to workplace discrimination and inequality. Migrant women, for example, often face much greater risks to their human rights. Women working in the informal sector can also be vulnerable, not least because they are usually much less visible.
- Discrimination in the workplace will often reflect broader community discrimination. For example, if the community tolerates a certain level of sexual harassment, it is likely that this will be a problem for women across a broad range of workplaces.

120 Available at www.humanrights.gov.au/publications/pregnancy-guidelines-2001.

121 Available at www.eoc.org.hk/eoc/graphicsfolder/showcontent.aspx?content=preventing%20sex%20discrimination%20in%20pay.

- Partners for engaging with business on the issue of women's human rights can include trade unions, industry peak bodies and employer associations. These alliances can help NHRIs to develop productive relationships with employers and business, based on mutual trust and respect. Such partners can also be an important source of advice on whether the strategies and resources developed by NHRIs are relevant, credible and useful.

NHRIs can support employers and businesses to implement their obligations under national and international law, as well as policies and voluntary commitments. For example, addressing sexual harassment in the workplace often requires a range of measures that go beyond simple prohibitions. NHRIs can help employers and businesses to identify those measures and implement them effectively.

UNITED NATIONS GLOBAL COMPACT: WOMEN'S EMPOWERMENT PRINCIPLES

The Women's Empowerment Principles¹²² emerged out of a partnership between UN Women and the United Nations Global Compact, a worldwide initiative for businesses committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, the environment and anti-corruption.

The Women's Empowerment Principles set out the key elements necessary to promote gender equality in the workplace, the marketplace and the community. Developed through an international consultative process, and informed by real-life business practices and input gathered from across the globe, they provide a "gender lens" through which business can survey and analyse current practices, benchmarks and reporting practices.



WOMEN'S EMPOWERMENT PRINCIPLES

1. Establish high-level corporate leadership for gender equality.
2. Treat all women and men fairly at work – respect and support human rights and non-discrimination.
3. Ensure the health, safety and well-being of all women and men workers.
4. Promote education, training and professional development for women.
5. Implement enterprise development, supply chain and marketing practices that empower women.
6. Promote equality through community initiatives and advocacy.
7. Measure and publicly report on progress to achieve gender equality.

7.4. PROFESSIONAL TRAINING AND ENGAGEMENT

As discussed, community education on the human rights of women and girls – through schools, civil society groups and business – is an important element of the work of NHRIs to promote awareness of women's and girls' human rights. However, NHRIs should also reach out to individuals and institutions that have or may have special responsibilities concerning the human rights of women and girls. Such engagement can take many different forms. For example, NHRIs may seek to involve a particular professional group in their community outreach initiatives. They may also seek the support of one or more professional groups when conducting an inquiry or undertaking research.

122 See www.weprinciples.org.

Training is an important process through which NHRIs can establish and strengthen valuable relationships with professional groups and improve their capacity to protect and promote the human rights of women and girls. Professional training should seek to build greater understanding of national and international human rights standards and develop enhanced operational skills and strategies.

Appropriate target groups for professional training on the rights of women and girls might include:

- Law enforcement officials, including those with responsibilities related to detention and migration control
- Criminal justice officials, such as prosecutors and judges
- Regulatory officials, such as those responsible for workplace inspections and monitoring labour standards
- Government officials with responsibilities in areas that have a strong gender dimension or that are otherwise highly relevant to women and girls, such as those working in social security, health and medical services, aged care, disability, housing, migrant services, indigenous issues and family relations
- Parliamentarians and their support staff
- Migrant and refugee service providers
- Health and social welfare professionals.

NHRIs should seek to combine elements of mainstreaming and specialization in their training programmes.



A women's committee on Manono Island, Samoa. Photo by Sally Sitou/AusAID, reproduced under a CC BY 2.0 license.

7.4.1. Integrating a gender perspective into professional training programmes and resources

As part of a broader effort to integrate the human rights of women into their work (see further Chapter 12), NHRIs should review their existing professional human rights training programmes and associated resources to identify ways in which those programmes and resources could be strengthened with respect to the human rights of women and girls.

For example, a review of a general human rights training programme for law enforcement officials may find a need to introduce issues of particular concern to women and girls, such as human trafficking, domestic violence and other forms of gender-based violence. It may also reveal that more attention should be given to the gendered aspects of certain law enforcement practices, such as victim interviewing. It may identify the issue of sex-based discrimination as one of particular relevance for law enforcement. In addition, the review may highlight ways to raise awareness among training participants about how gender operates within their own organizations to perpetuate negative stereotypes that disadvantage women.

7.4.2. Developing and contributing to professional training programmes and resources on the human rights of women and girls

NHRIs can consider developing specialized training programmes that focus on the human rights of women and girls or on a human rights issue that is of special relevance to women and girls. As with any other area of activity, such an initiative should be based on a solid understanding of the size, scope and gender dimensions of the issue. Needs assessment can take a range of forms. For example, NHRIs may initially identify a need for specific professional training through a study or outreach activity or through their complaints or inquiry procedures. They can then explore that need through other channels in order to determine how it can best be addressed.

When developing a professional training programme, NHRIs also need to:

- Identify the objectives and expected outcomes
- Prepare professional training materials and resources
- Select a suitable trainer(s)
- Select the most appropriate group of participants
- Undertake post-training evaluation.

There are a number of useful resources available to help NHRIs in this area. For example, OHCHR has developed a manual on human rights training¹²³ and also provides a wide range of human rights training materials for professional groups, including law enforcement officials, prosecutors and judges.¹²⁴ It is important to note, however, that many existing resources do not fully integrate a gender perspective. NHRIs should therefore use such resources as a starting point rather than as a fixed template.

7.5. RESEARCH INTO WOMEN'S HUMAN RIGHTS¹²⁵

Research is an important part of the work of all NHRIs. It helps provide a solid evidence base for its interventions and supports the development of priorities and specific initiatives. For example, NHRIs can examine their complaints data to identify patterns of human rights violations experienced by women and girls and to establish whether certain groups of women may be especially vulnerable to human rights violations. Information collected through other regular monitoring activities – such as visits to places of detention – can also be reviewed to identify systemic issues.

123 OHCHR, *Human Rights Training: A Manual on Human Rights Training Methodology*, Professional Training Series No. 6, 2000.

124 Available at www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducation.aspx.

125 This section is adapted from APF, *Promoting and Protecting the Rights of Migrant Workers: The Role of National Human Rights Institutions*, 2012, pp. 142-144.

An effective research project should add value. It should contribute new knowledge to around a current “information gap” and identify potential areas for legislative, policy or other reform. The research conducted by the National Human Rights Commission of India (see text box below) is a good example of research being used to inform policy. Such research can also provide important baseline data against which progress can be measured.

Research can be especially useful when NHRIs wish to undertake a more focused approach to a particular issue. In this context, a research project may seek to establish the parameters of the issue, identify potential partners, propose possibilities for making progress on the issue and draw together examples of similar work being done elsewhere.

INDIA: RESEARCH INTO PRENATAL SEX SELECTION

The **National Human Rights Commission of India** first took up the issue of prenatal sex selection in its 2000–2001 Annual Report when it commented on the sex ratio across the country. The Commission highlighted the disproportionate number of men to women in some States and Territories called for a concerted effort to end the misuse of sex-determination tests.

In 2008, the Commission undertook a collaborative research project with UNFPA entitled “Research and Review to Strengthen Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act’s Implementation across Key States”. The main objective of the research project was to review cases registered by the States and Union Territories under the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, examine the hurdles in filing such cases and then review the final orders passed, in order to identify the impediments to implementing the Act.

In October 2010, the Commission organized a one-day conference on “Prenatal Sex Selection in India: Issues, Concerns and Actions”. The main objective of the conference was to critically analyse the problem of prenatal sex selection in India and create awareness about issues, concerns and actions relating to it. The recommendations from the research and the conference have been circulated to all State Governments and Union Territory administrations for their compliance. The Commission continues to monitor their observance.



NHRIs may initiate and conduct their own research if the necessary resources and expertise are available. However, NHRIs should also consider collaborating with potential partners, such as professional groups, NGOs, government departments, academic institutions and intergovernmental organizations, with relevant expertise.

Increasingly, NHRIs are well placed to develop toolkits on good practices and to suggest effective strategies for addressing gender inequality, particularly in the workplace. For example, the Australian Human Rights Commission recently undertook widespread consultations with male-dominated industries and stakeholders and developed a toolkit on how to address the underrepresentation of women in male-dominated industries.¹²⁶

126 See www.humanrights.gov.au/women-male-dominated-industries-toolkit-strategies.

KEY POINTS: CHAPTER 7

- NHRIs have a responsibility to promote the realization of the human rights of women and girls, which places on them an obligation to:
 - Develop programmes and initiatives that are directly targeted to the needs of women and girls
 - Integrate gender and the human rights of women and girls into their general programme of work.
- NHRIs should seek to build a solid understanding of the major human rights issues facing women and girls and the obstacles that can impede the realization of their rights.
- NHRIs can promote community awareness of women's and girls' human rights using both integrated and specialized strategies. They should look for opportunities to ensure that their general community awareness activities include and reflect the human rights of women and girls. In addition, NHRIs should identify ways to directly build community awareness about women's and girls' human rights.
- NHRIs have a responsibility to monitor the activities of business and report on any adverse impacts on women's and girls' enjoyment of their human rights. They can help businesses and employers to build their understanding of human rights and to improve the realization of women's human rights at work.
- Training is an important process through which NHRIs can develop relationships with professional groups and improve their capacity to protect and promote the human rights of women and girls. An effective approach for professional human rights training will combine both "mainstreaming" and "specialization" approaches.
- Research on issues relevant to the human rights of women and girls can add value to the broader work of NHRIs.



Chapter 8:

Engaging with international and regional mechanisms

KEY QUESTIONS

- What international bodies and processes are important for NHRIs in relation to their work on women's and girls' human rights?
- What opportunities exist for NHRIs to interact with the Human Rights Council, in particular the universal periodic review and the special procedures?
- How can NHRIs engage strategically with the human rights treaty bodies to highlight issues of concern to women and girls?
- What other international and regional bodies and mechanisms can NHRIs engage with to promote and protect the rights of women and girls?
- What good practice examples can NHRIs draw on for inspiration and guidance?



BASIS FOR NHRI INVOLVEMENT

PARIS PRINCIPLES

Competence and responsibilities

3. A national institution shall, *inter alia*, have the following responsibilities:
 - (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
 - (e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights.



AMMAN DECLARATION

NHRIs agree to the following broad principles and areas of work:

- [In prioritizing and mainstreaming the human rights of women and girls and gender equality] NHRIs should seek technical assistance from specialist UN agencies, ICC, Regional Coordinating Committees or other institutions to support these efforts (paragraph 1).
- [E]ngage with organizations and stakeholders at the national, regional and international levels, including trade unions, UN agencies, non-State actors, civil society organizations, and regional- and inter-governmental organizations to promote and protect women's and girl's human rights and gender equality (paragraph 2).



- Forge strategic partnerships with UN agencies such as UN Women, UNDP, UNICEF, UNFPA, and OHCHR to strengthen cooperation with, and the capacities of, NHRIs to more effectively promote and protect women's and girls' human rights (paragraph 11).
- Prioritize and promote the human rights of women and girls and gender equality through their engagement with all international and regional human rights mechanisms, and in their engagement with global processes such as the post-2015 development agenda, the ICPD Beyond 2014 Global Review, the Beijing Platform of Action, and the Vienna Programme of Action (paragraph 16).

AMMAN PROGRAMME OF ACTION

In relation to women's economic, social and cultural rights, NHRIs agree to:

- Support efforts to monitor development assistance programmes to ensure that they do not discriminate against or disadvantage women and that they prioritize the achievement of gender equality and women's and girls' human rights (paragraph 12).

APF ACTION PLAN ON THE HUMAN RIGHTS OF WOMEN AND GIRLS: PROMOTING GENDER EQUALITY

APF member institutions agree to:

- Monitor the State party's implementation of CEDAW and its Optional Protocol and engage in the periodic examinations, reporting processes and development of general recommendations under the treaty, as well as engage in the communication and inquiries process under the Optional Protocol, where appropriate (paragraph 2).
- Engage with the UPR and monitor the State's implementation of the recommendations on women and girl's rights that have been accepted in the UPR (paragraph 3).
- Mainstream women's and children's issues in engagement with all treaty bodies and special procedure mandate holders to promote the human rights of women and girls and follow up the State's implementation of recommendations relating to women and girl's human rights (paragraph 4).
- Engage with regional intergovernmental bodies such as the ASEAN Intergovernmental Commission on Human Rights, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, the League of Arab States, Pacific Island Forum Secretariat and the South Asian Association for Regional Cooperation on issues relating to human rights of women and girls (paragraph 5).
- Continue advocacy for independent participation rights for "A status" NHRIs at the United Nations Commission on the Status of Women and the General Assembly (paragraph 1).

8.1. INTRODUCTION

International and regional engagement is a two-way street. It benefits NHRIs and it also helps to advance the broader international agenda around women's human rights. By collaborating with international and regional processes, NHRIs can make their own work more effective by drawing attention to human rights issues at home and generating support for the changes that need to be made. They can also increase their profile at home and develop new strategies and ways of working based on the experiences and insights of others.

NHRIs are also uniquely placed to contribute to the development of international norms and practices that support and promote the human rights of women and girls. They can share the knowledge and experience gained through working closely with women and girls, as well as their deep knowledge of the practical challenges to equality and non-discrimination. While recognizing important progress made on some fronts, they can also challenge and help redress the ongoing marginalization of women and gender in the international human rights system.

NHRIs have had considerable success in engaging at the international and regional levels. Within the United Nations system, for example, NHRIs have carved out a clear and independent role for themselves. In doing so, they have brought a new and valuable voice to international discussions and debates around human rights. As NHRIs become more experienced in this role, and as their presence becomes more accepted, their reach and influence is likely to increase. This in turn will allow NHRIs to make full use of international and regional institutions and processes to advance their own agendas.

This chapter should be read in conjunction with Chapters 2 and 3 of the Manual, which introduces the international and regional human rights system, including those parts that are primarily or particularly focused on the human rights of women and girls. This chapter is focused on how NHRIs can interact effectively with key human rights bodies and mechanisms in order to advance the human rights of women and girls.

This chapter does not provide extensive detail on the international and regional human rights mechanisms themselves. That information, developed with specific reference to the work of NHRIs, is available in *International Human Rights and the International Human Rights System: A Manual for National Human Rights Institutions*,¹²⁷ published by the APF in 2012.

Part A: Engaging with the international human rights system

8.2. ENGAGING WITH THE HUMAN RIGHTS COUNCIL

The origins and purpose of the Human Rights Council were described in Chapter 3. In brief, the Council is the principal intergovernmental body responsible for human rights within the United Nations system. It is responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and making recommendations on them. The Council has a broad mandate, which allows it to discuss all thematic human rights issues and situations that require its attention, including issues related to the human rights of women and girls. The Council meets throughout the year in Geneva, Switzerland.

The Council is made up of 47 Member States of the United Nations, elected by the General Assembly. Other Member States participate in Council meetings as observers. Accredited intergovernmental organizations, NGOs and, as detailed below, "A status"¹²⁸ NHRIs may also participate as observers.

Working effectively with the Council requires an understanding of its essential nature. As one human rights author noted:

¹²⁷ Available at www.asiapacificforum.net/support/professional-resources/.

¹²⁸ "A status" NHRIs are those that have been accredited by the International Coordinating Committee for National Institutions for the Promotion and Protection of Human Rights as complying with the Paris Principles.

*The principal UN human rights organ is not a tribunal of impartial judges, not an academy of specialists in human rights, nor a club of human rights activists. It is a political organ composed of States represented by governments that as such reflect the political forces of the world as it is.*¹²⁹

The Council oversees a number of institutions and procedures. These include the **universal periodic review** (UPR), which assesses the human rights situations in all Member States; an **Advisory Committee**, which serves as the Council's "think tank" and provides it with expertise and advice on thematic human rights issues; and a **complaint procedure** that addresses "consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances".¹³⁰ The complaint procedure allows communications from individuals, groups and organizations that claim to be victims of human rights violations or have direct, reliable knowledge of such violations.

The Council also works with the **special procedures**. These include special rapporteurs, special representatives, independent experts and working groups that monitor, examine, advise and publicly report on thematic issues or human rights situations in specific countries.

In June 2013, the Council adopted resolution 23/17, which recognizes the important role played by NHRIs in the Council and encourages NHRIs to continue to participate in and contribute in its institutions and procedures.¹³¹ Each of these different mechanisms is briefly described opposite with specific reference to the opportunities they offer for engagement with NHRIs, most particularly in relation to the human rights of women and girls.



Opening of the Human Rights Council's twenty-fifth session. UN Photo by Eskinder Debebe.

129 M. Bossuyt, "The New Human Rights Council: A First Appraisal", in *Netherlands Quarterly of Human Rights*, Vol. 24(4), 2006, p. 554.

130 Human Rights Council resolution 5/1.

131 Available at www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session23/Pages/ResDecStat.aspx.

NHRI PARTICIPATION IN THE HUMAN RIGHTS COUNCIL

NHRIs with “A status” have full observer status in the Human Rights Council. They are entitled to attend and participate in all regular and special sessions of the Council, except those that are private. “A status” NHRIs have the following entitlements:

- Make oral and video statements at the Council on any agenda item. They are permitted to speak after Member States and Observer States and before NGOs. They usually share an allocation of time with NGOs.
- Submit written statements to the Council relevant to any agenda item.
- Submit other documents to the Council, such as policy papers, reports and studies that relate to the work of the Council.
- Attend informal consultations and working groups that occur before and during Council sessions for purposes of preparing Council work, including proposals for resolutions.
- Organize “parallel events” during Council sessions on any human rights issue (usually in the form of a panel of expert speakers).
- Move freely around the Council venue, thereby facilitating advocacy with Governments and others.¹³²



At its 19th Session in 2012, the Council endorsed the report and recommendations of the Task Force on secretariat services, accessibility for persons with disabilities and use of information technology. This decision provided “A status” NHRIs with opportunities to participate in Council sessions through pre-recorded video statements in order to enhance their participation in Council plenary debates.¹³³

8.3. ENGAGING WITH THE UNIVERSAL PERIODIC REVIEW

The universal periodic review (UPR) was established when the Human Rights Council was created in 2006 by the General Assembly.¹³⁴ It involves a periodic review of the human rights records of all 193 United Nations Member States. The UPR provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. Its ultimate goal is the improvement of the human rights situation on the ground. The UPR also aims to provide technical assistance to States and enhance their capacity to deal effectively with human rights challenges and to share best practices in the field of human rights among States and other stakeholders.

The mandate and functioning of the Human Rights Council with respect to the UPR is set out by the General Assembly as follows:

*Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies.*¹³⁵

¹³² Adapted from APF, *International Human Rights and the International Human Rights System*, 2012, pp. 32-34.

¹³³ See Recommendation 46; A/HRC/DEC/19/119.

¹³⁴ General Assembly resolution 60/251 mandated the Council to “[u]ndertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States”.

¹³⁵ General Assembly resolution 60/251, para. 5(e).

The UPR assesses the human rights performance of States against their obligations under international human rights law, as well as voluntary pledges and commitments made by the State. A core principle of the UPR process is that it “fully integrate a gender perspective” into all aspects of the review.¹³⁶

Reviews are conducted by a working group of the Human Rights Council (the UPR Working Group) consisting of all 47 Council Members. Each State review is assisted by a group of three States, known as the “troika”, which acts as the rapporteur. The review process itself consists of an interactive discussion between the State under review and other Member States at a meeting of the UPR Working Group. During this discussion any Member State can pose questions, make comments or propose recommendations to the State under review.

The review of a State is based on three documents:

- information prepared by the State concerned, not exceeding 20 pages
- a compilation prepared by OHCHR of the information contained in the reports and official documents of relevant UN bodies and agencies, not exceeding ten pages
- a summary prepared by OHCHR of “[a]dditional, credible and reliable information provided by other relevant stakeholders”, not exceeding ten pages.¹³⁷

Following the review by the UPR Working Group, an “outcome report” is prepared that summarizes the discussion and sets out the response of the State under review to any conclusions reached and recommendations made. Reports are adopted by the UPR Working Group before being presented to a plenary session of the Human Rights Council for adoption.

During that session, the State under review is given the opportunity to reply to questions and issues that were not sufficiently addressed during the UPR Working Group and to respond to recommendations that were raised by States during the review. Member and Observer States are also allocated time to comment on the outcome of the review, followed by NHRIs and NGOs.

The State under review is responsible for implementing any recommendations made in the review report that it accepts. It is expected to provide information on such implementation in subsequent reviews.

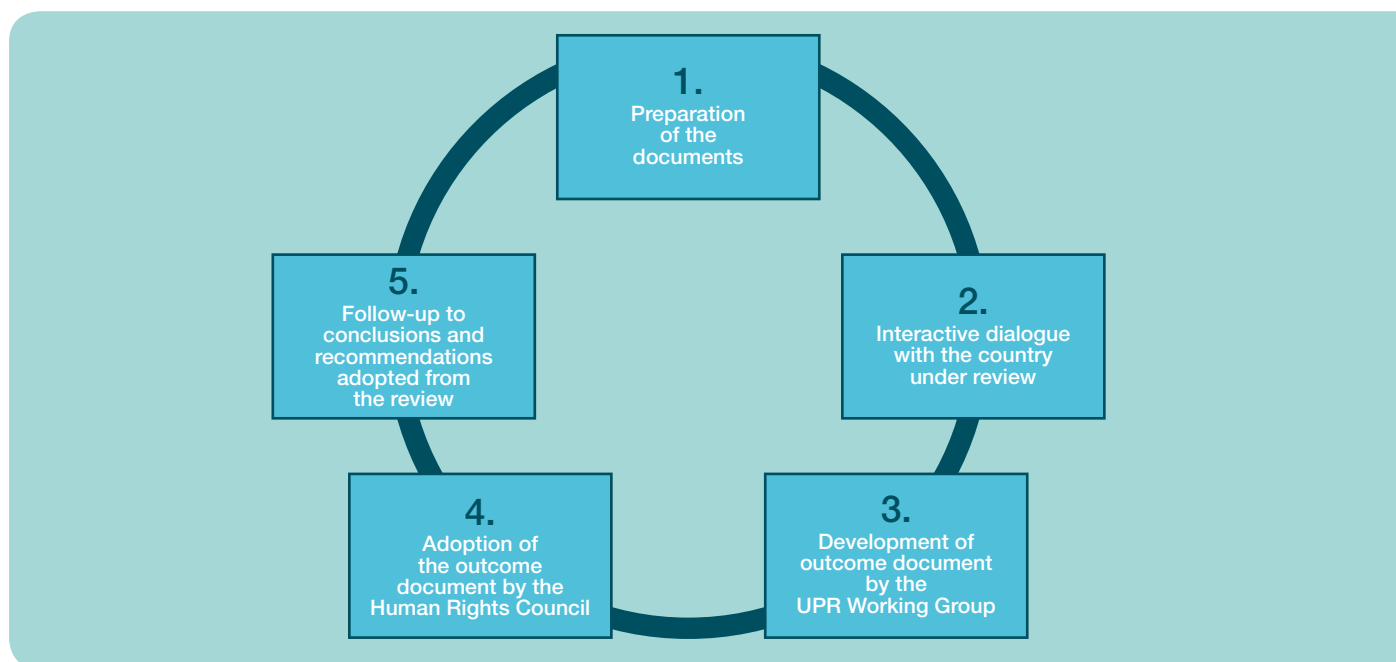
There are a number of ways that NHRIs can help strengthen the capacity of the UPR process to address the human rights of women and girls. For example, they can support their State in preparing a national report that addresses these issues as fully as possible. NHRIs can discuss the following questions with the State:

- How is the national report being prepared? Who is involved and who is being consulted? Specifically, are women and girls being heard?
- What is the quality of the data presented in the national report? Is data disaggregated by sex in a way that reveals information relevant to equality and discrimination?
- Does the national report itself integrate a gender perspective? For example, is there any consideration of the way in which gender impacts on the realization of certain human rights or on their violation?

NHRIs can also use their own participation in the UPR process – such as providing written information for inclusion in the summary document or contributing to subsequent Human Rights Council discussions – to remedy any deficiencies in attention given to gender and the human rights of women and girls.

¹³⁶ Human Rights Council resolution 5/1, Annex, para. 3(k).

¹³⁷ HRC Resolution 5/1, part I.D, para. 15.

The UPR cycle¹³⁸NHRI INVOLVEMENT IN THE UPR PROCESS¹³⁹

The State under review is responsible for preparing its report for the UPR and NHRIs should not take on that task on behalf of the State. The NHRI may present its views or make recommendations to the State while it is preparing the report but it is up to the State to decide whether or not to include or reflect that information.

The NHRI may also present its views directly to the Council through the UPR Working Group. “Credible and reliable information” provided by NHRIs is usually incorporated into a summary document prepared by OHCHR, which forms part of the review process. NHRIs also have the opportunity to provide information during the three reporting cycles that are involved in each State review.

“A status” NHRIs may attend the UPR Working Group meeting, where an interactive dialogue with the State under review takes place. However, NHRIs are not permitted to speak. If the opportunity arises, NHRIs can support Member States of the UPR Working Group in developing suitable recommendations for the State under review.

The “A status” NHRI of the State under review has special status at the Human Rights Council plenary session at which the UPR Working Group’s report is debated and adopted. It is entitled to speak immediately after the State under review. All “A status” NHRIs may make oral statements during the debate, after Member States and Observer States. However the interventions must be specifically directed towards the draft report.



138 T. Bejar, Human Rights Project at the Urban Justice Center, *A Practical Guide to the United Nations’ Universal Periodic Review*, 2010.

139 Adapted from APF, *International Human Rights and the International Human Rights System*, 2012, pp. 27-46.

In addition, NHRIs can use their influence within the Council and with States to lobby for a UPR process that does not marginalize women and their rights. They could, for example, highlight the importance of having gender expertise available to all those involved in the UPR process, including the “troikas”, the delegation of the State under review and the OHCHR staff responsible for compiling the documentation for review. NHRIs could also lobby for gender and the human rights of women and girls to become a standard agenda item during the discussion of outcome reports within the UPR Working Group.¹⁴⁰

Finally, NHRIs have an important role to play in encouraging and monitoring implementation of recommendations made through the UPR process. Many NHRIs have developed strategies to maximize their influence at this important stage and the integration of a gender perspective will ensure that issues of concern to women and girls are not overlooked or otherwise marginalized. NHRIs could, for example, work with their Government on integrating recommendations relating to women, non-discrimination and gender equality into specific laws, policies and programmes.

8.4. ENGAGING WITH THE UNITED NATIONS SPECIAL PROCEDURES

The special procedures refers to a range of different mechanisms – including “Special Rapporteur,” “Special Representative of the Secretary-General,” “Independent Expert” or “Working Group” – operating under the Human Rights Council to address either specific country situations (country mandates) or thematic issues in all parts of the world (thematic mandates).

The working methods of the special procedures are specific to their mandates but they usually involve studying the human rights situation, receiving information from a range of sources and conducting country visits. Many special procedures are able to receive information on specific allegations of human rights violations and to send urgent appeals or letters to Governments asking for clarification or resolution of a particular problem. Most report regularly to both the Human Rights Council and the General Assembly. The reports of the special procedures are also integrated into the UPR process.

All special procedures are or should be concerned with the human rights of women and girls. Many have played an important role in highlighting the human rights of women and the importance of a gender perspective. For example, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has done critical work in exposing and examining the gendered dimensions of torture.¹⁴¹ Other special procedures with a particular gender dimension to their work include, for example, the special rapporteurs dealing with the rights of migrants, the right to food and the right to education.

Some special procedures are of more direct relevance to the human rights of women and girls. They can be a useful focus for NHRIs. These include the **Special Rapporteur on violence against women, its causes and consequences** and the **Working Group on the issue of discrimination against women in law and in practice**. The mandate and functioning of both these special procedures is briefly outlined in Chapter 3 of this Manual.

Other special procedures for NHRIs to consider in relation to their international engagement on issues affecting women and girls include:

- Special Rapporteur on the sale of children, child prostitution and child pornography
- Special Rapporteur on trafficking in persons, especially women and children
- Special Rapporteur on contemporary forms of slavery, including its causes and its consequences.

¹⁴⁰ For a detailed consideration of these issues, see J. Sarkin, “How to Better Infuse Gender into the Human Rights Council’s Universal Periodic Review Process” in *Jindal Global Law Review*, Vol. 2(1), 2010.

¹⁴¹ See. A/HRC/7/3.

THE INVOLVEMENT OF NHRIs IN THE WORK OF SPECIAL PROCEDURES¹⁴²

NHRIs can be involved in the work of special procedures in a number of ways, including:

- Engaging in the process for nomination and selection of mandate holders; for example, NHRIs are able to nominate candidates for appointment to special procedure mandates and also comment on or support particular candidates who are under consideration
- Contributing to studies and reports by providing a special procedure with credible and reliable information
- Supporting the country visits of a special procedure
- Participating in the Human Rights Council dialogue around the reports of a special procedure (“A status” NHRIs only).



Country visits and communications about human rights violations are two areas where NHRIs can provide particularly valuable support to special procedures in relation to the human rights of women and girls.

8.4.1. Country visits

Country visits are an important means by which special procedures carry out their work, enabling them to bring a human rights situation to international attention. NHRIs can use country visits to build national and international support for a particular issue that is of concern to them. Any country visit requires the approval of the State. NHRIs should encourage their Government to issue a standing invitation to all the special procedures or to invite specific special procedures, such as the Special Rapporteur on violence against women, to visit the country to examine an issue of particular concern.



Palestinian mother and daughter. Photo by Radio Nederland Wereldomroep, reproduced under a CC BY-ND 2.0 license.

142 Adapted from: APF, *International Human Rights and the International Human Rights System*, 2012, pp. 47-54.

A typical country visit involving a special rapporteur will usually involve a series of meetings with government officials and other stakeholders, including the NHRI and civil society groups. The special rapporteur will also meet with victims and others directly affected by the human rights situation under investigation. After the visit, she or he will prepare a report, including findings and recommendations, for the Human Rights Council. The report is then discussed in an interactive dialogue with the State, during a plenary session of the Council at which “A status” NHRIs may participate according to the usual rules of procedure.

COUNTRY VISITS TO APF MEMBER INSTITUTION COUNTRIES BY THE SPECIAL RAPPOREUR ON VIOLENCE AGAINST WOMEN, ITS CAUSES AND CONSEQUENCES

The Special Rapporteur on violence against women has undertaken official country visits to several countries in the Asia Pacific region with NHRIs.

- Official visit in 2004 to gather first-hand information on how the occupation and conflict impacts on violence against women in the **Occupied Palestinian Territories**. The visit took place with the cooperation of the Government of Israel and the Palestinian Authority. The Special Rapporteur met with representatives of human rights and women’s organizations, including the **Palestinian Independent Commission for Human Rights** (formerly known as the Palestinian Independent Commission for Citizen’s Rights).¹⁴³
- Official visit in 2000 at the invitation of the Governments of **Bangladesh**, **Nepal** and **India** to study the issue of trafficking in women and girls in the region. The Special Rapporteur met with the NHRIs of India and Nepal (the National Human Rights Commission of Bangladesh was not yet established) and made a number of recommendation directed towards them; for example, that the “human rights commissions in all the countries of the region should make trafficking a special focus of their work”.¹⁴⁴
- Official visit in 1998 at the invitation of the Government of **Indonesia** to study the issue of violence against women, as perpetrated or condoned by the State. The Special Rapporteur met with the **National Commission on Human Rights**, as well as staff from Indonesia’s National Commission on Violence against Women, which, as the Rapporteur noted in her report, was established earlier that year “in response to strong protest from a broad spectrum of women activists/organizations at government passivity in the face of incidents of sexual violence during the May 1998 riots”.¹⁴⁵



The Special Rapporteur has also undertaken country visits to **Jordan** (2011) and **Afghanistan** (2005 and 1999). **Nepal** is among the States that have requested an official visit by the Special Rapporteur.

The country visit reports of the Special Rapporteur on violence against women are available at www.ohchr.org/EN/Issues/Women/SRWomen/Pages/CountryVisits.aspx.

OHCHR provides support for the country visits of the special procedures and will generally provide the visiting special rapporteur or working group with background information prior to the visit. NHRIs can assist that process by providing OHCHR with information that may be included in background

¹⁴³ E/CN.4/2005/72/Add.4.

¹⁴⁴ E/CN.4/2001/73/Add.2, para. 164.

¹⁴⁵ E/CN.4/1999/68/Add.3, para. 23.

documentation, including suggestions for persons and organizations to meet. NHRIs can also support and advise the special procedures during and after the visit by providing credible and reliable information and responding to any queries that might arise.

In addition, NHRIs can play a crucial role once the report of the country visit is made public. They can promote awareness of the report and its findings, advocate for implementation of the report's recommendations, monitor the progress of implementation and report on this to the different mechanisms of United Nations human rights system.

Less usually, special procedure mandate holders can conduct unofficial visits that do not result in a formal report to the Human Rights Council but which nevertheless make an important contribution to the national human rights dialogue. An example, involving the Australian Human Rights Commission, is detailed below.

NHRI-SPONSORED STUDY TOUR OF AUSTRALIA BY THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN

In 2012, the Special Rapporteur on violence against women, its causes and consequences undertook an unofficial study tour of Australia, co-hosted by the [Australian Human Rights Commission](#) and the Australian Government. The objectives of the study tour included:

- Gathering information on violence against women from a range of governmental and non-governmental sources
- Gathering information on culture and violence against women in Aboriginal and Torres Strait Islander communities
- Identifying strategies to eliminate all forms of violence against women and remedy its consequences.



The study tour involved 27 roundtables, meetings and site visits across the country. It provided an opportunity for stakeholders to examine implementation of Australia's *National Plan to Reduce Violence against Women and their Children (2010–2022)*, as well as to encourage discussion around specific issues, such as domestic violence and sexual assault, and the impact of culture, race and gender on the extent, nature and management of violence against women.

The Australian Human Rights Commission produced a report on the study tour, detailing the key issues and themes that emerged.¹⁴⁶

8.4.2. Communications and urgent appeals

Some special procedures, including the Special Rapporteur on violence against women, can establish a dialogue with Governments to address specific allegations of human rights violations that fall within their mandates. The dialogue “can relate to a human rights violation that has already occurred, is on-going, or which has a high risk of occurring ... Communications may deal with individual cases, general trends and patterns of human rights violations occurring in a particular country, cases affecting a particular group or community, or the content of draft or existing legislation considered to be not fully compatible with international human rights standards.”¹⁴⁷

¹⁴⁶ Available at www.humanrights.gov.au/publications/australian-study-tour-report-visit-un-special-rapporteur-violence-against-women.

¹⁴⁷ OHCHR, “Communications”, available at: www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx.

Based on these communications, the special procedure may begin a dialogue with the Government concerned, generally with a view to clarifying the allegation and/or investigating and preventing a violation. “Urgent appeals” can be used by the special procedure to communicate serious and time-sensitive matters.

NHRIs can raise awareness about the complaints procedure at the national level and encourage the submission of communications to the relevant special procedure regarding violations of the human rights of women and girls. They can also help individuals to prepare and submit a complaint that meets the necessary criteria of the special procedure. However, as with all other individual complaints procedures within the international human rights system, it is important to be realistic about their scope and effectiveness. By their very nature, such mechanisms will only ever be able to address a very small number of complaints and it is often the NHRI itself that will offer a more timely and effective avenue for women and girls to seek redress for the violations committed against them.

8.5. ENGAGING WITH THE HUMAN RIGHTS TREATY BODIES

As explained in Chapter 3, each of the major human rights treaties establishes a committee – or treaty body – comprised of independent experts nominated by States parties. Each treaty body is charged with overseeing the implementation of its respective treaty and also, depending on the terms of the treaty or any additional protocol, receiving and considering complaints of violations.

All of the major human rights treaties require States parties to report regularly on their progress to implement the relevant treaty. The treaty body is required to consider these reports, along with information received from other sources, including NGOs and NHRIs. Reports are generally required to conform to guidelines issued by the treaty body. Increasingly, those guidelines request specific information on the situation of women in relation to the rights protected by the relevant treaty. The reporting process usually involves a dialogue with the State at which issues raised by the treaty body or in the report are discussed. At the conclusion of this process, the treaty body produces “concluding observations” which set out its principal findings and recommendations.

Treaty bodies also help interpret and clarify the provisions of their respective treaties. This is usually done through preparing “general comments” or “general recommendations”. Some treaty bodies will also hold “discussion days” on themes arising under their respective treaties. Sometimes these discussions are held as part of the process to prepare a general comment or general recommendation.

8.5.1. Involvement of NHRIs in the work of treaty bodies

NHRIs can be of great assistance to treaty bodies in the performance of their duties. Similarly, the treaty bodies can be a valuable asset to NHRIs by supporting issues and positions advocated by NHRIs and drawing international attention to human rights concerns at the national level.

The status granted to NHRIs, and the nature and scope of their participation in the work of the treaty bodies, varies between each treaty body.¹⁴⁸ Three treaty bodies have issued general comments on NHRIs: the Committee on the Rights of the Child,¹⁴⁹ the Committee on Economic, Social and Cultural Rights¹⁵⁰ and the Committee on the Elimination of Racial Discrimination.¹⁵¹ The Committee on the

148 OHCHR, “Information Note: National Human Rights Institutions (NHRIs) Interaction with the UN Treaty Body System”, 2011, p. 5; available at <http://nhri.ohchr.org/EN/IHRS/TreatyBodies/Pages/default.aspx>.

149 General Comment No. 2 on the role of independent national human rights institutions in the promotion and protection of the rights of the child, 2002.

150 General Comment No. 10 on the role of national human rights institutions in the protection of economic, social and cultural rights, 1998.

151 General Recommendation No. 17 on the establishment of national institutions to facilitate implementation of the Convention, 1993.

Elimination of Racial Discrimination¹⁵² and the Committee against Torture¹⁵³ have formally incorporated NHRIs into their working methods and rules of procedure. In late 2012, the Human Rights Committee adopted a detailed position paper on its relationship with NHRIs (see text box below). In 2008, the CEDAW Committee issued a statement on its relationship with NHRIs,¹⁵⁴ which is discussed below.

RELATIONSHIP OF THE HUMAN RIGHTS COMMITTEE WITH NHRIs

In late 2012, the Human Rights Committee released a position paper¹⁵⁵ on its relationship with NHRIs, affirming that:

ICC-accredited national human rights institutions are important national partners of the Committee. At that level, national human rights institutions may promote human rights education, awareness of the Covenant rights, the communications procedure and the Committee's work; and monitor, and advise the State on, legislative and policy compliance with the Covenant provisions. At the international level, national human rights institutions encourage and assist the State party to meet its reporting obligations; provide the Committee with independent information on the national implementation of the Covenant; and work on follow-up to, and monitor implementation of, the Committee's concluding observations, Views and other decisions. In States that are not party to the Covenant or the Optional Protocols, national human rights institutions may encourage their ratification.



The position paper sets out in detail the views of the Committee on the role that NHRIs can play in different aspects of its reporting procedure including: contributions to the development of the list of issues; contributions to and during the Committee sessions; contributions in follow-up to concluding observations; and contributions under the review procedure (examination in the absence of a State report). The paper also highlights the role that NHRIs can play in relation to the individual communications procedure under the Optional Protocol; and the development and use of the Committee's general comments.

All treaty bodies receive information from sources other than the reporting State. This additional information allows the treaty body to develop a fuller picture of the State's compliance with its treaty obligations and to prepare for the interactive dialogue with the State. NHRIs have established a strong reputation as providers of reliable, factual information and credible views. Treaty bodies encourage NHRIs to contribute their information and analysis, consistent with their responsibility under the Paris Principles to "cooperate with the United Nations and any other organization in the United Nations system".¹⁵⁶

Usually the NHRI will provide its information after the State report has been submitted, as this allows it to respond to the matters raised in the State report and permits the treaty body to assess these different sources of information. "Parallel reports" should be balanced and consider both positive and negative developments. In relation to the human rights of women and girls, the parallel report from the NHRI can be especially valuable for providing information and insights that the State may have overlooked – and indeed that the treaty body may not have otherwise considered. If the NHRI does not have the capacity to prepare a comprehensive parallel report, it should, as a minimum, address the issues it sees as being most important or relevant to its own work.

152 See the Working Methods (www.ohchr.org/EN/HRBodies/CERD/Pages/WorkingMethods.aspx) and Rules of Procedure (CERD/C/35/Rev.3, Rule 81).

153 Rules of Procedure, CAT/C/3/Rev.5, Rules 63 and 73.

154 A/63/38 (Part One), Annex II, para 7 (2008).

155 *Paper on the relationship of the Human Rights Committee with national human rights institutions*, CCPR/C/106/3 (quote at para. 4). The full text is available at http://nhri.ohchr.org/EN/News/Lists/News/Attachments/90/FINAL%20HRCpaperNHRI_en.pdf.

156 Paris Principles, para. 3(e)

NHRI involvement in the work of the treaty bodies¹⁵⁷

Treaty monitoring body function	Role of NHRIs
Promotion of ratification of the treaty	• Advocacy with the Government for ratification and implementation • Community education and promotion of the treaty
Examination of the State report	• Contribute to the development of the State report • Contribute to the list of issues • Participate in pre-sessional meetings • Prepare parallel reports • Participate in the session • Promote the concluding observations and the recommendations
Interpretation of the treaty	• Propose a general comment or general recommendation • Participate in days of general discussion • Provide submissions on draft texts
Individual complaints	• Provide assistance to complainants
Inquiries	• Submit information
Early warning or urgent action	• Submit information
Follow-up	• Monitoring • Submit information

8.5.2. NHRI involvement in the CEDAW Committee

In 2008, the CEDAW Committee issued a formal statement on its relationship with NHRIs, affirming that close cooperation between the two is “critical” and that “[n]ational human rights institutions may provide comments and suggestions to a State party’s reports in any way they see fit. National human rights institutions may also provide assistance to alleged victims of human rights violations under the Convention to submit individual communications to the Committee or, when the situation arises, provide reliable information in relation to the mandate of the Committee to conduct an inquiry.”¹⁵⁸

In practice, the CEDAW Committee has increasingly welcomed the participation of NHRIs and encouraged the submission of information to both the Committee and its pre-session working group, where the initial work is done to prepare for the Committee’s dialogue with States parties. For example, at the 2010 review of Australia, the CEDAW Committee requested the Australian Government to provide an interim report on measures to address violence against women and on measures to improve Aboriginal and Torres Strait Islander women’s enjoyment of their human rights. To contribute to the dialogue on these issues, the Australian Human Rights Commission prepared an independent interim report for the CEDAW Committee.¹⁵⁹

¹⁵⁷ APF, *International Human Rights and the International Human Rights System*, 2012, p. 69.

¹⁵⁸ E/CN.6/2008/CRP.1, Annex II, para. 6.

¹⁵⁹ Available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/FollowUp.aspx?Treaty=CEDAW.

STATEMENT BY THE CEDAW COMMITTEE ON ITS RELATIONSHIP WITH NHRIs¹⁶⁰

1. The Committee on the Elimination of Discrimination against Women and independent national human rights institutions share the common goals of protecting, promoting and fulfilling the human rights of women and girls. The Committee considers that close cooperation between the two is critical. It is accordingly exploring ways to create further interaction and links with national human rights institutions.
2. The Committee emphasizes that national human rights institutions should be established in compliance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the “Paris Principles”) adopted by the General Assembly in 1993 (resolution 48/134, annex) in 1993 and duly accredited by the International Coordinating Committee of National Human Rights Institutions. The Paris Principles provide guidance on the establishment, competence, responsibilities, composition, including pluralism, independence, methods of operation, and quasi-judicial activities of such national bodies.
3. The Committee considers national human rights institutions as playing an important role in the promotion of the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (Convention) at the national level, the protection of women’s human rights as well as the enhancement of public awareness of such rights. In this regard, the Committee refers to national human rights institutions and their role in its monitoring activities.
4. The Committee expects national human rights institutions to ensure that their work concerning, *inter alia*, consideration of individual complaints and elaboration of recommendations on laws, policies, and their activities in human rights education, is based on the principle of formal and substantive equality between women and men and non-discrimination as contained in the Convention, and that women have easy access to all services for the protection of their rights provided by national human rights institutions. The Committee also expects that the composition of members and staff of national human rights institutions is gender balanced at all levels.
5. The Committee encourages national human rights institutions to publicize and disseminate the Convention and its Optional Protocol, its concluding observations, general recommendations and decisions and views on individual communications and inquiries conducted under the Optional Protocol, as well as to monitor the State party’s implementation of the Convention and its Optional Protocol.
6. The Committee recognizes that national human rights institutions may contribute in various ways to the work of the Committee under the monitoring procedures of the Convention and its Optional Protocol. National human rights institutions may provide comments and suggestions to the State party’s reports in any way they see fit. National human rights institutions may also provide assistance to alleged victims of human rights violations under the Convention to submit individual communications to the Committee or, when the situation arises, provide reliable information in relation to the mandate of the Committee to conduct an inquiry.
7. The Committee welcomes national human rights institutions’ provision of country-specific information on States parties’ reports that are before the pre-session working group or the Committee. Such information may be submitted in writing prior to or at the relevant pre-session working group meeting or the relevant session of the Committee. National human rights institutions may also physically attend and provide information orally in the meetings allocated to them in the pre-session working groups and sessions of the Committee. The Committee will include such a time allocation for national human rights institutions’ contribution in the provisional agenda of the relevant working group meeting or session in order to enhance the visibility of input from national human rights institutions.



160 E/CN.6/2008/CRP.1, Annex II.

An information note detailing the State reports to be examined, the time and location of the sessions and the procedures for NHRIs wishing to submit information is usually provided prior to each session of the Committee.¹⁶¹ These notes generally stipulate that NHRI submissions may be made orally or in writing and that written submissions should not exceed a certain length (previously 20 pages but recently reduced to ten). Submissions “should highlight priority concerns and make suggested country-specific recommendations to facilitate the work of the Committee”.¹⁶²

In keeping with its commitment in the 2008 statement, the CEDAW Committee sets aside a specific period of time at each of its sessions for NHRIs to provide oral information regarding the States being considered during the session.¹⁶³ The Committee has emphasized that oral presentations must be concise as, on average, not more than ten minutes are allocated for NHRIs wishing to intervene and that “efforts to share the available time amongst the NHRIs wishing to speak on a country are encouraged and appreciated”.¹⁶⁴ NHRIs making oral interventions are also required to provide a copy of the intervention in advance and to bring a set number of copies of their oral statements on the morning of the presentation for circulation to the Committee and for interpretation purposes, in addition to any reports that they may have filed.

NHRIs can also play an important role in the Committee’s complaints mechanism, which is described in Chapter 3. For example, NHRIs can assist individuals or groups seeking to lodge a complaint with the Committee. They can also support the Committee in relation to any inquiry it is making concerning complaints of human rights violations.¹⁶⁵



Riding a horse cart, Dadal County, Mongolia. Photo by Khasar Sandag/World Bank, reproduced under a CC BY-NC-ND 2.0 license.

161 See, for example, the CEDAW Committee’s note from the 54th Session; available at www2.ohchr.org/english/bodies/cedaw/docs/CEDAW_NHRI_54Session.pdf.

162 Ibid. para. IV.

163 Ibid.

164 Note on participation by NHRIs from the 52nd Session, para. VII; available at www2.ohchr.org/english/bodies/cedaw/docs/NHRIParticipationNote52ndSession.pdf.

165 A useful resource is Australian Human Rights Commission, *Mechanisms for advancing women’s human rights: A guide to using the Optional Protocol to CEDAW*, 2011; available at www.humanrights.gov.au/publications/mechanisms-advancing-women-s-human-rights-guide-using-optional-protocol-cedaw-and-other.

8.5.3. NHRI involvement in the Committee on the Rights of the Child

In 2002, the Committee on the Rights of the Child issued a detailed general comment on the role of NHRIs to promote and protect the rights of the child.¹⁶⁶ In its General Comment No.2, the Committee called for the establishment of NHRIs that are specifically focused on the human rights of children or, where this is not feasible, for a “broad-based NHRI that includes a specific focus on children” and “within its structure either an identifiable commissioner specifically responsible for children’s rights, or a specific section or division responsible for children’s rights”.¹⁶⁷ General Comment No.2 goes beyond the standard of the Paris Principles in stating that NHRIs “must” have the power to receive and act on complaints of human rights.¹⁶⁸ This position has been reaffirmed by the Committee in subsequent general comments, including those on the rights of children with disabilities¹⁶⁹ and on the right of children to be heard.¹⁷⁰

In addition, General Comment No.2 addresses NHRI engagement with the Committee’s reporting process:

NHRIs should contribute independently to the reporting process under the Convention and other relevant international instruments and monitor the integrity of government reports to international treaty bodies with respect to children’s rights, including through dialogue with the Committee on the Rights of the Child at its pre-sessional working group and with other relevant treaty bodies.

*The Committee requests that States parties include detailed information on the legislative basis and mandate and principal relevant activities of NHRIs in their reports to the Committee. It is appropriate for States parties to consult with independent human rights institutions during the preparation of reports to the Committee. However, States parties must respect the independence of these bodies and their independent role in providing information to the Committee. It is not appropriate to delegate to NHRIs the drafting of reports or to include them in the government delegation when reports are examined by the Committee.*¹⁷¹

8.6. ENGAGING WITH THE COMMISSION ON THE STATUS OF WOMEN

The Commission on the Status of Women (CSW) is the primary intergovernmental mechanism on women’s empowerment and gender equality. As such, it plays a critical role in global policy around women’s rights. Recent themes of the CSW have included elimination and prevention of all forms of violence against women (2013); the empowerment of rural women and their role in poverty and hunger eradication, development and current challenges (2012); and access and participation of women and girls in education, training, science and technology, including for the promotion of women’s equal access to full employment and decent work (2011).

NHRIs have an important role to play in the work of CSW, not least through contributing their independent knowledge and expertise on the human rights issues facing women and girls in their country. However, unlike the Human Rights Council and other parts of the United Nations human rights system, NHRIs do not have independent standing to participate in meetings of CSW and can only attend as part of their country’s government delegation, if they are invited. In some cases, NHRIs may seek accreditation through NGOs to attend the annual CSW session. However, neither option appropriately reflects the independent status of NHRIs. However, as described below, efforts are currently underway to promote the independent participation of NHRIs at CSW sessions.

¹⁶⁶ Available at www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx.

¹⁶⁷ Ibid. para. 6.

¹⁶⁸ Ibid. para. 13.

¹⁶⁹ General Comment No. 9, 2006, para 24.

¹⁷⁰ General Comment No.12, 2009, para. 49.

¹⁷¹ See paras. 20-21.

NHRIs AT THE COMMISSION ON THE STATUS OF WOMEN

In 2008, the APF initiated a major advocacy campaign, supported by the ICC, for “A status” NHRIs to be able to participate independently in the work of the CSW. In 2013, leadership of the campaign was taken over by the ICC and its Chair, the South African Human Rights Commission.

Lobbying efforts by the APF, its member institutions and NHRIs from other regions has helped to raise awareness among the government delegations that make up the CSW of the important role played by NHRIs to advance the rights of women and girls at the national level.

Each year, a substantial number of NHRIs are involved in the CSW sessions and it is hoped that this involvement will contribute to the success of the campaign. The APF was able to report the following achievements¹⁷² of the 2008–2013 campaign involving CSW:

- Higher rates of engagement by NHRIs; in 2008, one institution attended the CSW while 11 NHRIs attended in 2010
- Greater understanding among NHRIs of the role and functions of the CSW as a policy-making body
- Strengthened and consolidated ICC engagement around the issue of women’s and girls’ human rights, including its decision to dedicate an ICC Conference on this issue in November 2012
- New relationships established between NHRIs and APF with United Nations officials, agencies and diplomats in New York that have been leveraged in the extended advocacy at the General Assembly
- Successful advocacy for the inclusion of references to NHRIs into the Agreed Conclusions of CSW in 2009, 2011 and 2013
- Convening NHRI side-events at the CSW, as well as NHRI caucuses and informal dialogues between NHRIs and States on the role of NHRIs in promoting women’s and girls’ human rights
- Successful advocacy for adoption of Human Rights Council resolution 20/14 in June 2012, that, for the first time, specifically referred to the NHRI contribution to CSW; encouraged advocacy for independent participation rights at that body; and further encouraged NHRIs to continue to interact with and advocate for independent participation in all relevant United Nations mechanisms in accordance with their respective mandates.



Part B: Engaging with international organizations and processes

Most international organizations and processes are relevant, in some way or another, to the work of NHRIs. For example, in 2010, it was reported that the United Nations was currently providing NHRIs in more than 60 countries with technical assistance.¹⁷³

In relation to its work on women’s and girls’ human rights, equality and non-discrimination, international organizations can be important partners for NHRIs.

¹⁷² APF, *Briefing Paper: Commission on the Status of Women, 57th Session (4–15 March 2013)*, p. 3; available at www.asiapacificforum.net/human-rights/women-and-girls/.

¹⁷³ UNDP and OHCHR, *Toolkit for Collaboration with National Human Rights Institutions*, 2010.

For example, the World Health Organization runs programmes supporting the health of women and girls in many countries where NHRIs have been established. The United Nations Development Programme (UNDP) – often the leader of the United Nations country team, bringing together all United Nations agencies and programmes working at the national level – is very active in promoting women’s social, political and economic empowerment.

The United Nations Children’s Fund (UNICEF) is a powerful voice for the rights of children and can be an important partner for NHRIs working to advance the rights of girls. UNICEF also advocates for the establishment of, and supports the functioning of, independent national mechanisms for children, such as children’s ombudsmen, children’s commissioners and similar structures. Often such bodies have close institutional and functional links to NHRIs.

This section provides a brief overview of those international organizations and processes that are – or could be – most significant for NHRIs in their work to promote and protect the rights of women and girls. Additional and more general information on NHRI collaboration and interaction with the international system is available in the APF publication, *International Human Rights and the International Human Rights System: A Manual for National Human Rights Institutions* (2012). Further information on how the United Nations operates with respect to NHRIs is available in the joint OHCHR-UNDP publication, *Toolkit for Collaboration with National Human Rights Institutions* (2010).

8.7. UN WOMEN

In 2010, the General Assembly established UN Women: the United Nations Entity for Gender Equality and the Empowerment of Women. UN Women brings together and builds on the important work of four previously distinct parts of the United Nations system which focused exclusively on gender equality and women’s empowerment:

- Division for the Advancement of Women (DAW)
- International Research and Training Institute for the Advancement of Women (INSTRAW)
- Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI)
- United Nations Development Fund for Women (UNIFEM).

The establishment of UN Women was about much more than the rationalization of resources and the coordination of activities. It was also intended to address serious challenges faced by the United Nations in its efforts to promote gender equality globally, including inadequate funding and that there was previously no single recognized agency to drive activities on gender equality issues. By confronting these challenges, UN Women aims to accelerate the broader work of the United Nations on gender equality, the elimination of discrimination and the empowerment of women. Its main goals are:

- To support intergovernmental bodies, such as CSW, in their formulation of policies, global standards and norms
- To help Member States implement these standards, standing ready to provide suitable technical and financial support to those countries that request it, and to forge effective partnerships with civil society
- To hold the United Nations system accountable for its own commitments on gender equality, including regular monitoring of system-wide progress.

NHRIs are uniquely well placed to both contribute to and benefit from the work of UN Women at the national level. The focus areas of UN Women – violence against women; human rights, peace and security; leadership and participation; and economic empowerment – fit very closely with the current focus of many NHRIs in their work to promote and protect the rights of women and girls.

In the field of human rights, UN Women is explicitly committed to national-level support, especially in relation to helping Governments and civil society in their efforts to implement CEDAW. Its focus in this regard is on:

- Facilitating the development of national legal and policy frameworks in line with CEDAW
- Supporting the implementation of existing human rights frameworks to help ensure impact and rights realization
- Placing special emphasis on particularly vulnerable and marginalized groups, such as poor or indigenous women, so that national frameworks become more inclusive of and responsive to the full range of women's rights concerns.

8.8. THE UNITED NATIONS POPULATION FUND

The United Nations Population Fund (UNFPA) is an international development agency that promotes the right of every woman, man and child to enjoy a life of health and equal opportunity. UNFPA supports countries in using population data for policies and programmes to reduce poverty and to ensure that every pregnancy is wanted, every birth is safe, every young person is free from HIV and every girl and woman is treated with dignity and respect.

UNFPA's core areas of work are:

- Reproductive health
- Gender equality
- Population and development strategies.

UNFPA works in partnership with Governments, as well as with other agencies and civil society broadly, to advance its mission. Three frameworks serve to focus its efforts: the Programme of Action adopted at the International Conference on Population and Development; CEDAW; and the Millennium Development Goals.

UNFPA has worked with a number of APF member institutions in areas such as training and education around reproductive rights. At the 13th APF Annual Meeting, held in Malaysia in 2008, APF Forum Councillors considered and formally approved a proposal to undertake joint activities with UNFPA in the area of reproductive rights. The principal activity agreed between the APF and UNFPA was a study on integrating reproductive rights into the work of APF member institutions. The results of this study are discussed in Chapter 9.

8.9. THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

OHCHR is the main part of the United Nations Secretariat working on human rights and supporting the integration of human rights into other United Nations activities and programmes. Its mission is to work for the protection of all human rights for all people; to help empower people to realize their rights; and to assist those responsible for upholding such rights in ensuring that they are implemented.

OHCHR is responsible for supporting the work of the Human Rights Council and its various processes, including the UPR and the special procedures, as well as the human rights treaty bodies, including the CEDAW Committee. It also works with Governments, legislatures, courts, NHRIs, civil society, regional and international organizations and the United Nations system to develop and strengthen capacity, particularly at the national level, for the protection of human rights in accordance with international norms.

Women's rights and gender equality are a core part of OHCHR's overall mandate to contribute to the realization of all human rights of all people. OHCHR's work in the field, with the Human Rights Council and with human rights mechanisms, such as the special procedures and treaty bodies, aims to promote the elimination of all forms of discrimination against women and girls.¹⁷⁴ A Women's Rights and Gender Section within OHCHR provides oversight of work in this area.¹⁷⁵

OHCHR works with NHRIs internationally, regionally and globally. The National Institutions and Regional Mechanisms Section (NIRMS) is responsible for promoting and coordinating relationships between OHCHR and NHRIs. NIRMS provides secretariat services to the ICC and its Sub-Committee on Accreditation. It also collaborates with regional associations of NHRIs and conducts programmes and activities directed towards the establishment and strengthening of NHRIs in compliance with the Paris Principles.¹⁷⁶

Part C: Engaging with regional institutions and processes

8.10. REGIONAL HUMAN RIGHTS BODIES AND COURTS

As noted in Chapter 3, regional human rights systems have been established in Africa, the Americas and Europe, each underpinned by a regional human rights treaty. The African and Inter-American systems have adopted a two-body mechanism for the examination of individual complaints, consisting of a Commission and a Court. In Europe, individuals can bring complaints of violations of the European Convention on Human Rights to the European Court of Human Rights.¹⁷⁷ The Commissions are quasi-judicial bodies, with the power to issue decisions and recommendations. The Courts have the power to issue legally enforceable judgments.

NHRIs can make use of regional complaints mechanisms in a number of ways. They can assist individuals to submit complaints or they can file cases directly in certain circumstances. They can also present *amicus curiae* briefs, if they have the mandate to do so. In addition, NHRIs can seek affiliated or accredited status before regional mechanisms to present evidence and advocate their views. NHRIs also have the role of raising public awareness of the outcome of complaints at the national level and of disseminating case law to legal and judicial stakeholders. In addition, NHRIs should closely monitor the implementation of the decisions and judgments by the authorities.

The Asia Pacific region does not have a regional human rights treaty or an intergovernmental, judicial or quasi-judicial system to monitor, promote and protect human rights. However, as outlined in Chapter 3, there have been some important recent developments within the ASEAN sub-region. In 2009, the **ASEAN Inter-Governmental Commission on Human Rights (AICHR)** was established. The AICHR is a "consultative intergovernmental body" that works to promote human rights within the region, including through enhanced regional cooperation. However, it is not comparable to other regional human rights institutions as it is not based on an underlying treaty and therefore has no function or power to enforce specific rights and obligations, apart from a commitment to upholding universal human rights standards. Its terms of reference require it to "engage in dialogue and consultation" with a range of stakeholders including NGOs and NHRIs. To date, very little collaboration has taken place.

174 See *Concept Note: 11th International Biennial Conference of the ICC, Human Rights of Women and Girls: Promoting Gender Equality: The Role of NHRIs*, Amman, Jordan, 5–7 November 2012, pp. 6–7, available at <http://nhri.ohchr.org/EN/ICC/InternationalConference/11IC/Pages/default.aspx>.

175 Relevant documentation, including research reports on issues of concern to women and their rights and progress in mainstreaming gender throughout the international human rights system, is available at: www.ohchr.org/EN/Issues/Women/WRGS/Pages/WRGSIndex.aspx.

176 The NHRI section of OHCHR's website functions as the ICC website; <http://nhri.ohchr.org/EN/Pages/default.aspx>. It includes documentation on the ICC's 11th International Conference on the Human Rights of Women and Girls, 5–7 November 2012.

177 Note also the existence of other human rights instruments and mechanisms within the European system, such as the European Social Charter, European Committee on Social Rights and the Council of Europe Convention on Action against Trafficking in Human Beings and its implementing bodies.

In 2010, the **ASEAN Commission on the Promotion and Protection of the Rights of Women and Children** (ACWC) was established to promote the implementation of international standards on the rights of women and children, as well as relevant ASEAN instruments and declarations, such as the 2004 ASEAN Declaration on the Elimination of Violence Against Women in the ASEAN Region and the 2013 ASEAN Declaration on the Elimination of Violence against Women and Children. Like the AICHR, the ACWC is an intergovernmental consultative body. It does not have authority to monitor the implementation of women's and children's rights across the ASEAN region or to compel Governments to take specific actions. Rather, it functions as a resource for ASEAN and its Member States. To that end, the ACWC is working to build the capacity of those who are critical to promoting and protecting the rights of women and girls, including legislatures, criminal justice agencies, relevant statutory institutions, civil society groups and community leaders. This is being done principally through the provision of technical assistance, training and workshops. The ACWC is yet to reach out formally to NHRIs or their representative bodies but it is clear that such relationships, once established, will be mutually beneficial.

Part D: Collaboration between national human rights institutions

8.11. INTERNATIONAL COORDINATING COMMITTEE OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

The ICC is the global representative body of NHRIs. Its aim is to assist in the establishment and strengthening of independent NHRIs that meet the international standards set out in the Paris Principles. Established in 1993, the ICC is comprised of nearly one hundred member institutions drawn from all four regions: Africa, the Americas, Asia Pacific and Europe.

Among its main activities, the ICC:

- Coordinates a peer-review accreditation process to support compliance with the Paris Principles
- Assists NHRIs to engage with the Human Rights Council, its mechanisms and the human rights treaty bodies
- Encourages cooperation and sharing of good practice between NHRIs
- Promotes the work and contribution of NHRIs within the United Nations system and with States and other international agencies.

The ICC hosts an International Conference every two years that brings together representatives from NHRIs, Governments, United Nations agencies, international organizations and civil society. The purpose of the International Conference is to develop and strengthen cooperation among NHRIs and other stakeholders, to discuss human rights issues and to ensure their follow-up at the national level. Each International Conference concentrates on a particular theme, such as “Business and Human Rights: the Role of National Human Rights Institutions” (2010); “National Human Rights Institutions and the Administration of Justice” (2008), Migration: the Role of National Institutions” (2006); “Upholding Human Rights during Conflict and while Countering Terrorism: Economic, Social and Cultural Rights” (2004); and “The Role of National Human Rights Institutions in Combating Racial Discrimination” (2002).

The 11th International Conference took place in November 2012 in Amman, Jordan. The conference theme was “The Human Rights of Women and Girls: Promoting Gender Equality”. Representatives from more than 70 NHRIs, as well as international and regional organizations, NGOs and Governments, took part in the three-day gathering. At the conclusion of the conference, the ICC and its member institutions adopted the Amman Declaration and Programme of Action. The ICC, through this Declaration, also agreed to dedicate a session to the role of NHRIs in promoting and protecting the rights of women and girls at its annual meeting.

8.12. ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

The APF works to ensure an ongoing and collaborative focus on the rights of women and girls among all of its member institutions.¹⁷⁸ The work it undertakes in cooperation with its members at the international and regional levels seeks to complement the work done by NHRIs on women's and girls' human rights and gender equality at the national level.

The APF has focused particular attention on trafficking in persons, especially women and children, as well as on the issue of reproductive rights. In 2010–2011, the APF engaged in a regional joint initiative with UNFPA to map progress and challenges in the integration of reproductive rights into the work of its member institutions. This collaboration resulted in a detailed study and a workshop aimed at encouraging and facilitating NHRI work in this area.¹⁷⁹

In 2011, at the 16th APF Annual Meeting, held in Thailand, Forum Councillors adopted the APF Gender Policy.¹⁸⁰ The policy provides a blueprint for integrating a gender perspective into all APF objectives, programmes and activities. At the same meeting, Forum Councillors also agreed to establish a Gender Focal Point within the APF secretariat to provide leadership, coordination and communication on the different elements of gender integration practice. By formalizing this role at a senior level within the organization, the APF has signalled the seriousness of its commitment.

At the international level, the APF has played a leadership role at CSW. For example, between 2009 and 2013, its advocacy contributed to NHRIs being recognized for the first time in CSW resolutions and heralded greater engagement by NHRIs in that forum.¹⁸¹ The APF also played a central role in shaping the 2013 Human Rights Council resolution on NHRIs.¹⁸² The resolution recognizes the important contribution of NHRIs to the elimination of discrimination and violence against women and girls, as stipulated in the Agreed Conclusions of the 57th Session of CSW, held in March 2013.¹⁸³

In addition, the APF was closely involved in developing the concept and organizing the ICC 11th International Conference on the human rights of women and girls. The Amman Declaration and Programme of Action, adopted at the conclusion of the conference, will be used by the APF as a key framework in its blended learning training programmes to build the capacity of APF member institutions to more effectively promote and protect the human rights of women and girls in their national jurisdictions.

In 2012, the APF adopted its own **Action Plan on the Human Rights of Women and Girls: Promoting Gender Equality**.¹⁸⁴ The action plan sets out a number of commitments that APF member institutions have agreed to meet, such as:

- Working closely with specialized commissions for women and children, where they exist, ensuring that their work on the promotion and protection of the rights of women and girls is complementary and mutually supportive
- Working in cooperation with NGOs and other civil society organizations to promote and protect women's and girl's human rights
- Giving particular attention to the needs and problems of women who are human rights defenders or who suffer discrimination because of the human rights issues they raise
- Reporting on the measures they have taken under the action plan at APF annual meetings.

178 The list of APF member institutions is available at www.asiapacificforum.net/members.

179 See www.asiapacificforum.net/human-rights/reproductive-rights/.

180 Available at www.asiapacificforum.net/about/governance.

181 See www.asiapacificforum.net/support/international-regional-advocacy/united-nations/csw/.

182 Human Rights Council resolution 23/17.

183 Ibid, para. 24.

184 Available at www.asiapacificforum.net/human-rights/women-and-girls/.

The APF has a dedicated page on its website highlighting its work on women's human rights.¹⁸⁵ It also has a YouTube channel featuring interviews with representatives of APF member institutions and other experts on the role of NHRIs to promote and protect women's human rights and to advance gender equality.¹⁸⁶

KEY POINTS: CHAPTER 8

- International and regional engagement benefits NHRIs and also helps to advance the broader international agenda around women's and girls' human rights.
- To advance the human rights of women and girls at all levels, NHRIs can interact with key international human rights bodies and mechanisms, including:
 - the Human Rights Council
 - the universal periodic review
 - the special procedures
 - the human rights treaty bodies, especially CEDAW
 - the Commission on the Status of Women
 - international organizations such as UN Women, UNICEF, UNFPA and OHCHR.
- NHRIs can engage with the regional human rights systems that have been established in Africa, the Americas and Europe.
- NHRIs can also collaborate with each other, through the ICC or regional coordinating committees of NHRIs, such as the APF, to share good practice and build capacity to promote and protect the human rights of women and girls.



¹⁸⁵ See www.asiapacificforum.net/human-rights/women-and-girls/.

¹⁸⁶ See www.youtube.com/user/AsiaPacificForum.



Part III: Special issues of focus



Chapter 9: Reproductive rights

Chapter 10: Violence against women and girls

Chapter 11: Female migrant domestic workers

Chapter 9: Reproductive rights

KEY QUESTIONS

- What are the key issues and challenges around reproductive rights?
- What are the main obligations of States with respect to reproductive rights?
- How can NHRIs integrate the issue of reproductive rights into their work?
- What good practice examples can NHRIs draw on for inspiration and guidance?



BASIS FOR NHRI INVOLVEMENT

AMMAN PROGRAMME OF ACTION

NHRIs agree to give priority, over the next decade and beyond, to:

- Protect and promote reproductive rights without any discrimination, recognizing reproductive rights include the right to the highest attainable standard of sexual and reproductive health, the right of all to decide freely and responsibly the number, spacing and timing of their children, and on matters related to their sexuality, and to have the information and means to do so free from discrimination, violence or coercion, as laid out in the Beijing Platform for Action and the Programme of Action of the International Conference on Population and Development (paragraph 25).
- Encourage and aid the compilation of an evidence base (e.g. data, inquiries, research) concerning the exercise of reproductive rights and the right to sexual and reproductive health, including but not limited to cases of *de jure* and *de facto* discrimination in access to sexual and reproductive health care information and services, forced sterilization, forced abortion, child marriage, forced marriage, female genital mutilation/cutting, biased sex selection and other harmful practices (paragraph 26).
- Review national laws and administrative regulations relating to reproductive rights such as those governing family, sexual and reproductive health, including laws which are discriminatory or criminalize access to sexual and reproductive health services, and propose recommendations to assist States in meeting their human rights obligations (paragraph 27).
- Promote measures to ensure access to comprehensive sexual and reproductive health information and services and to remove barriers which hinder such access, and support the establishment of accountability mechanisms for the effective application of the laws and the provision of remedies when obligations have been breached (paragraph 28).



9.1. INTRODUCTION¹⁸⁷

Reproduction is an elemental, life-changing and common experience for much of humanity. Yet each year more than 120 million couples have an unmet need for contraception; 80 million women have unintended pregnancies (45 million of which end in abortion); more than half a million women are estimated to die from complications associated with pregnancy, childbirth and the postpartum period; and 340 million people acquire new sexually transmitted infections.¹⁸⁸ In every part of the world, women and adolescents bear the brunt of sexual and reproductive ill-health. Globally, it is women and girls in developing countries who are at most risk of reproductive-related disease, disability and death.

One might expect that reproductive rights would have a correspondingly important place in international human rights law and practice. However, this is not the current position. Thus far, reproductive rights have been infrequently discussed and are often poorly understood. Many aspects of reproductive rights remain unsettled and controversial. As a result, reproductive rights have tended to occupy a marginalized position in the international human rights landscape. As a complex and multifaceted package of rights, reproductive rights are also often collapsed into, mistaken for, or overshadowed by more easily identifiable rights, such as the right to health and the prohibition of violence against women. The lack of attention to reproductive rights is also a reflection of the general marginalization of women's human rights within the broader human rights system that was discussed in Chapter 1 of this Manual.

Over the past several years there has been increasing attention on how NHRIs can work in the area of reproductive rights. For example, the 13th APF Annual Meeting in 2008 approved a proposal for the APF to work with UNFPA on the issue of reproductive rights. That led to a detailed mapping study of the current situation, as well as identifying the challenges and opportunities for NHRIs in this area. A subsequent meeting of NHRIs confirmed the widespread commitment among APF member institutions to take this issue forward. In 2012, at the 11th ICC International Conference, which focused on women's and girls' human rights, reproductive rights were affirmed to be an important part of the work of NHRIs. In addition, the APF Regional Action Plan on the Human Rights of Women and Girls, which was adopted during the 11th ICC International Conference, set out a detailed list of steps to be taken. Concurrently with these initiatives, UNFPA, OHCHR and the Danish Centre for Human Rights have been preparing a handbook for NHRIs on reproductive rights.

This chapter seeks to provide NHRIs with information and insights that will help them to begin or continue work on the challenging issue of reproductive rights. It also aims to draw the attention of NHRIs to the resources that are available to help them in their endeavours, as well as experiences and good practices that they can look to for inspiration and guidance.

¹⁸⁷ This chapter draws on the APF and UNFPA report, *Integrating Reproductive Rights into the Work of National Human Rights Institutions of the Asia Pacific Region: A Preliminary Study of Current Views and Practices, Challenges and Opportunities* (2011), as well as the report of the follow-up regional consultation with APF member institutions on this issue, held in Kuala Lumpur, Malaysia, 20–21 June 2011. Both reports are available at www.asiapacificforum.net/human-rights/reproductive-rights/.

¹⁸⁸ Figures from A. Glasier et al, "Sexual and Reproductive Health: A Matter of Life and Death", *The Lancet Sexual and Reproductive Health Series*, October 2006.

9.2. UNDERSTANDING REPRODUCTIVE RIGHTS AND THE HUMAN RIGHTS CHALLENGES

The most definitive statement on the concept of reproductive rights emerged from the United Nations International Conference on Population and Development in 1994:

*[R]eproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other relevant United Nations consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes the right of all to make decisions concerning reproduction free of discrimination, coercion and violence as expressed in human rights documents.*¹⁸⁹

This statement has been critically important in shaping and reflecting international consensus on the concept of reproductive rights. It is reflected for example, in the Amman Programme of Action, which states that “reproductive rights include the right to the highest attainable standard of sexual and reproductive health, the right of all to decide freely and responsibly the number, spacing and timing of their children, and on matters related to their sexuality, and to have the information and means to do so free from discrimination, violence or coercion”.¹⁹⁰

These components of reproductive rights find authority in the major international human rights treaties, most critically in the widely accepted **prohibition on sex-based discrimination**. Of course, other key rights recognized in many instruments, such as the right to found a family and the right to privacy, are also directly implied in reproductive rights. CEDAW addresses reproductive rights more directly – for example, by requiring States parties to ensure women “access to health care services, including those related to family planning” – and refers to appropriate services in connection with pregnancy and the **right to decide on the number and spacing of children**.¹⁹¹

The CEDAW Committee has affirmed that depriving a woman of her reproductive capacity (sterilization) without full and informed consent is a clear violation of this important right.¹⁹² As shown in text box below, the CEDAW Committee has also drawn attention to the obligations on States with regard to preventable maternal mortality. More generally, it has affirmed the obligation of States parties to eliminate discrimination against women accessing health services, “particularly in the areas of family planning, pregnancy, confinement and during the post-natal period”.¹⁹³ In this regard, special attention should be paid “to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities”.¹⁹⁴ It is inappropriate for “a health care system [to lack] services to prevent, detect and treat illnesses specific to women” and it is “discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women”.¹⁹⁵ Importantly, the CEDAW Committee has confirmed that States parties may not “restrict women’s access to health services ... on the ground that women do not have the authorization of husbands, partners, parents or health authorities, because they are unmarried or because they are women” or have laws in place that “criminalize medical procedures only needed by women and that punish women who undergo those procedures”.¹⁹⁶

189 Report of the International Conference on Population and Development, Cairo, 5–13 September 1994; A/CONF.171/13/ Rev.1 (1995), p. 40 (para. 7.3 of the Programme of Action of the International Conference on Population and Development).

190 Amman Programme of Action, para. 25.

191 CEDAW, article 12.

192 *A.S. v. Hungary*, Communication No. 4/2004, views adopted 29 August 2004, para. 11.3. See also OHCHR, *Thematic study on the issue of violence against women and girls and disability* (A/HRC/20/5), which recognizes forced sterilisation as a form of violence against women and girls with disability.

193 General Recommendation No. 24 on article 12 of the Convention (women and health), 1999, para. 2.

194 *Ibid.*, para. 6.

195 *Ibid.*, para. 11.

196 *Ibid.*, para. 14.

PREVENTABLE MATERNAL DEATH: STATE OBLIGATIONS UNDER CEDAW

On 16 November 2002, Alynne da Silva Pimentel Teixeira, a Brazilian woman of African descent, died from pregnancy-related causes after her symptoms were misdiagnosed and emergency obstetric care was delayed. Her death led to the first decision of an international human rights treaty body finding a State responsible for a preventable maternal death.¹⁹⁷

The CEDAW Committee found violations of the right to access health care and effective judicial protection in the context of non-discrimination. The decision confirmed that States parties to CEDAW have an obligation to guarantee women of all racial and economic backgrounds timely and non-discriminatory access to appropriate maternal health services. The CEDAW Committee also affirmed that Governments outsourcing services to private health-care providers remain directly responsible for, and must regulate and monitor the actions of, these providers.

In relation to Brazil's obligation to reduce preventable maternal deaths, the CEDAW Committee made a number of specific recommendations, including that Brazil should:

- Ensure women's right to safe motherhood and affordable access to emergency obstetric care
- Provide adequate professional training for health workers
- Ensure that private health-care facilities comply with national and international reproductive health-care standards
- Implement its own commitments set out in the National Pact for the Reduction of Maternal and Neonatal Mortality
- Ensure women's access to effective remedies when their reproductive rights have been violated.¹⁹⁸



Rebecca Cook explains why this decision is so important:

*The Committee's finding of human rights violations has led to a shift in understanding of maternal deaths as a matter of social injustice that societies are obligated to remedy. This shift is significant because maternal deaths can no longer be explained away by fate, by divine purpose or as something that is pre-determined to happen and beyond human control. Maternal deaths are preventable, and when governments fail to take the appropriate preventive measures, that failure violates women's human rights. In acknowledging Alynne as a rights holder, the Committee recognized that pregnant women and their health are worthy of consideration for their own sake.*¹⁹⁹

197 *Pimentel v. Brazil*, Communication No. 17/2008, views adopted 10 August 2011.

198 For further discussion on this decision, as well as other initiatives of the international human rights system with regard to preventable maternal mortality, see J. Bueno de Mesquita and E. Kismödi, "Maternal mortality and human rights: Landmark decision by United Nations human rights body", *Bulletin of the World Health Organization*, Vol. 90, 2012; available at www.who.int/bulletin/volumes/90/2/11-101410/en/.

199 R. Cook, "Human Rights and Maternal Health: Exploring the Effectiveness of the Alynne Decision", *Journal of Law, Medicine and Ethics*, Vol. 41(1), 2013; available at <http://onlinelibrary.wiley.com/doi/10.1111/jlme.12008/pdf>.

The international human rights system has explicitly linked reproductive rights to the **right to health**. In 2003, the United Nations Commission on Human Rights noted that “sexual and reproductive health are integral elements of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.²⁰⁰ As shown below, this connection has been made more explicit by the Committee on Economic, Social and Cultural Rights and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

REPRODUCTIVE RIGHTS AND THE RIGHT TO HEALTH

The 1994 International Conference on Population and Development proposed the following definition of reproductive health:

*Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice and the right of access to appropriate health care services that will enable women to go safely through pregnancy and childbirth, and provide couples with the best chance of having a healthy infant.*²⁰¹

The Committee on Economic, Social and Cultural Rights and the Special Rapporteur on the right to health has further explained that the right to health includes both *freedoms* and *entitlements*. In the context of sexual and reproductive health, *freedoms* include a right to control one’s health and body. This encompasses the right to be free from any form of sexual violence, harmful practices, forced pregnancy and non-consensual contraceptive methods. *Entitlements* include access to a system of health protection and universal access to services, including family planning, pre- and post-natal care and other maternal health needs. Another important entitlement is the right to reproductive decision-making, including voluntary choice in marriage, in family formation and in determining the number, timing and spacing of one’s children; and the right to access the information and the means needed to exercise voluntary choice. In this context, the State’s *obligations* include the obligation to refrain from limiting access to contraceptives and to prevent harmful practices from interfering with reproductive rights. *Non-discrimination* is another essential aspect of reproductive rights. Freedom from discrimination on any basis – including sex, age, sexual orientation, ethnicity, language, religion, culture, HIV status and physical and mental disability – is essential to ensure the enjoyment of the right to sexual and reproductive health.²⁰²



200 Commission on Human Rights resolution 2003/28, preamble.

201 A/CONF.171/13/ Rev.1, 1995, p. 40 (para. 7.2 of the Programme of Action of the International Conference on Population and Development).

202 See Committee on Economic, Social and Cultural Rights, General Comment No. 14 on the right to the highest attainable standard of health, 2000, part I; and E.CN.4/2004/49, paras. 24-47.

Reproductive rights and reproductive health have been recognized as critical to human development and security. The United Nations Millennium Declaration, adopted in 2000, and the eight Millennium Development Goals, developed in 2001, initially omitted the International Conference on Population and Development goal of universal access to reproductive health. This was amended in 2007 and became effective on 1 January 2008 when Target 5.B: “Achieve universal access to reproductive health” was introduced with four attached indicators: contraceptive prevalence rate; adolescent birth rate; antenatal care coverage; and unmet need for family planning.

The Millennium Development Goals also recognize the link between reproductive rights and the realization of other goals including:

- Goal 3 on promoting gender equality and empowering women
- Goal 4 on reducing the child mortality rate
- Goal 5 on reducing maternal mortality.

Other important rights linked to the right to health include the **right to life**; the **right to privacy**; the **right to liberty and security of the person**; the **right to consent to marry and to equality in marriage**; the **right to be free from torture and other cruel, inhuman or degrading treatment or punishment**; the **right to education**; and the **right to enjoy the benefits of scientific progress**. The **prohibition on violence against women**, which is examined in detail in the Chapter 10, is also an essential component of reproductive rights.

Much progress has been made since 1994 in identifying the various rights implied in reproductive rights and in developing the substantive content of reproductive rights. However, it is important to acknowledge that there is not yet full agreement on many of the core questions that are at the heart of reproductive rights. Particularly complex and sensitive issues that remain to be resolved include access to abortion; the link between reproductive rights and violence against women; and the human rights implication of sex-selective birth practices.



A pregnant woman in Timor Leste. UN Photo by Martine Perret.

ELEMENTS OF THE RIGHT TO SEXUAL AND REPRODUCTIVE HEALTH MAY INCLUDE THE FOLLOWING:

- *Reproductive decision-making*, including voluntary choice in marriage; family formation and determining the number, timing and spacing of one's children; and access to the information and the means needed to exercise voluntary choice
- *Universal access to reproductive health services*, including family planning
- *Appropriate reproductive education, information services to adolescent girls and boys*
- *Freedom from harmful practices*, such as early marriage; sale in marriage; female cutting/female genital mutilation; and sex-selective birth practices (both pre- and post-natal)
- *Access to and respect for non-harmful cultural reproductive practices*; for example, the right to choose safe home birth and having a choice of female medical practitioners
- *Freedom from sexual violence and abuse*
- *Freedom from forced sterilization, forced abortion and forced contraception*
- *Freedom from discrimination* on any basis – including sex, age, marital status, pregnancy, sexual orientation, ethnicity, language, religion, culture, HIV status and physical and mental disability – to ensure the enjoyment of reproductive rights
- *Maternal health*, particularly access to services to promote maternal health and to reduce maternal morbidity (disease/poor health) and mortality (death), including pre- and post-natal care
- *Right to confidentiality*, with respect to reproductive health information and services.
- *Reproductive rights associated with the right to work and to participate in the community.*²⁰³



9.3. NHRI ENGAGEMENT ON REPRODUCTIVE RIGHTS

It has been recognized for some time that NHRIs can play a very important role in promoting and protecting reproductive rights. NHRIs are increasingly engaging with issues related to discrimination and violence against women and, more broadly, with areas of human rights concern, such as health and education, that lie outside a traditional focus on civil and political rights. In addition, NHRIs are often uniquely placed to contribute positively and innovatively to rights protection in areas that are relatively new, sensitive and prone to misunderstanding.

This section provides a brief overview of possible points of NHRI intervention and engagement, organized with reference to the principle functions of NHRIs established in accordance with the Paris Principles. It also draws on the key findings of the APF mapping study conducted in 2011.²⁰³

²⁰³ APF and UNFPA, *Integrating Reproductive Rights into the Work of National Human Rights Institutions of the Asia Pacific Region*, 2011, p. 5.

REPRODUCTIVE RIGHTS AND THE WORK OF NHRIs: KEY FINDINGS OF THE APF MAPPING STUDY²⁰⁴

Mandate, responsibilities and priorities

All NHRIs recognize a mandate and responsibility to promote and protect reproductive rights: All NHRIs overwhelmingly agreed that they have a current or future role in promoting and protecting reproductive rights and that there was no technical obstacle to engaging with reproductive rights.

Most NHRIs cited the following issues as being the most important in relation to reproductive rights:

- Maternal mortality
- Infant and child mortality
- Lack of awareness about issues related to reproduction and reproductive rights
- Lack of access to adequate reproductive services including family planning, either generally or in relation to specific vulnerable groups
- Harmful practices, such as early marriage and forced marriage
- Lack of control over reproductive decision-making, including in relation to the number and spacing of children
- Abortion, including unsafe abortion
- Adolescent sexuality, including teenage pregnancy
- Lack of education, knowledge and services related to sexually transmitted diseases
- Harmful cultural and religious influences over matters related to reproductive rights.

NHRIs generally identified the same groups as most vulnerable to violations of reproductive rights: Almost all NHRIs noted that persons, especially women, who are isolated, poor and socially marginalized or excluded are especially vulnerable to violations of their reproductive rights. Other groups identified as being especially vulnerable included people with disabilities, young people and migrants.



Work practices, experiences and challenges

No NHRI has a programme, focal point, strategy or work area dedicated to reproductive rights: Many innovations and good practices reported were one-off activities or undertaken through existing programmes related to the right to health or to women's rights.

There has been limited but important work done on reproductive rights: The majority of participating NHRIs reported that they had done at least some work to promote and protect reproductive rights. Most NHRIs were able to describe activities or achievements that were directly relevant to core issues of reproductive rights.

Culture and religion are seen as major impediments to the integration of reproductive rights: However, NHRIs noted that these issues went beyond the immediate concern of reproductive rights and contributed, in a broader sense, to the maintenance of laws, structures and practices that fail to protect the rights of vulnerable groups, including women and children.

Other obstacles include competing priorities, limited resources and lack of expertise.

204 Ibid, pp. 9-19.

Awareness of reproductive rights within NHRIs is an important prerequisite for their effective action in this area. At a regional consultation in 2011, APF member institutions highlighted the importance of training in order to build awareness of the issue among staff and Commissioners. This suggestion has been taken up by a number of NHRIs. For example, the Palestinian Independent Commission on Human Rights has held workshops on reproductive rights for staff in the West Bank and Gaza, facilitated by the UNFPA Palestine country office.²⁰⁵

The capacity of NHRIs to establish and maintain strong working relations with relevant government ministries and service providers is also relevant. Several NHRIs pointed out that these bodies had the information, data and contacts that allowed them to monitor reproductive rights and identify areas for action or intervention. As one NHRI noted, “our cooperation with the Ministry of Health gives us focus and provides more cohesion with our activities”.²⁰⁶ In the same way, relationships with NGOs can be critical for providing NHRIs with the information and contacts necessary to be effective. As one respondent to the APF–UNFPA study confirmed, “[n]ational human rights institutions need the support of the executive and the engagement of civil society. Without this support and engagement they can, unfortunately, do very little in the area of reproductive rights.”²⁰⁷

9.3.1. Strengthening the legal and policy framework around reproductive rights

A strong legal and policy framework around reproductive rights is crucial to their effective realization. NHRIs seeking to work in this area should, as the Amman Programme of Action proposes, undertake a **comprehensive review of laws and regulations in the areas of family, sexual and reproductive health**. Such a review should be undertaken with close reference to relevant international standards, including the prohibition on discrimination and the right to health. It should specifically seek to identify areas where laws and policies – or the impact of laws and policies – are detrimental to the rights, health and well-being of women and girls. Specific attention should be paid to:

- **Family law and practices:** including parallel systems of family law based on custom or religion, to the extent that they impact on aspects of reproduction
- **Access to health services:** Is there any inequality in access in law or in fact? Do laws and regulations uphold the right to privacy and the obligation on health providers to ensure free and informed consent to all medical services? Do laws or policies require third party authorization for access to reproductive services? Are any exceptions or deviations – for example, related to age or disability – defensible?
- **Criminal law:** Are harmful practices criminalized? Can women or girls ever be criminalized for exercising their reproductive rights?
- **Remedies for violations:** Does the law uphold access to remedies for violations of reproductive rights?

Undertaking a review of this kind can have important additional benefits. For example it can improve knowledge and understanding of reproductive rights within the NHRI. It can also help the NHRI to develop priorities and proposals to intervene for positive change.

A legislative review does not necessarily have to be comprehensive. The NHRI may decide, for example, to maximize its influence by undertaking a focused review on a particular issue that is currently being discussed by the Government or that is the subject of a new legislative initiative. Scrutiny of draft legislation can make a substantial contribution towards ensuring that new laws strengthen protections for women in relation to their reproductive rights.

205 The report of the workshops is available at <http://www.asiapacificforum.net/human-rights/reproductive-rights/>.

206 APF and UNFPA, *Integrating Reproductive Rights into the Work of National Human Rights Institutions of the Asia Pacific Region*, 2011, p. 29.

207 Ibid. p. 30.

REPRODUCTIVE RIGHTS AND THE WORK OF NHRIs: LEGISLATIVE REVIEWS

JORDAN: INVOLVEMENT IN REVIEW OF THE NATIONAL STATUS LAW

The [Jordan National Centre for Human Rights](#) was involved in a comprehensive review of that country's status law, which deals with issues related to marriage and family. The Centre was able to promote a rights-based analysis of a number of key issues. It also lobbied strongly for the new law to include an explicit prohibition on child marriage, with an exception made in the case of pregnant girls. That recommendation was accepted and the revised law is currently being considered for adoption.

THE PHILIPPINES: ADVISORY OPINION ON LAW RESTRICTING ACCESS TO BIRTH CONTROL

The [Commission on Human Rights of the Philippines](#) recently provided the Government with a written advisory opinion on a local government ordinance restricting access to birth control. Prior to drafting the opinion, the Commission Chairperson held a dialogue with relevant NGOs and other stakeholders. The advisory opinion evaluated the ordinance in relation to the Government's obligations under international human rights law, especially CEDAW. It found that the ordinance breached those obligations. The Commission has since called for a public inquiry into the issue.

In 2012, the Government passed, and then suspended in March 2013 pending the outcome of a judicial review of its constitutionality, the Reproductive Health Law. The law guarantees the country's poorest women universal and free access to modern contraceptives at government health centres.²⁰⁸ It also prohibits and includes sanctions for providers who knowingly withhold or restrict dissemination of information on reproductive services and programmes, as well as those who intentionally disseminate incorrect information.²⁰⁹ Furthermore, the law prohibits and sanctions providers who refuse to provide reproductive health care based on the lack of spousal consent.²¹⁰



TIMOR LESTE AND REPUBLIC OF KOREA: INVOLVEMENT IN NATIONAL DISCUSSIONS ON ABORTION LAW

The [Providor for Human Rights and Justice of Timor Leste](#) was involved in national discussions regarding the criminalization of abortion. Together with other civil society organizations and the Government, it undertook a concerted effort to bring the provisions of the draft criminal code into line with CEDAW.

The [National Human Rights Commission of Korea](#) has received complaints from some human rights groups related to the current abortion law. As part of its investigation into these complaints, the Commission will convene community discussions on the issue and options for legal and policy reform. The Commission considers itself well placed to moderate these sensitive discussions, which must, by necessity, involve all stakeholders.

208 Act Providing for a National Policy on Responsible Parenthood and Reproductive Health, Republic Act No. 10354, section 2. See also the Implementing Rules and Regulations of Republic Act No. 10354 (21 March 2013).

209 Ibid, section 23.

210 Ibid.

Government policies can, in many instances, be just as important as laws in shaping the way in which women experience their reproductive rights. A government policy on population, for example, can operate to restrict women's access to contraception or even compel them to have unwanted abortions. NHRIs have an important role to play in monitoring government policies that relate to reproduction and to engage in advocacy that explicitly seeks to ensure that such policies reflect an appropriate human rights and gender perspective.

REPRODUCTIVE RIGHTS AND THE WORK OF NHRIs: MONITORING GOVERNMENT POLICIES

INDIA: INTEGRATING RIGHTS INTO POPULATION POLICY

In 2003, the **National Human Rights Commission of India**, in collaboration with UNFPA and the Ministry of Health and Family Welfare, organized a “Colloquium on Population Policy – Development and Human Rights”. The Colloquium adopted a Declaration and recommended that the State Governments and Union Territories exclude discriminatory and coercive measures from their population policies. The Declaration acknowledged that reproductive rights, set on the foundation of dignity and integrity of an individual, encompass several aspects such as: the right to informed decision-making, free from fear of discrimination; the right to regular, accessible, affordable, good quality and reliable health care; the right to medical assistance and counselling for the choice of birth control methods appropriate for the individual couple; and the right to sexual and reproductive security, free from gender-based violence.²¹¹

The Commission has continued its work on population policy. In 2006, for example, it established a working group to examine state population policies in the light of the national population policy. Its report called for a rights-based approach to population stabilization, based on the principles of choice, equity and quality of care. In April 2012, the Commission requested information from the states about their population policies with a view to assess the existing scenario. The Commission intends to examine the issue in depth.



A mother and her newborn child at Cama Hospital, Mumbai, India. UN Photo by Mark Garten.

²¹¹ The report of the Colloquium is available at <http://india.unfpa.org/publications/national-colloquium-population-policy-development-and-human-rights-new-delhi-india>.

REPRODUCTIVE RIGHTS AND THE WORK OF NHRIs: COMMUNITY ENGAGEMENT

THE PHILIPPINES: COMMUNITY CONSULTATION FOR A REPRODUCTIVE RIGHTS STRATEGY

The **Commission on Human Rights of the Philippines** recently decided to develop a reproductive health rights programme. In developing the programme, the Commission will hold discussions at the village level, using its 15 provincial offices to coordinate these events. The discussions will feed into the Commission's human rights education program by providing initial awareness raising about reproductive health rights. The discussions will also enable the Commission to gain an insight into the situation of reproductive rights in these provinces. In addition to their monitoring value, such insights will help clarify various needs and priorities, as well as identify the obstacles to the effective realization of reproductive rights.



9.3.2. Engaging the community

While reproductive rights can be upheld by law, they must ultimately be protected and respected by the communities to which women and girls belong. NHRIs have an important role to play in engaging the community on the issue of reproductive rights through activities such as education, awareness raising and research.

All APF member institutions have identified that they have a current or potential role in community education and awareness raising on reproductive rights.²¹² The target audiences for these activities include vulnerable groups (such as women, young women, rural women, members of ethnic or religious minorities, migrant women and sex workers), government officials and employers. Several NHRIs noted that men and boys should also be a focus for awareness raising and education activities on human rights related to reproductive rights.

Like all other aspects of NHRI work, community engagement should be built on a strong evidence base, considering both the obstacles and opportunities of the current situation. Such evidence may be collected from a range of sources, both within and external to the NHRI.

9.3.3. Education and awareness raising

NHRIs can build information about reproductive rights into their mainstream education and awareness activities, as part of the broader mainstreaming of women's human rights advocated throughout this Manual. NHRIs may also look to develop specific education or awareness raising initiatives in response to a clearly identified need. For example, the monitoring activities of NHRIs – or indeed a community consultation similar to that conducted in Qatar – may reveal gaps in the provision of information and services to particular groups, such as migrant women and rural women. This information could be used to tailor an education or awareness raising activity to meet that need.

It is important that NHRIs understand that **access to information** is an important component of reproductive rights and, in fact, a prerequisite to the effective enjoyment of reproductive rights. As the Special Rapporteur on the right to education has affirmed, “States must ensure that they do not restrict individuals’ access to appropriate services and necessary information and must remove social and regulatory barriers to information on sexual and reproductive health and health care”.²¹³

212 APF and UNFPA, *Integrating Reproductive Rights into the Work of National Human Rights Institutions of the Asia Pacific Region*, 2011, pp. 21-22.

213 A/65/162, para. 4.

REPRODUCTIVE RIGHTS AND THE WORK OF NHRIs: EDUCATION AND AWARENESS RAISING

THAILAND: INFORMATION GUIDE ON REPRODUCTIVE RIGHTS

In 2007, the [National Human Rights Commission of Thailand](#) issued a guide to reproductive rights, directed principally to government officials, NGOs and those providing legal and social services to women and girls. *Reproductive Rights: The Key to Women's Health* sets out the nature and scope of reproductive rights and explains how these rights are protected under international and national law. It uses human rights law to identify a wide range of rights as relevant to the realization of reproductive rights.

NEW ZEALAND: COMMUNITY LEADERS' DIALOGUE ON SEXUALITY, GENDER AND HUMAN RIGHTS

In 2008, the [New Zealand Human Rights Commission](#), in collaboration with Family Planning International, brought together community activists and leaders to discuss sexuality, gender and human rights. The dialogue touched on what are traditionally sensitive issues and was inspired by the work of South Asian human rights advocates. Four main themes emerged in the course of the discussion and are documented in the dialogue's report: human rights; gender and power; culture and identities; and advocacy relationships. In addition to its substantive discussion on sexuality, gender and rights, the dialogue and its report²¹⁴ reflected on the important place of dialogue as an opportunity for shared conscious reflection and collaborative learning. It was observed that while human rights issues are constantly present, they risk being overlooked and watered down without conscious reflection and that reference to a human rights framework provides opportunities for progress.



JORDAN: INTEGRATING REPRODUCTIVE RIGHTS INTO TRAINING FOR PHYSICIANS ON THE RIGHT TO HEALTH

In 2011, the [Jordan National Centre for Human Rights](#), in cooperation with UNDP, organized a training session regarding the right to health. The 20 participants included physicians in the public and private sectors with different specialties. The programme included one session on reproductive rights and another on the rights to health of women and children. Case studies and working groups also dealt with the subject of reproductive rights.



A physician in Ramtha, northern Jordan. Photo by Russell Watkins/Department for International Development, reproduced under a CC BY 2.0 license.

²¹⁴ The report of the dialogue is available at <http://thehub.superu.govt.nz/publication/voices-talking-about-sexuality-gender-and-human-rights-aotearoa-new-zealand-pdf>.

9.3.4. Dealing with cultural and religious resistance

NHRIs in the Asia Pacific region have identified cultural and religious resistance as key obstacles to the realization of reproductive rights, as well as to their effective integration into the work of the institution.²¹⁵ A number of NHRIs have initiated activities for the specific purpose of addressing and overcoming cultural and religious resistance to the full recognition of reproductive rights.

REPRODUCTIVE RIGHTS AND THE WORK OF NHRIs: CULTURAL AND RELIGIOUS BARRIERS

AFGHANISTAN: BUILDING ALLIANCES AND PARTNERSHIPS

For a multitude of reasons, including lack of resources, the [Afghanistan Independent Human Rights Commission](#) considers itself unable to rely on criminal justice agencies to pursue serious violations of human rights, including reproductive rights. In order to make progress in this area, the Commission must develop strategic alliances with those who are in a position to provide support. Most recently, the Commission has begun to work closely with the newly-formed family units within the Afghan National Police. These units include a significant proportion of female officers who are proving to be strong allies in the Commission's fight against practices such as wife beating, self-immolation and forced marriage.

JORDAN AND THE PHILIPPINES: INVOLVING RELIGIOUS AUTHORITIES IN DISCUSSION OF SENSITIVE ISSUES

The [Jordan National Centre for Human Rights](#) organized a workshop at the University of Jordan on the issue of abortion in cases of foetal deformity/disability. The workshop focused specifically on whether national law and international standards would permit abortion in such circumstances. The Centre ensured that the debate included a cleric who was able to address the religious law aspects. The workshop came up with detailed recommendations that were widely shared. The event received much publicity and, in the view of the organizers and participants, succeeded in raising awareness and discussion on one potentially controversial aspect of reproductive rights.

The Commission on Human Rights of the Philippines also noted the importance of involving religious authorities in discussions about reproductive rights, citing its previous work on sexuality as an example of the value of such an approach in building common ground. The Commission intends to involve leaders and members of faith-based groups in discussions on a future strategy for reproductive health rights.



²¹⁵ APF and UNFPA, *Integrating Reproductive Rights into the Work of National Human Rights Institutions of the Asia Pacific Region*, 2011, pp. 28-29.

9.4. MONITORING, REPORTING ON AND RESPONDING TO VIOLATIONS OF REPRODUCTIVE RIGHTS

The Paris Principles states that the mandate of NHRIs should extend to reporting and recommending on “any situation of violation of human rights”.²¹⁶ The Amman Programme of Action specifies that NHRI monitoring and reporting functions in this area should be directed towards the establishment of a strong evidence base across the full range of violations of reproductive rights. The main purpose of such an evidence base is to guide effective and relevant interventions. NHRIs can also share the information they acquire with other stakeholders that have a role to play in protecting and promoting reproductive rights.

There are a range of activities that NHRIs can carry out in this area.

Monitoring and reporting on the general situation with respect to reproductive rights: The NHRI might usefully prepare a list of issues that could be included within the scope of such reporting, based on a preliminary assessment of areas requiring attention. For example, the NHRI may decide to focus its attention on the general issue of freedom from discrimination as well as on specific issues, such as access to information and rights around pregnancy and childbirth. The NHRI may also decide to integrate issues related to reproductive rights into its general monitoring and reporting, as well as to focus specific attention on this issue. If a particular issue or problem comes to the attention of the NHRI, it may decide to conduct a **national inquiry** or to issue a special report.

REPRODUCTIVE RIGHTS AND THE WORK OF NHRIs: MONITORING

AFGHANISTAN: INNOVATIONS IN MONITORING VIOLATIONS OF REPRODUCTIVE RIGHTS

Issues related to personal freedom and familial, social and political pressures mean that many violations of reproductive rights are never reported to the [Afghanistan Independent Human Rights Commission](#). The Commission has sought to address this problem by expanding its monitoring scope to include hospitals, where many women will go after being burned or beaten. For example, in 2009, the Women’s Unit within the Commission monitored 18 hospitals for cases of violence against women in 18 provinces. Close monitoring of hospitals has improved the Commission’s understanding of the nature of reproductive rights violations, as well as the challenges to an effective response.



Responding to individual complaints of violations: The NHRI can respond to individual complaints through its formal complaint handling procedure or by using a less structured approach. For example, as shown below, some NHRIs provide mediation services and some are engaged in the delivery of services; for example, providing victims of human rights violations with support and assistance and referring them to appropriate agencies.

It may be useful for the NHRI to examine its complaint handling procedure with a view to ensuring that it is able to capture information about violations of reproductive rights. For example, at a regional consultation, APF member institutions noted that reproductive rights can very easily “fall between the cracks”. This is not just because of limited awareness among NHRI staff. It is also a result of operational systems that have not been set up to capture and analyse relevant information. Many APF member institutions felt that a reclassification of their complaints system to include a specific category on reproductive rights was an urgent priority and something that could be achieved fairly easily. The New Zealand Human Rights Commission has since updated its complaint handling database to capture information about reproductive rights.

²¹⁶ Paris Principles, para. 3(a)(ii).

REPRODUCTIVE RIGHTS AND THE WORK OF NHRIs: RESPONDING TO INDIVIDUAL COMPLAINTS

AFGHANISTAN AND JORDAN: MEDIATING COMPLAINTS OF VIOLATIONS OF REPRODUCTIVE RIGHTS

Mediation, with its focus on resolving conflict and repairing relations rather than addressing systemic problems, may not be an appropriate method for dealing with allegations of serious human rights violations. However, in some circumstances, mediation may offer the only opportunity to improve individual situations.

The [Afghanistan Independent Human Rights Commission](#) noted that because of serious weaknesses in public administration, even the most egregious violations of reproductive rights often remain unresolved. In attempting to respond to these challenges, the Commission has had some success with mediating complaints involving violations of reproductive rights, particularly those involving close family members (e.g. a dispute over child marriage or a forced marriage). The Commission is able to provide a confidential and safe environment for a discussion that can lead to resolution of the problem, with the mediation process encouraging women's participation and offering them a role in resolving the disputes.²¹⁷ According to the Commission, "women are often reluctant to complain about their husbands to authorities. They express a preference for mediation, hoping for a resolution that preserves the unity of the family, fearful of the costs and public scrutiny they may incur at judicial institutions, and knowing they have few other good options".²¹⁸



The [Jordan National Centre for Human Rights](#) has adopted a flexible approach to handling complaints that appears well suited to addressing some violations of reproductive rights. In responding to a complaint involving family relations (e.g. a husband's insistence on a certain number of children over the wishes of his wife), the Centre will seek to contact the husband directly in order to informally mediate the complaint. If a complaint concerns a lack of access to essential services – an example was given of a humidicrib for a premature infant – the Centre will try to intervene directly with the service provider. In addition to resolving the particular case, the Centre will also seek to address underlying causes by contacting the relevant government ministry.



Visit to the doctor, Jabalseraj District Parwan Province, Afghanistan. Photo by Graham Crouch/World Bank, reproduced under a CC BY-NC-ND 2.0 license.

217 Women are routinely excluded from participating in other dispute resolution processes, such as *jirgas* (gatherings of elders) and *shuras* (local councils).

218 United Nations Assistance Mission in Afghanistan and OHCHR, *A Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan*, 2011, p. 24.

Intervening in legal proceedings: Some NHRIs are empowered to participate in legal proceedings, for example by acting as *amicus curiae* (“friend of the court”) or intervening in certain cases. When such interventions are made in relation to cases involving reproductive rights, they can have a powerful impact on the realization of human rights.

REPRODUCTIVE RIGHTS AND THE WORK OF NHRIS: LEGAL INTERVENTION

AUSTRALIA: PROTECTING THE REPRODUCTIVE RIGHTS OF WOMEN AND GIRLS WITH A DISABILITY

The **Australian Human Rights Commission** has worked to promote measures to prevent unnecessary sterilizing procedures being performed on persons with disabilities, particularly girls and young women. In a series of court cases, including “Marion’s case”²¹⁹ in the High Court of Australia in 1992, the Commission argued for improved legal scrutiny of decisions to perform sterilizing medical or surgical procedures. The Commission subsequently monitored the implementation of the legal principles that emerged from this case, publishing major research papers in 1997 and 2001 on sterilization performed on young women with disabilities for various purposes.

The Commission has continued to argue for improvements to the legal framework applying to decision-making in respect of sterilization of children. Its research provided commentary on the distinction between therapeutic and non-therapeutic sterilization. It also drew on key principles in the Convention on the Rights of the Child to argue the critical need to act in the “best interests of the child” and that such procedures be used as “last resort”. The research analysed the reasons commonly given in support of the sterilization of girls and young women and identified alternative and less invasive procedures by which similar outcomes might be achieved.

In relation to the broader issue of involuntary or coerced sterilization of persons with disabilities, the Commission has continued to take a leading role in public discussion on this issue. It made a detailed submission to a recent government inquiry²²⁰ and included a number of recommendations on the legislative, policy and educative measures that Australia could adopt if it is to fulfil its international legal obligation to prohibit the sterilization of children, particularly girls (regardless of whether they have a disability), and the sterilization of women with disabilities without their informed consent, except where there is a serious threat to life or health. The Commission recommends that people with disabilities are consulted and actively involved in developing and implementing such measures.



219 See www.austlii.edu.au/au/cases/cth/HCA/1992/15.html.

220 The Commission’s submission to the Senate Community Affairs References Committee inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia is available at www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Submissions.

KEY POINTS: CHAPTER 9

- Reproductive rights include the right to the highest attainable standard of sexual and reproductive health, the right of all to decide freely and responsibly the number, spacing and timing of their children, and on matters related to their sexuality, and to have the information and means to do so free from discrimination, violence or coercion.²²¹
- The international human rights system has explicitly linked reproductive rights to the right to health. The right to health includes both freedoms and entitlements. In the context of sexual and reproductive health, *freedoms* include a right to control one's health and body and *entitlements* include access to a system of health protection and universal access to services, including family planning, pre- and post-natal care and other maternal health needs.
- NHRIs can play an important role in promoting and protecting reproductive rights. Awareness of reproductive rights within NHRIs is an important prerequisite for effective action in this area, as is the capacity of NHRIs to establish and maintain strong working relations with relevant government and non-government agencies and service providers.
- NHRIs can undertake a comprehensive review of laws and policies in the areas of family, sexual and reproductive health.
- NHRIs can engage the community on the issue of reproductive rights through education, awareness raising and research activities. They can integrate information about reproductive rights into their mainstream education and awareness activities and develop specific education or awareness raising initiatives in response to identified needs.
- NHRI monitoring and reporting functions in the area of reproductive rights should be directed towards establishing a strong evidence base across the full range of violations of reproductive rights.



FURTHER READINGS AND RESOURCES

Asia Pacific Forum of National Human Rights Institutions and United Nations Population Fund, *Integrating Reproductive Rights into the Work of National Human Rights Institutions of the Asia Pacific Region: A Preliminary Study of Current Views and Practices, Challenges and Opportunities*, 2011

Centre for Reproductive Rights and United Nations Population Fund, *Reproductive Rights: A Tool for Monitoring State Obligations*, 2012

United Nations Population Fund, Danish Institute for Human Rights and Office of the High Commissioner for Human Rights, *Reproductive Rights and Human Rights: A Handbook for National Human Rights Institutions* (forthcoming)



221 Amman Programme of Action, para. 25.

Chapter 10:

Violence against women and girls

KEY QUESTIONS

- What are the key issues and challenges around violence against women and girls?
- What are the main obligations of States with respect to violence against women and girls?
- How can NHRIs integrate the issue of violence against women and girls into their work?
- What good practice examples can NHRIs draw on for inspiration and guidance?



BASIS FOR NHRI INVOLVEMENT

AMMAN PROGRAMME OF ACTION

NHRIs agree to give priority, over the next decade and beyond, to:

- Encourage and aid the compilation of an evidence base (e.g. data, inquiries, research) on the nature, extent, causes and effects of all forms of gender-based violence, and on the effectiveness of measures to prevent and address gender-based violence (paragraph 15).
- Promote and support the adoption of laws against domestic and family violence, sexual assault and all other forms of gender-based violence, in accordance with international human rights standards (paragraph 16).
- Support the adoption of National Action Plans to address violence against women that include provision for the National Action Plans to be independently monitored and evaluated (paragraph 17).
- Where their mandate permits, conduct training of judicial and law enforcement officers, medical professionals, and other public officials on responding to violence against women, gender equality and women's human rights (paragraph 18).
- Promote measures, including penal provisions, preventive and rehabilitation measures to protect women and girls subject to trafficking and other forms of sexual exploitation (paragraph 19).
- Assist women and girl victims in accessing complaints procedures and remedies, including compensation and ensure the use of NHRIs' quasi-judicial powers to address complaints of violence against women and girls (paragraph 20).
- Develop programmes to prevent and combat sexual harassment, and measures to protect women from sexual harassment and other forms of gender-based violence in the workplace, schools, or in other institutions such as places of detention (paragraph 21).



- Establish or support adequately resourced critical services for victims of domestic and family violence, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation, counselling and legal services, and ensure these services are accessible to particularly disadvantaged groups of women (paragraph 22).
- Promote implementation of the updated Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, as well as the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (paragraph 23).
- Establish and support measures to address human rights violations experienced by women in situations of armed conflict, especially sexual violence, and to hold perpetrators of these violations accountable (paragraph 24).

10.1. INTRODUCTION

Violence is a major factor in the lives of many women and girls. A landmark study by the United Nations Secretary-General in 2006 affirmed the nature of the problem, the responsibility of States and the challenges of an effective response:

Violence against women persists in every country in the world as a pervasive violation of human rights and a major impediment to achieving gender equality. Such violence is unacceptable, whether perpetrated by the State and its agents or by family members or strangers, in the public or private sphere, in peacetime or in times of conflict. The Secretary-General has stated that as long as violence against women continues, we cannot claim to be making real progress towards equality, development and peace.

States have an obligation to protect women from violence, to hold perpetrators accountable and to provide justice and remedies to victims. Eliminating violence against women remains one of the most serious challenges of our time. The knowledge base and tools to prevent and eliminate violence against women developed over the past decade must be utilized more systematically and effectively to put a stop to all violence against women. This requires clear political will, outspoken, visible and unwavering commitment at the highest levels of leadership of the State and the resolve, advocacy and practical action of individuals and communities.²²²

One of the most significant developments over the past several decades has been the growing acceptance that violence against women – a term that should always be taken to include girls – is not just a public health issue or a criminal justice problem. It is also a serious violation of human rights. This acknowledgement has paved the way for the development of norms that recognize the obligation on States to prevent and respond to such violence, wherever and whenever it occurs.

Violence against women will often be a common thread woven through much of the work done by NHRIs in the area of women's human rights. The other special topics chosen for this part of the Manual provide a useful illustration. It is well established that female migrant domestic workers are highly vulnerable to violence, including sexual violence. While reproductive rights and violence against women are two separate issues, the overlaps are substantial. Violence against women, particularly domestic violence, deprives women of their autonomy to exercise voluntary reproductive choice. It will also infringe women's right to health and, in serious cases, impair the right to life and bodily integrity. In certain cases, the breach of reproductive rights and the prohibition on violence against women will coincide; for example, in relation to forced marriage, sexual violence, forced sterilization and forced abortion. In addition, where a woman becomes pregnant as the result of rape, the protection of her reproductive rights may entail a right to access safe and legal abortion.

222 A/61/122/Add.1, paras. 1-2.

LINKS BETWEEN VIOLENCE AGAINST WOMEN AND REPRODUCTIVE RIGHTS

THE EXPERIENCE OF APF MEMBER INSTITUTIONS

In a 2011 survey on reproductive rights, most APF member institutions cited violence against women, including sexual violence and harassment, as an issue that either directly or indirectly impacts on the ability of women to enjoy their reproductive rights. One NHRI noted that violence against pregnant women by their spouses was a major concern. In some countries, gender-based violence was considered to be a major obstacle to the realization of reproductive rights.²²³



DOMESTIC VIOLENCE AND REPRODUCTIVE RIGHTS

In a 2011 report, the Special Rapporteur on violence against women, its causes and consequences noted that women victims of violence “face enormous challenges in terms of their sexual and reproductive health. Abusers usually exercise control over victims’ access to contraception, abortion and other reproductive health services.”²²⁴

As the examples of innovation and good practice in this chapter confirm, NHRIs are increasingly engaged on the issue of violence against women. Some NHRIs have chosen to focus on an issue of particular importance to the community they serve; for example, domestic violence or sexual harassment in the workplace. Other NHRIs have taken a broader approach by working to assess the situation generally and build understanding of the extent of violence against women and how this impairs the realization of their human rights. Many NHRIs and their collegiate bodies, such as the APF, have helped draw attention to violence against women in international forums, such as the United Nations Commission on the Status of Women²²⁵ and the Human Rights Council.²²⁶ In 2012, at the ICC’s 11th International Conference devoted to the issue of women’s and girls’ human rights, violence against women was affirmed to be an important part of work of NHRIs globally. The Amman Programme of Action adopted at that conference set out a detailed list of steps that NHRIs could take in this area.

This chapter seeks to provide NHRIs with information and insights to support their work on violence against women. It also aims to draw the attention of NHRIs to the resources that are available to help them in this endeavour as well as experiences and good practices that they can look to for inspiration and guidance.

10.2. UNDERSTANDING VIOLENCE AGAINST WOMEN AND THE HUMAN RIGHTS CHALLENGES

As discussed in Chapter 1, the international human rights system has been slow to respond to many human rights issues of direct concern to women. Violence against women has proved especially difficult in this regard. Such violence often takes place in the private spheres of community, workplace and family and human rights law has only recently begun to extend to these areas. A further complication has been the relationship between violence against women and deeply entrenched social and cultural attitudes and harmful stereotypes.

223 APF and UNFPA, *Integrating Reproductive Rights into the Work of National Human Rights Institutions of the Asia Pacific Region: A Preliminary Study of Current Views and Practices, Challenges and Opportunities*, 2011, pp. 9-19.

224 A/HRC/17/26/Add.5, para. 21.

225 As recognized in the Agreed Conclusions adopted at the Commission’s 57th Session, March 2013; available at www.asiapacificforum.net/support/international-regional-advocacy/united-nations/csw/.

226 See Human Rights Council resolution 23/17.

Violence against women is not expressly prohibited under any of the major international or regional human rights treaties, including CEDAW. Of course, international human rights law is not silent on issues related to violence against women. For example, the right to life and the prohibition against torture and inhumane treatment are central protections that apply to all persons, including women at risk of gender-based violence. International human rights law also prohibits certain practices that often manifest as gender-based violence, such as human trafficking, the sale of children and child pornography.

Nevertheless, the absence of an agreed understanding of violence against women and the lack of a clear prohibition under international law proved to be significant obstacles to progress and change. The global campaign for women's human rights launched in the early 1990s was largely focused on violence against women and sought to place the issue on the international human rights agenda.

In 1992, the CEDAW Committee issued **General Recommendation No. 19 on violence against women**, which was a crucial first step in closing the gap created by the absence of a clear prohibition on violence against women. It brought the issue within the terms of CEDAW by stipulating that the definition of discrimination set out in article 1 includes “gender-based violence”, which the CEDAW Committee described as “violence that is directed against a woman because she is a woman or that affects women disproportionately”.²²⁷

General Recommendation No.19 identifies gender-based violence as “a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men” and that “impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions”.²²⁸ Importantly, it points out that discrimination prohibited under CEDAW is not restricted to action by or on behalf of Governments and that States parties are required to “take appropriate and effective measures to overcome all forms of gender-based violence, *whether by public or private act*”.²²⁹

GENERAL RECOMMENDATION NO. 19 AND TRAFFICKING IN WOMEN

The CEDAW Committee’s General Recommendation No. 19 on violence against women confirms that trafficking is a form of violence against women. In relation to article 6 of CEDAW (requiring States to take all appropriate measures, including legislation, to suppress all forms of trafficking in women and the exploitation of prostitution of women), it notes that: poverty and unemployment increase opportunities for trafficking and may force many women, including young girls, into prostitution; that prostitutes are especially vulnerable to violence because their status, which may be unlawful; that prostitutes need the equal protection of laws against rape and other forms of violence; that in addition to established forms of trafficking, there are new forms of sexual and/or gendered exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries, and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity, putting women at special risk of violence and abuse. General Recommendation No. 19 also observes that wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures.²³⁰



227 Para. 6.

228 Ibid, paras. 1 and 7.

229 Ibid, para. 25(a) (emphasis added).

230 Ibid, paras. 13-16

This understanding of violence against women was given greater clarity and political force in 1993 when the United Nations General Assembly adopted a **Declaration on the Elimination of Violence against Women**. The Declaration defined such violence as:

*... any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life ... [encompassing but not limited to] ... (a) physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (b) physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere; trafficking in women and forced prostitution; (c) physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.*²³¹

This comprehensive understanding of violence against women was further clarified in the **Beijing Declaration and Platform for Action**,²³² which refers to violations of the rights of women in situations of armed conflict, including systematic rape, sexual slavery and forced pregnancy; forced sterilization, forced abortion, coerced or forced use of contraceptives; prenatal sex selection; and female infanticide. The Beijing Declaration and Platform for Action further recognized the particular vulnerabilities of women belonging to minorities; the elderly and the displaced; women belonging to indigenous, refugee and migrant communities; women living in impoverished rural or remote areas; and women in detention.

Substantial progress has been made over the past two decades in developing the substantive content of the obligation of States to prevent and respond effectively to violence against women. Several specialized treaties have been concluded at the regional level.²³³ A greater willingness to examine existing human rights prohibitions through the lens of gender has also resulted in increased understanding of how States must respond to violence against women. For example, it is now well recognized that torture has specific gender dimensions that must be identified and addressed.

However, impunity for cases of violence against women continues to be very high. As the Special Rapporteur on violence against women stated in her 2013 report to the Human Rights Council on due diligence (see text box below), the recognition that violence against women is one of the most prevalent human rights violations has not translated into the adoption of “necessary solutions that are coherent and sustainable, and which would lead to elimination of all forms of violence against all women. In fact, the view from civil society is that the prevalence rates are increasing and also manifesting in new forms in many parts of the world. Also, that impunity for both perpetrators and State officials who fail to protect and prevent violence against women continues to be the norm.”²³⁴

231 UN General Assembly resolution 48/104, articles. 1-2.

232 Adopted on 15 September 1995 at the Fourth World Conference on Women.

233 These include the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará) (1994); the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2003); and the Council of Europe Convention on preventing and combating violence against women and domestic violence, which is not yet in force.

234 A/HRC/23/49, para. 43.

UNDERSTANDING VIOLENCE AGAINST WOMEN

Gender-based violence is violence that is directed against a woman because she is a woman or that affects women disproportionately.

Violence against women is any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women.

Violence against women can take place in:

- Families
- Community settings
- Workplaces
- Official institutions and settings and/or by officials or agents of the State.

Forms and manifestations of violence against women (many also experienced by girls) include but are not limited to: domestic violence; sexual violence; marital rape; stalking; sexual harassment; early and forced marriage; human trafficking; wife inheritance; female genital mutilation/cutting; “honour” crimes; acid attacks; dowry-related violence; maltreatment of widows, including inciting widows to commit suicide; and harmful practices that constitute or contribute to violence against women.

These forms of violence against women can involve physical, sexual, psychological/emotional and economic abuse and exploitation.



Women in rural village, Southern Bangladesh. Photo by Stephan Bachenheimer/World Bank, reproduced under a CC BY-NC-ND 2.0 license.

DUE DILIGENCE AND STATE RESPONSIBILITY FOR VIOLENCE AGAINST WOMEN

International law requires States to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those actions are perpetrated by the State or private persons. In the case of acts committed by private individuals, the State is under an obligation to discharge these obligations with “due diligence”.

In 2013, the Special Rapporteur on violence against women issued a report examining the “due diligence” obligation. She proposed dividing the standard into two categories:

Individual due diligence refers to the obligations States owe to particular individuals, or groups of individuals, to prevent, protect, punish and provide effective remedies on a specific basis. States can fulfil the individual due diligence obligation of protection by providing a woman with services such as telephone hotlines, health care, counselling centres, legal assistance, shelters, restraining orders and financial aid. Education on protection measures and access to effective measures can also help fulfil protection and prevention obligations that an individual is owed by the State. Individual due diligence places an obligation on the State to assist victims in rebuilding their lives and moving forward, and can include monetary compensation, as well as assistance in relocating or in finding a job. Individual due diligence also requires States to punish not just the perpetrators, but also those who fail in their duty to respond to the violation.

*Systemic due diligence refers to the obligations States must take to ensure a holistic and sustained model of prevention, protection, punishment and reparations for acts of violence against women. At a systemic level, States can meet their responsibility to protect, prevent and punish by, among other things, adopting or modifying legislation; developing strategies, action plans and awareness-raising campaigns and providing services; reinforcing the capacities and power of police, prosecutors and judges; adequately resourcing transformative change initiatives; and holding accountable those who fail to protect and prevent, as well as those who perpetrate violations of human rights of women. Also, States have to be involved more concretely in overall societal transformation to address structural and systemic gender inequality and discrimination.*²³⁵



The “due diligence” standard has been applied in the context of violence against women in the jurisprudence of the CEDAW Committee. For example, in one case a woman was killed by her husband after being subjected to physical violence and threats of violence over a number of years, despite having sought assistance from law enforcement officials and the courts. The CEDAW Committee noted that although the State party had “established a comprehensive model to address domestic violence that includes legislation, criminal and civil-law remedies, awareness-raising, education and training, shelters, counselling for victims of violence and work with perpetrators”:

... in order for the individual woman victim of domestic violence to enjoy the practical realization of the principle of equality of men and women and of her human rights and fundamental freedoms, the political will that is expressed in the aforementioned comprehensive system of [the State party] must be supported by State actors, who adhere to the State party’s due diligence obligations.



²³⁵ A/HRC/23/49, paras. 70-71.

The CEDAW Committee made a number of recommendations, including that the State party:

*Strengthen implementation and monitoring of the [State party's Act] for the Protection against Violence within the family and related criminal law, by acting with due diligence to prevent and respond to such violence against women and adequately providing for sanctions for the failure to do so.*²³⁶

10.3. NHRI ENGAGEMENT ON VIOLENCE AGAINST WOMEN

As noted in the introduction to this chapter, the increasing focus of NHRIs on the human rights of women and girls has often translated into greater attention on the issue of violence against women. For example, most NHRIs in the Asia Pacific region are or have been engaged in activities aimed at preventing or drawing attention to violence against women. As with the issue of reproductive rights, NHRIs are uniquely placed to contribute positively to rights protection in this area, which is often highly sensitive for States and the general community.

This section provides a brief overview of possible points of NHRI intervention and engagement, organized with reference to the principle functions of NHRIs established in accordance with the Paris Principles. This overview also includes examples of innovation and good practice.

10.3.1. Strengthening the legal and policy framework around violence against women

Legislation establishes rights and entitlements, as well as responsibilities and obligations, around violence against women. It also provides the framework and foundation for policies and programmes aimed at both prevention and response. All States should have a strong legal and policy framework to counter violence against women. NHRIs seeking to work in this area should, as the Amman Programme for Action suggests, *promote and support the adoption of laws against domestic and family violence, sexual assault and all other forms of gender-based violence*, in accordance with international human rights standards. NHRIs should apply the international definitions of gender-based violence and violence against women to ensure that the legislative framework addresses violence in the family, the community and the workplace, as well as violence committed by or through State agencies and State officials.

Efforts by NHRIs to promote a strong legal and policy framework concerning violence against women should be based on a solid understanding of the current situation, including both weaknesses and opportunities for change. To this end, NHRIs seeking to work in this area may consider undertaking a **comprehensive review of laws and regulations** that relate to, or that potentially impact on, this issue. They can also provide input into draft laws, ensuring that any proposed legislation incorporates a rights-based response and reflects a full understanding of the nature of the problem being addressed (see the “guiding considerations” in the text box below).

²³⁶ *Goekce (deceased) v. Austria*, Communication No. 5/2005, views adopted 6 August 2007, para. 12.1.2 and 12.4. See also *A.T. v. Hungary*, Communication No. 2/2003, views adopted 26 January 2005; *Yildirim (deceased) v. Austria*, Communication No. 6/2005, views adopted 1 October 2007; and *Ciudad Juárez Inquiry*, CEDAW/C/2005/OP.8/MEXICO, views adopted 27 January 2005.

VIOLENCE AGAINST WOMEN AND THE WORK OF NHRIs: LEGISLATIVE REVIEW AND REFORM

In Afghanistan, violence against women is a major obstacle to the effective realization of reproductive rights. Accordingly, it is an issue that has been given high priority by the [Afghanistan Independent Human Rights Commission](#). In 2008, the Commission worked closely with the Government to draft a new law on violence against women. The law was enacted by presidential decree in 2009. Unfortunately, an effort to pass the law through the Parliament in 2013 was unsuccessful.

In Timor Leste, the [Provedor for Human Rights and Justice](#) was involved in the development of the Law Against Domestic Violence, which was enacted in 2010. In order to increase awareness and understanding about the law and to support its implementation, the Provedor, the Secretary of State for Promotion of Equality and civil society organizations conducted awareness campaigns and training on the new law for community leaders, police and medical staff. The Provedor and the Secretary of State also convened high-level ministerial meetings to develop action plans for inter-ministerial cooperation for implementation of the law.

In 2002, the [National Human Rights Commission of India](#) undertook a comprehensive review of the Protection from Domestic Violence Bill. The Commission's suggestions were substantially reflected in the Protection of Women from Domestic Violence Act, 2005. For example, the Commission recommended that the Act extend to children and include adopted children, stepchildren and foster children. It also recommended that the definition of "child" reflect the definition in the Convention on the Rights of the Child. In addition, the Commission provided advice on what constitutes domestic and family violence and different types of abuse, including physical, sexual, verbal, emotional and economic abuse. In January 2013, the Commission held a consultation on violence against women. It resulted in a number of recommendations, which the Commission reviewed and provided to a committee constituted to review India's criminal law regime concerning sexual crimes (the Verma Committee). The Commission's recommendations, including those on laws related to rape, sexual harassment, human trafficking, stalking and acid attacks, were reflected in the Verma Committee's report to the Government and in the subsequent Criminal Law (Amendment) Act, 2013.

In Korea, crimes involving sexual violence are set out in "special laws", such as the Act on Special Cases Concerning the Punishment, etc. of Sexual Violence Crimes. Although the Criminal Law is the basic law governing sexual violence, it has not been revised in concert with the special laws. To rectify discrepancies between the Criminal Law and the special laws, the [National Human Rights Commission of Korea](#) undertook a review of the relevant laws and in 2011, made its recommendation that legislative measures be taken and that the Criminal Law be amended.



KEY RESOURCE: HANDBOOK ON LEGISLATION

In 2010, the United Nations produced a *Handbook for Legislation on Violence against Women*.²³⁷ The Handbook is a resource to assist States and other stakeholders, including NHRIs, to enhance existing laws or develop new laws to protect the rights of women.

The Handbook outlines the international and regional legal and policy frameworks that mandate States to enact and implement comprehensive and effective laws to address violence against women. It then presents a model framework for legislation on violence against women, divided into 14 sections. The model framework offers recommendations on the content of legislation, accompanied by explanatory commentaries and good practice examples. While many of the framework's recommendations are applicable to all forms of violence against women, some are specific to certain forms, such as domestic violence or sexual violence.

The Handbook provides a useful checklist of considerations when legislation is being drafted on violence against women. This list highlights the importance of identifying a clear legislative goal; undertaking comprehensive and inclusive consultation with all relevant stakeholders, in particular victims/survivors; and adopting an evidence-based approach to legislative drafting.

A supplementary publication on *"Harmful Practices" against Women* is also available.²³⁸



16-day activism against gender violence campaign, Maliana District, Timor Leste. Photo by Martine Perret.

²³⁷ Department of Economic and Social Affairs, Division of the Advancement of Women, *Handbook for Legislation on Violence against Women*, 2010; available at www.un.org/womenwatch/daw/vaw/v-handbook.htm.

²³⁸ Department of Economic and Social Affairs, Division of the Advancement of Women, *Supplement to the Handbook for Legislation on Violence against Women: "Harmful Practices" against Women*, 2011; available at www.un.org/womenwatch/daw/vaw/v-handbook.htm.

LEGISLATING ON VIOLENCE AGAINST WOMEN: AIMS AND KEY CONSIDERATIONS

The United Nations has affirmed that legislation on violence against women should aim to: *prevent* violence against women and girls; *ensure* investigation, prosecution and punishment of perpetrators; and *provide* protection and support for survivors of violence.²³⁹

Important **guiding considerations** for such legislation include:

- Recognizing that violence against women is a form of gender-based discrimination and a violation of women's human rights
- Addressing all forms of violence against women, whether "public" or "private"
- Making clear that violence against women is unacceptable and that eliminating it is a shared, public responsibility
- Ensuring that women and girls who have experienced violence are not re-victimized through the legal process
- Promoting women's agency and survivors' empowerment
- Taking into account the different impact of measures on women according to their age, race, class, ethnicity, religion, disability, culture, indigenous or migrant status, legal status and/or sexual orientation or other status.²⁴⁰



NHRIs can also make an important contribution to developing national policies around violence against women. As noted above, any policy should be grounded on, and seek to promote implementation of, a strong and comprehensive legal framework.

A growing number of countries are developing **national plans of action** as a way of shaping and giving momentum to their responses to violence against women. National action plans are seen as an essential part of strategic, long-term programmes of activity, providing comprehensive, multi-sectoral and sustained "blueprints for ending violence against women".²⁴¹ As the United Nations has noted, such plans "enable all the sectors involved to coordinate and systematize their activity, evaluating and building on initiatives so that approaches remain adaptive and responsive for years to come".²⁴²

The Amman Declaration recognizes that NHRIs can be effective advocates for the development of strong and rights-based national action plans to address violence against women. Once a decision to establish a national action plan has been taken, the NHRI can help ensure that it is grounded on a solid understanding of the problem as a human rights issue. It can share the knowledge and insights it has gained through its outreach, monitoring and complaint handling functions. In countries where a national action plan on violence against women has already been developed, NHRIs should be closely involved in implementing the plan and monitoring and evaluating its impact.

239 Department of Economic and Social Affairs, Division of the Advancement of Women, *Handbook for Legislation on Violence against Women*, 2010, p. 57.

240 UN Women, "Introducing or reforming legislation"; available at www.endvawnow.org/en/articles/315-introducing-or-reforming-legislation-.html.

241 See General Assembly resolutions on intensification of efforts to eliminate all forms of violence against women: 61/143, para. 8; 63/155, para. 16; 65/187, para. 16; and 67/144, para. 18.

242 UN Women, *Handbook for National Action Plans on Violence against Women*, 2012, p. 2.

KEY RESOURCE: HANDBOOK FOR NATIONAL ACTION PLANS ON VIOLENCE AGAINST WOMEN

In 2012, UN Women produced a *Handbook for National Action Plans on Violence against Women*.²⁴³ The Handbook brings together current knowledge on effective policy for preventing responding to violence against women. It demonstrates how different States have developed and implemented such plans in their own national settings. The Handbook sets out a comprehensive model framework that addresses all aspects of an effective plan and includes the advice of experts from different countries and regions. The principles it promotes are relevant to all countries, regardless of the context, size or resource base of individual States, although the method of implementation may vary between countries.



10.3.2. Engaging the community

NHRIs can play an important role in engaging the community on the issue of violence against women through activities such as education, awareness raising, campaigning and research. The target audience for these initiatives can include women and girls who may be especially vulnerable to violence (for example, young women, older women, rural women, members of ethnic or religious minorities, migrant women and sex workers); men and boys; community groups; government officials and policy-makers; and business groups and employers.

NHRI's WORK ON VIOLENCE AGAINST WOMEN: EDUCATION AND TRAINING

In 2013, a regional office of the [National Human Rights Commission of Nepal](#) conducted a two-day workshop on violence against women for participants from government agencies, national and international NGOs, the media, security agencies, human rights advocacy groups and other local stakeholders. The objectives of the workshop were to share women's experiences of violence in Nepal; to explain and discuss with participants their role in responding to and combating such violence; and to explore the underlying causes of violence against women, including discriminatory attitudes and practices, superstitions and religious and cultural beliefs. At the conclusion of the meeting, participants suggested that similar workshops should be held in rural areas. They also stressed the importance of the State's obligation to enforce laws and secure justice for victims.



As with other issues related to the rights of women and girls, NHRIs can choose to build information about violence against women into their mainstream education, awareness, campaigning and research activities, as part of their broader efforts to mainstream women's human rights issues. However, NHRIs may also decide to develop specific interventions on violence against women, or an aspect of violence against women, in response to a clearly identified need. The latter approach works well when NHRIs have made sustained efforts to learn about the situation. For example, the national inquiry into violence against women conducted by the Afghanistan Independent Human Rights Commission (see Chapter 6) has provided that NHRI with the knowledge, relationships and capacity to develop a range of credible and effective interventions. The process of the inquiry itself was also an excellent demonstration of community engagement that resulted in improved understanding of the issue among key stakeholders across the country.

243 Available at www.endvawnow.org/uploads/browser/files/handbook-for-nap-on-vaw.pdf.

BASIC PRINCIPLES FOR WORKING ON VIOLENCE AGAINST WOMEN

The United Nations has identified some useful principles to guide campaigning and other community engagement initiatives around violence against women.²⁴⁴ NHRIs should incorporate these principles into all aspects of their work on violence against women, such as education, training, complaint handling and conducting national inquiries.

The Principles require that any initiative or activity:

- Should be **grounded in a human rights and gender analysis**: This goes beyond a simple understanding of the nature of the issue and engages with the broader context, including gender inequalities and discriminatory practices that cause and perpetuate violence.
- Should **adhere to ethical principles** that recognize the sensitivities of these issues and the risks they can present to individuals and groups. Respect for the person, minimizing risks, and seeking justice are all important ethical principles in this context.
- Should **do no harm**. This means going beyond security risk assessment and ensuring that all persons involved and/or targeted do not suffer any kind of detriment. For example, NHRIs should be in a position to help those who are identified through such interventions or to at least refer them to those who can provide such assistance. The highest standards of safety must be adhered to when working with girls.
- Should **involve those affected**. The campaign or intervention must be designed and implemented in partnership with people who experience violence against women in their own lives.
- Should **secure informed consent and ensure confidentiality**. Specific cases of violence against women and girls must not be exposed to the public unless the survivors are fully informed of potential consequences and have given their explicit consent, possibly in writing. Any information on any individual cases of violence against women and girls must be treated with strict confidentiality.
- Should **demonstrate integrity**. A campaign or other intervention needs to be managed in a responsible, accountable manner.



10.3.3. Monitoring, reporting on and responding to violence against women

The Paris Principles state that the mandate of NHRIs should involve reporting and making recommendations on “any situation of violation of human rights”.²⁴⁵ The Amman Programme of Action specifies that NHRIs should contribute to the establishment of an evidence base “on the nature, extent, causes and effects of all forms of gender-based violence, and on the effectiveness of measures to prevent and address gender-based violence.”²⁴⁶ It also commits NHRIs to assisting women and girl victims “in accessing complaints procedures and remedies, including compensation” and ensuring “the use of NHRIs’ quasi-judicial powers to address complaints of violence against women and girls”.²⁴⁷

There are a range of activities that NHRIs can carry out in this area.

²⁴⁴ See www.endvawnow.org/en/modules/view/3-campaigns.html#270.

²⁴⁵ Paris Principles, para. 3(a)(ii).

²⁴⁶ Amman Programme of Action, para. 15.

²⁴⁷ Ibid, para. 20.

- **General monitoring and reporting** on the situation with respect to violence against women: The NHRI could prepare a list of issues to be included within the scope of such reporting, based on a preliminary assessment of areas requiring attention. For example, the NHRI may decide to focus its attention on the general issue of freedom from discrimination, as well as on specific issues such as sexual harassment or domestic violence. If a particular issue or problem comes to the attention of the NHRI, it may decide to issue a special report or conduct an inquiry.
- Conducting a **national inquiry** into violence against women: The NHRI may assess that the issue of violence against women – or a particular manifestation of violence against women – requires special investigation; for example, the national inquiry conducted by the Afghanistan Independent Human Rights Commission National Inquiry focusing on “honour killings” and rape (see Chapter 6). The general principles for conducting national inquiries apply to those addressing issues related to violence against women. However NHRIs should be aware of the particular risks and vulnerabilities that may arise and, to that end, ensure that the inquiry upholds the guiding principles for working on violence against women set out above.
- **Responding to individual complaints** of violations: The NHRI should receive and act on complaints of violence against women. As with other issues affecting women and girls, such as reproductive rights, the NHRI may need to encourage women to make such complaints by building community awareness around its complaints handling procedure and its commitment to resolving these sorts of complaints. Through its complaint handling procedure, the NHRI may also be able to identify women and girls in need of protection and support and ensure that they receive referrals to services that can assist them. An analysis of the complaints received by the NHRI – identifying various trends and patterns – can also be valuable for informing the NHRI’s broader programme of work and advocacy.



A woman sits in front of a church in Malacca, Malaysia. Photo by Hadi Zaher, reproduced under a CC BY-NC-ND 2.0 license.

MALDIVES: INTERVENING IN THE CASE OF THE 15 YEAR OLD GIRL SENTENCED TO BE FLOGGED

After this matter was publicized in the media, the [Human Rights Commission of the Maldives](#) immediately launched an investigation to understand the circumstances of the case. Commission representatives met with all relevant government institutions, including the Ministry of Gender, the Juvenile Justice Unit, the Prosecutor General's Office and the police. However, a request to meet with the Islamic Ministry was refused.

Concerns for the girl – who had been sexually abused by her stepfather since she was nine years old – had been lodged with the Ministry of Gender Ministry. While they were aware of her situation, she nonetheless continued to be abused. The case came to media attention when her stepfather killed her newborn baby, whom he had fathered. During the police investigation, the girl was questioned, without any consideration to her psychological status, about the act and fornication. The police claim that she admitted to having had sex with someone other than her stepfather and this amounted to fornication, a charge which the Prosecutor General decided to follow up. The girl, who had no understanding of what was happening, turned from being victim to perpetrator and she was sentenced by the Juvenile Court to be flogged.

The case was appealed to the High Court and, during the trial, the Commission made a request to act as *amicus curiae* (or “friend of the court”) or to submit its investigation report, which highlighted the many government violations and failures. The Court granted the Commission the opportunity to appear as *amicus curiae*, which was the first time it had taken on this role. After hearing from the State, the Commission and the girl's defence lawyer, the High Court overturned the decision of the Juvenile Court.



A young girl from Kolhuvaariyaafushi, Maldives. UN Photo by Evan Schneider.

AUSTRALIA: REVIEW INTO THE TREATMENT OF WOMEN IN THE AUSTRALIAN DEFENCE FORCE

Since April 2011, the [Australian Human Rights Commission](http://defencereview.humanrights.gov.au) has been undertaking a review into the treatment of women in the Australian Defence Force Academy (ADFA) and the Australian Defence Force (ADF).²⁴⁸

The terms of reference required the Sex Discrimination Commissioner and a secretariat to review, report and make recommendations on a range of areas with relevance to women, including measures to promote gender equality, ensure women's safety and to address and prevent sexual harassment and abuse, and sex discrimination. All recommendations made were to be followed by an audit process, beginning 12 months after the tabling of the reports. To date, the Review has tabled two reports; one into the treatment of women at ADFA (November 2011) and one into the treatment of women in the ADF more broadly (August 2012).²⁴⁹

The Review has been a high-profile and very effective project for the Commission. It has encouraged positive changes in awareness and understanding of human rights issues and the treatment of women in the ADF, both within and beyond the organization. A wide programme of consultations within the ADF has fostered a cooperative process in which discussions and engagement were a means to furthering human rights ends in themselves.

In Phase One (ADFA), the Review engaged with over 1,000 individuals through a World Café forum, focus groups, interviews, surveys, submissions and calls to a dedicated hotline. In Phase Two (ADF), the Review employed a similar methodology and consulted with over 1,700 individuals in Australia and internationally and surveyed over 5,000 serving ADF members. The Review also conducted comparative research – the first of its kind in Australia – on sexual harassment in the ADF and the community, as a sub-section of the 2012 Sexual Harassment National Telephone Survey.

The broad consultation programme and rigorous research methodology delivered robust, evidence-based recommendations. The Phase One Report made 31 recommendations and the Phase Two Report made 21 recommendations. All recommendations were swiftly accepted by the ADF. The willingness of ADF leaders and members to critically engage with the Review has been one of its great successes.

The Review has now moved into Phase Three, which consists of an audit of the implementation of the recommendations made to ADFA and the ADF. The audit of the ADFA recommendations has been completed and the findings indicate that the reforms implemented have made a material difference to the human rights outcomes of women in the ADF; for example, through improved residential supervision and better complaints processes. The audit of the ADF recommendations is yet to commence but one of the Review's key recommendations – the establishment of a dedicated ADF-wide Sexual Misconduct Prevention and Response Office, which will provide preventative education and victim support to ADF members – has already been implemented.



248 See <http://defencereview.humanrights.gov.au>.

249 Both reports are available at <http://defencereview.humanrights.gov.au>.

KEY POINTS: CHAPTER 10

- Violence against women and girls is a common issue in the work of NHRIs in the area of women's human rights.
- Gender-based violence is violence that is directed against a woman because she is a woman or that affects women disproportionately. Violence against women is any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women.
- NHRIs are uniquely placed to contribute to rights protection in this area. For example, NHRIs can:
 - Promote and support the adoption of laws against domestic and family violence, sexual assault and all other forms of violence against women, in accordance with international human rights standards
 - Be advocates for the development of a strong, rights-based national action plan to address violence against women
 - Engage the community on the issue of violence against women through activities such as education, awareness raising, campaigns and research.
- The mandate of NHRIs should extend to monitoring, reporting on and responding to violence against women. Activities in this area may include:
 - General monitoring and reporting on the situation with respect to violence against women
 - Conducting national inquiries into issues related to violence against women
 - Responding to individual complaints of human rights violations.

**FURTHER READINGS AND RESOURCES**

A. Byrnes, "Article 2" in M. Freeman, Christine Chinkin, and Beate Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary*, 2012

UN Department of Economic and Social Affairs, Division of the Advancement of Women, *Handbook for Legislation on Violence against Women*, 2010; and *Supplement to the Handbook for Legislation on Violence against Women: "Harmful Practices" against Women*, 2011

UN Women, *Handbook for National Action Plans on Violence against Women*, 2012

UN Women Virtual Knowledge Centre to End Violence against Women and Girls; www.endvawnow.org/en/

World Health Organization, *Global and regional estimates of violence against women: Prevalence and health effects of intimate partner violence and non-partner sexual violence*, 2013



Chapter 11:

Female migrant domestic workers

KEY QUESTIONS

- What are the key issues and challenges facing female migrant domestic workers?
- What are the main human rights obligations of countries of origin and countries of destination with respect to female migrant domestic workers?
- How can NHRIs support female migrant domestic workers and protect their rights?
- What good practice examples can NHRIs draw on for inspiration and guidance?



11.1. INTRODUCTION

International law defines a domestic worker as “any person engaged in domestic work within an employment relationship”.²⁵⁰ Domestic work is defined as “work performed in or for a household or households”²⁵¹ and will typically involve tasks such as cleaning, cooking, washing and ironing clothes and taking care of children or elderly or sick members of a family.

While some men work in domestic service, often as gardeners, drivers and cooks, the sector is highly feminized. The International Labour Organization (ILO) has estimated that more than 80 per cent of all domestic workers are women and that, globally, one in every 13 female workers is in domestic service. That ratio is much higher in Latin America and the Caribbean (one in four) and the Middle East (almost one in three). Employment in private households is one of the most common occupations for women throughout Asia. Worldwide, it is estimated that around 30 per cent of all domestic workers are children, most of them girls.²⁵²

Domestic workers make a major contribution to the global economy, as well as to the national economies of many countries. They free up their employers, often women, to participate in the workforce. They also help many countries make the adjustments required to cater for rapidly ageing populations. For their countries of origin, migrant domestic workers are a vital resource, sending home billions of dollars each year. In Nepal, for example, which has the most feminized migrant workforce in South Asia (68 per cent), women migrant workers, who are mostly domestic workers, contribute about half of migrant workers’ remittances or around 23 per cent to gross domestic product.²⁵³

The positive effects of safe and gainful migration for migrants should not be forgotten. Many women who migrate to work in domestic service are empowered by this choice. Their income may give them access to land, markets and credit that will increase their autonomy and independence, including when they return home.²⁵⁴

²⁵⁰ Convention concerning Decent Work for Domestic Workers, 2011, ILO No. 189, article 1(c) (hereafter “Domestic Workers Convention”).

²⁵¹ Ibid. article 1(a).

²⁵² For detailed statistical data and related information see International Labour Office, *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection*, 2013.

²⁵³ UN Women, *Contributions of Migrant Domestic Workers to Sustainable Development*, 2013, p. 5.

²⁵⁴ See UN Women, *Contributions of Migrant Domestic Workers to Sustainable Development*, 2013.

DOMESTIC WORKERS: FACTS AND FIGURES²⁵⁵

- At least 52 million persons are employed as domestic workers worldwide.
- 83 per cent of domestic workers are women or girls, accounting for at least 7.5 per cent of women's wage employment.
- 29.9 per cent of domestic workers are excluded from the scope of national labour legislation.
- 45 per cent of domestic workers have no entitlement to a weekly rest day.
- More than a third of female domestic workers have no right to maternity leave.



Increasingly, domestic workers are sourced from abroad and demand for their services is growing in high- and medium-income countries. Those working in a country other than their own are referred to as migrant domestic workers. The vulnerability of migrant workers to human rights violations is widely recognized:

Migrant workers are vulnerable to abuse by employers and government officials, among others, in both sending and receiving countries. Abuses of labour and human rights range from discrimination and hazardous working conditions, to extortion, arbitrary detention, deportation and violence, including rape and murder. Women migrant workers are particularly vulnerable to human rights violations. They face multiple levels of discrimination and a general lack of protections in place in the jobs available to them, such as domestic work. Factors that contribute to systemic patterns of human rights violations against migrant workers, and which can restrict access to effective redress for victims, include negative public attitudes, language barriers, restrictive immigration regimes, poor legal protection, lack of awareness, weak rule of law and impunity.²⁵⁶

As this extract recognizes, the situation of female migrant domestic workers can be precarious throughout the migration cycle; pre-departure, in transit, within the destination country and on their return home. For example, prior to their arrival in the destination country, female migrant domestic workers can find themselves exploited by high placement fees from recruitment agencies, which are often recovered through systems similar to debt bondage. In their countries of employment, many face very low wages, unfair deductions and harsh working conditions, including inadequate living conditions and long hours with no rest days or specified periods of rest. The seclusion of their employment can also make them highly vulnerable to physical, mental and sexual abuse. Often, female migrant domestic workers are denied freedom of movement.

In some countries, discrimination against female migrant domestic workers is entrenched in law and official policy. They are subject to invasive medical tests and can be dismissed if they become pregnant. They are legally forbidden from associating with each other and are not permitted to marry local men. Many are excluded from national labour laws, either partly or completely, denying them the most basic of all labour protections, such as a minimum wage. In some countries, female migrant domestic workers who flee abuse in their workplace are detained for prolonged periods by national authorities prior to their deportation.

The discrimination and exclusion faced by female migrant domestic workers is a result of a combination of factors, including their status as migrants, their sex and the fact that they are working in a hidden sector, engaged in occupations that in all societies has traditionally been undervalued as “women’s work”.

²⁵⁵ International Labour Office, *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection*, 2013, pp. 19, 50, 66 and 85.

²⁵⁶ APF, *Promoting and Protecting the Rights of Migrant Workers: The Role of National Human Rights Institutions*, 2012, p. 2.

Responses to the exploitation of female migrant domestic workers can also be discriminatory, exacerbating harm and entrenching unhelpful stereotypes of women as passive victims. An example is the imposition of blanket restrictions on emigration, imposed by some countries in response to cases of serious exploitation. While understandable, such responses do not take account of the very real need that underlines many women's decision to migrate and the importance of working to ensure that there are structures in place to support and protect them.

NHRIs have made explicit and detailed commitments to protecting the rights of migrant workers. Recent developments, including the adoption of a new treaty in 2011 and increased attention from the international human rights system, have delivered valuable new tools to assist them in this work. NHRIs, particularly those in source and destination countries, have the potential to make a substantial contribution to improving the lives and well-being of this marginalized and highly vulnerable group of women and girls.

FORCED AND HIGHLY EXPLOITATIVE DOMESTIC LABOUR

The ILO estimates that there are 20.9 million victims of forced labour worldwide, with domestic work one of the most frequently cited economic sectors. Forced labour of migrant domestic workers is prevalent around the world and has many different dimensions. In certain countries in the Middle East, for instance, the individual sponsorship system (“kafala”) for foreign labourers ties migrant domestic workers’ visas to individual employers, resulting in a relationship of structural dependence that can encourage abuses. In Latin America, indigenous persons who migrate internally are overrepresented among domestic workers and suffer from exploitation that is exacerbated by long-standing patterns of discrimination. Unethical and illegal activities of private employment agencies engaged in recruiting and placing migrant domestic workers in South-East Asia and other regions also facilitate forced labour. Often lacking proper regulatory frameworks and oversight, such agencies can engage in fraud and deception, the imposition of excessive recruitment fees and other abuses. Around the world, domestic workers in diplomatic households who are subjected to forced labour often have no recourse because of their employers’ diplomatic immunity.

To combat forced labour in domestic work, the Domestic Workers Convention, No. 189 (2011) calls on Governments to take measures to extend national legal protections to domestic workers. Migrant domestic workers, for instance, should be provided with written contracts enforceable in the country of employment, clear conditions under which they will be entitled to repatriation at the end of their employment and protection from abusive practices by private employment agencies through better monitoring. Other specific measures include protection against non-payment of wages; prohibiting the retention of passports by the employer and freedom of movement restrictions to ensure that the worker is free to reach agreement with the employer on whether to reside in the household; and effective protection from all forms of harassment, abuse and violence.

In India, for instance, the Lok Sabha (the lower house of Parliament) passed a Bill in September 2012 on the protection of women against sexual harassment in the workplace, which includes domestic workers in its remit. In the context of diplomatic immunity, the ILO Domestic Workers Recommendations, No. 201 (2011), advises States to consider adopting policies and codes of conduct for diplomatic personnel aimed at preventing violations of domestic workers’ rights.²⁵⁷



257 International Labour Office, *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection*, 2013, p. 45 (citations omitted).

11.2. THE INTERNATIONAL LEGAL AND POLICY FRAMEWORK

NHRIs need a solid understanding of how international human rights law applies to female migrant domestic workers if they are to work effectively for the protection of their rights. This section provides a very brief summary of this area of law.

KEY RESOURCE FOR NHRIs WORKING WITH AND FOR MIGRANT WORKERS

In 2012, the APF published *Promoting and Protecting the Rights of Migrant Workers: The Role of National Human Rights Institutions*.²⁵⁸ The manual recognizes that NHRIs can play a crucial role in advancing the rights of migrant workers. It aims to support and strengthen the work of NHRIs in countries of origin, transit and destination to identify and respond effectively to the human rights issues facing migrant workers and members of their families. The manual includes a detailed examination of the international legal framework applicable to migrant workers, as well as the institutional framework that exists to promote and support recognition of their rights.



11.2.1. Rights of non-nationals

International law extends fundamental rights to all persons, including those who are not nationals of the State in which they reside, and does not permit differentiation in the treatment of nationals and non-citizens in relation to fundamental human rights. The rights of female migrant domestic workers, therefore, include the right to life, liberty and security of person; liberty of movement, including the right to return to one's own country; protection from refoulement (that is, being returned to a likely situation of persecution or serious human rights violation); protection from arbitrary expulsion; freedom of thought, conscience and religion; the right to privacy; the right to recognition and equal protection before the law; the right not to be discriminated against on the basis of race, sex, language, religion, legal status or any other prohibited ground; and the right to health, education, housing, social security and an adequate standard of living, including adequate food. Female migrant domestic workers may also be entitled to rights relevant to their status other than as non-nationals. For example, they may have rights under international law as children, persons with disabilities or trafficked persons.

If a State does distinguish between the rights it grants to some people on the basis of nationality or immigration status and the protections it provides to others, then such a distinction must be reasonably justifiable. Any exceptions or exclusions must serve a legitimate State objective and be proportional to the achievement of that objective. A distinction or exclusion that materially harms the human rights of the individual concerned is unlikely to be justifiable. Under no circumstances would a State be able to validly exclude any non-citizens from protection of the core human rights listed above.

11.2.2. Rights of migrants and migrant workers

States and the international human rights system have repeatedly affirmed the special vulnerabilities faced by migrant workers and identified the particular nature of the violations they can experience. However, this area of human rights law and practice is subject to considerable difficulties of implementation. Many States are reluctant to formally recognize the rights to which migrant workers are entitled and to ensure meaningful protection of those rights.

²⁵⁸ Available at www.asiapacificforum.net/resources/manual-on-migrant-workers/.

Nevertheless, there are some important legal instruments that seek to identify specific rights and protections for migrant workers. For example, the ILO has developed two broad conventions protecting the rights and interests of migrant workers. The first of these, adopted in 1949, is the **ILO Convention concerning Migration for Employment (Revised)**²⁵⁹, which covers individuals who migrate from one country to another with a view to working for an employer. It requires States parties, *inter alia*, to maintain or facilitate a reasonable and free service in order to assist migrant workers and to provide them with correct information; to take all appropriate steps against misleading propaganda concerning immigration and emigration; and to ensure legal equality in matters of work (opportunity and treatment) between documented migrants and nationals. However, this Convention has not been widely accepted. For example, the Philippines and New Zealand are the only State parties within the Asia Pacific region.

The 1975 **ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers**²⁶⁰ obliges States parties to respect the basic human rights of all migrant workers, irrespective of their legal status in the country of employment. However, as with the 1949 Convention concerning Migration for Employment, this obligation does not extend to the right to equal opportunity and treatment with nationals. The first part of the Convention is devoted to the suppression of migration in abusive conditions. States parties are required to establish the situation of migrant workers within their own territory and whether the conditions under which they are living and working contravene relevant laws and regulations (article 2). States parties are also required to take necessary and appropriate measures, within their jurisdictions or in cooperation with other States, to combat clandestine migration and the illegal employment of migrants. Importantly, States parties are required to provide minimum legal protection for migrant workers whose situation is irregular and basic human rights are not to be conditional upon the circumstances of their residence. Provision must also be made for civil or criminal sanctions for organizing migration with a view to abusive employment, as well as for illegal employment and trafficking of migrant workers (article 6 (1)). This Convention also has very few States parties and only one – the Philippines – from the Asia-Pacific region.



Hong Kong is home to thousands of female migrant domestic workers from the Philippines, Indonesia, Thailand and Sri Lanka. Photo by Rex Pe, reproduced under a CC BY 2.0 license.

259 ILO Convention No. 97 entered into force on 22 January 1952. It is accompanied by ILO Recommendation No. 86 concerning Migration for Employment (Revised), 1949.

260 ILO Convention No. 143, entered into force 9 December 1978.

The **International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families** was adopted by the United Nations General Assembly in 1990. As stated in its preamble, the Convention is intended to expand upon – rather than replace or modify – existing rights. It adopts an inclusive definition of “migrant worker”²⁶¹ and applies to all migrant workers and their families without distinction of any kind. Key provisions of the Convention include:

- Recognition that migrant workers and members of their families, being non-nationals residing in States of employment or in transit, are vulnerable to exploitation and abuse (preamble)
- Reiteration of the right to life (article 9)
- Reiteration of the prohibitions on torture, slavery, servitude and forced labour (articles 10 and 11)
- Recognition of the right to liberty and security of the person (article 16)
- Obligation on States parties to protect all migrant workers effectively “against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions” (article 16 (2))
- Obligation on States to criminalize and sanction persons or groups who unlawfully destroy or confiscate identification, work or residency documents; use violence, threats or intimidation against migrant workers; or employ them in irregular circumstances (articles 21 and 68)
- Protection of all migrant workers, including those in an irregular situation, from unfair or arbitrary expulsion (article 22)
- Obligation on States parties with respect to migrant workers’ remuneration and treatment (“not less favourable than that which applies to national of the State of employment”), including conditions of work (e.g. hours of work, overtime, weekly rest, holidays with pay, safety, health, termination of the employment relationship) and terms of employment (e.g. minimum age of employment) (article 25)
- Rights of migrant workers’ children to a name, to registration of birth and to a nationality, and “access to education on the basis of equality of treatment with nationals” (articles 29 and 30).

Unfortunately, as with the ILO instruments, the Convention is not widely ratified. It has attracted fewer States parties than any of the major human rights treaties and very few countries of destination for migrant workers. For example, despite being a major source and destination region for migrant workers, the only State parties to the Convention within the Asia Pacific region are Bangladesh, Cambodia, Indonesia, Philippines, Sri Lanka and Timor-Leste.

Implementation of the Convention is monitored by the Committee on Migrant Workers. The Committee has issued some important general comments, one of which relates directly to migrant domestic workers and is discussed in more detail below. However, as noted in this chapter, other treaty bodies can and do address the issues concerning the rights of migrant workers.

11.2.3. Counter-trafficking laws

Until recently, the situation of migrant domestic workers – or indeed domestic workers in general – was not subject to special consideration in international law and policy. This changed to some extent with the development of a strong legal and policy regime to combat **trafficking in persons**, which is defined as the movement or maintenance of individuals in situations of exploitation from which they cannot escape. Migrant domestic workers who have been tricked or coerced into exploitative situations, or who are forced to remain in such situations, are now considered to be victims of trafficking. States are under very specific and detailed obligations to prevent such trafficking, to prosecute perpetrators and to protect and support victims.²⁶²

261 “The term “migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.” The Convention also defines (in article 2) the following terms: “frontier worker”, “seasonal worker”, “seafarer”, “worker on an offshore installation”, “itinerant worker”, “project-tied worker”, “specified-employment worker” and “self-employed worker”.

262 For a detailed explanation of the legal and policy framework around trafficking in persons, see OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary*, 2010.

Most APF member institutions operate in countries that have ratified the main trafficking treaty: the **Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children**, supplementing the United Nations Convention against Transnational Organized Crime. Most of those same countries have enacted laws criminalizing trafficking and providing certain entitlements to victims. As a result, these NHRIs are in a position to use the Protocol, as well as domestic laws on trafficking, forced labour, servitude and similar offences, to advocate for effective criminal justice responses to the exploitation of female migrant domestic workers, as well as for improved protection and support for victims.

11.2.4. ILO Domestic Workers Convention

*If someone had told me 45 years ago that we would be here today, I would not have believed it. We do not have to be slaves anymore.*²⁶³

PREAMBLE TO THE ILO DOMESTIC WORKERS CONVENTION

Considering that domestic work continues to be undervalued and invisible and is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights ...



In 2011, the International Labour Conference of the ILO adopted the **Convention concerning Decent Work for Domestic Workers (No. 189)** (Domestic Workers Convention) and **Recommendation concerning Decent Work for Domestic Workers (No. 201)**. This is the first time that the ILO has formulated international labour standards dedicated to this particular group of workers. The Convention, which becomes binding under international law for countries that ratify it, sets out basic principles and measures regarding the promotion of decent work for domestic workers. Recommendation No. 201 is a non-binding instrument that offers practical guidance for strengthening national laws and policies on domestic work. It builds on the provisions of the Convention and is intended to guide States parties with regard to measures they may take to apply the Convention.²⁶⁴

Key obligations on States parties to the Convention include:

- To respect, promote and realize the fundamental principles and rights of domestic workers including their right to freedom of association; their right to collective bargaining; the elimination of all forms of forced or compulsory labour; the abolition of child labour; and the elimination of discrimination in respect of employment and occupation (articles 3 and 11)
- To take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence (article 5)
- To ensure that domestic workers, like other workers generally, enjoy fair terms of employment, including, for live-in workers, decent living conditions that respect their privacy (article 6)
- To take measures to ensure that domestic workers are informed of the terms and conditions of their employment (article 7) and, in the case of migrant domestic workers, requiring that workers receive a job offer or written contract before crossing national borders (article 8)

²⁶³ Myrtle Witbooi, Chair of the International Domestic Workers Network and former domestic worker from South Africa, speaking at the adoption of the ILO Domestic Workers Convention, in Human Rights Watch, World Report, 2012, p. 60.

²⁶⁴ Useful background resources on the Convention include International Labour Office, *Decent Work for Domestic Workers: C189 and R201 at a Glance*, 2011; available at www.ilo.org/travail/whatwedo/publications/WCMS_170438/lang--en/index.htm; and *Achieving decent work for domestic workers: An organizer's manual to promote ILO Convention No. 189 and build domestic workers' power*, 2012; available at www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_181344.pdf.

- To “take measures towards ensuring equal treatment between domestic workers and workers generally” in relation to normal hours of work, overtime compensation, periods of daily and weekly (minimum 24 consecutive hours) rest, and annual paid leave (article 10)
- In countries that have minimum wage-setting machinery, to take measures to ensure that domestic workers enjoy minimum wage protection, to be established without discrimination based on sex (article 11)
- To ensure that payments to domestic workers are made directly to the worker and not to a third party; in cash or through other agreed means; at regular intervals but at least once a month (article 12); and without deduction of fees from private agencies (article 15)
- To take effective measures to ensure the occupational safety and health of domestic workers (article 13)
- To ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect to social security protection, including maternity benefits.

The Convention recognizes the additional vulnerability of certain groups of domestic workers. For example, in relation to **child domestic workers**, States parties are required to take measures to ensure that work performed by these children does not deprive them of compulsory education or interfere with opportunities for further education or vocational training (article 4).

The particular issues and risks facing **live-in workers**, many of whom are migrants, are recognized in provisions requiring States parties to ensure such workers:

- Are free to reach agreement with their employers or potential employers on whether or not to reside in the household (article 9(a))
- Enjoy decent living conditions that respect the workers’ privacy if they reside in the household (article 6)
- Are not obliged to remain in the household or with its members during periods of daily and weekly rest or leave (article 9(b))
- Are entitled to keep their identity and travel documents in their possession (article 9(c)).

The Convention includes important additional provisions for **migrant domestic workers**. States are required to:

- Take measures to cooperate with each other to ensure the effective application of the provisions of the Convention to migrant domestic workers (article 8(3))
- Establish a requirement that migrant domestic workers should receive a written contract, setting out the terms and conditions of employment, that is enforceable in the country of employment, or a written job offer, prior to travelling to the country of employment (article 8(1))
- Take measures to specify the conditions under which domestic workers are entitled to repatriation at the end of their employment (article 8(4)).

Other provisions of the Convention deal with the regulation of **private recruitment agencies** (article 15); **access to remedies** (article 16); and **compliance monitoring**, including through household inspections (article 17).

States parties to the Convention are required to submit reports to the ILO on the measures they have taken to implement the Convention. The ILO Committee of Experts on the Application of Conventions and Recommendations is mandated to examine the reports submitted by Governments, as well as observations submitted by workers’ and employers’ organizations, and to address comments to the country concerned. Based on the Committee of Expert’s annual reports, the application of the Convention may be discussed by the Committee on the Application of Standards of the International Labour Conference.



A Bangladeshi woman who left for Dubai to work as a maid, only to find that her recruiter had sold her into domestic servitude. Photo by UN Women/Anindit Roy-Chowdhury, reproduced under a CC BY-NC-ND 2.0 license.

11.2.5. The human rights treaty bodies and domestic workers

Two human rights treaty bodies – the CEDAW Committee and the Committee on Migrant Workers – have issued general recommendations and general comments that deal directly with the situation of migrant domestic workers. Both human rights treaties pre-date the ILO Domestic Workers Convention and that later instrument incorporates many of their major recommendations. However, the general recommendations and general comments are far more comprehensive than the ILO Convention in terms of their analysis of the issues experienced by migrant domestic workers and the proposals for responding to these issues. They are therefore useful resources for States, NHRIs and others seeking to strengthen protections for female migrant domestic workers.

General Recommendation No. 26 on women migrant workers²⁶⁵, issued by the CEDAW Committee in 2008, recognizes that while migration presents new opportunities for women and may be a means for their economic empowerment, it may also place their human rights and security at risk. It elaborates the circumstances that contribute to the specific vulnerability of many women migrant workers and their experiences of sex and gender-based discrimination as a cause and consequence of the violations of their human rights. In doing so, it affirms the fundamental rights to which all women migrant workers are entitled, including the right to equality and non-discrimination and the right to be free from gender-based violence. General Recommendation No. 26 recognizes that domestic workers are particularly vulnerable to physical and sexual assault, food and sleep deprivation and cruelty by their employers and that forced seclusion can present an insurmountable barrier to seeking and obtaining help. A series of detailed recommendations are directed to all countries, as well as to countries of origin, transit and destination. These recommendations may be particularly useful to NHRIs seeking to identify ways in which they can promote and protect the rights of female migrant domestic workers.

²⁶⁵ Available at www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf.

In 2011, the Committee on Migrant Workers issued **General Comment No. 1 on migrant domestic workers**.²⁶⁶ As with the CEDAW Committee's General Recommendation No. 26, it identifies a range of human rights violations that can be experienced at each stage of a migrant's journey, from pre-departure through transit to destination and return. It also examines the legal framework that applies to this group of migrant workers, identifying a substantial protection gap. Recommendations to States parties cover pre-departure awareness raising and training; cooperation among States; regulation and supervision of recruitment agencies; conditions of work; access to social security and health services; the right to organize for collective bargaining and protection; freedom of religion or belief and freedom of expression; access to justice and remedies; access to regular migration status; respect for family unity; special protections for children; the role of embassies and consulates; participation of migrant domestic workers and civil society; and monitoring and reporting. General Comment No.1 does not, however, directly address the gendered nature of migrant domestic work and the implications this has for violations of rights and how these need to be addressed.

11.3. THE ROLE OF NHRIs IN PROMOTING AND PROTECTING THE RIGHTS OF MIGRANT DOMESTIC WORKERS

Over the past several years, NHRIs have made detailed and explicit commitments to promoting and protecting the rights of migrant workers.²⁶⁷ The reforms NHRIs have agreed to advocate are based on international human rights standards and the principles of equality and non-discrimination, including:

- Strengthening national policies on the employment of migrant workers, including improved oversight and regulation of the activities of recruitment agencies, in conformity with international human rights standards
- Establishing minimum standards on working conditions and workplace policies, including safety and health, overtime and irregular hours, fair and adequate pay, clear information regarding work duties, reducing language barriers, respect for cultural and religious beliefs in the assignment of work duties and schedules, job termination and forceful dismissal
- Increasing penalties for violations of national labour and employment laws or recruitment policies
- Establishing minimum standards for the living conditions associated with employer-supplied housing for migrant workers – and their families, where appropriate – including requirements for the provision of basic amenities, such as adequate shelter, running water, heat and lighting
- Securing the application of domestic labour and employment laws to migrant workers in a manner equal to that of the national labour force, including the provision of medical services, participation in the national pension system, workplace accident and disability compensation, the right to join and form unions and the right to legal remedies for unpaid wages
- Enhancing the right to change employer, especially in cases of exploitative or otherwise unjust working conditions.²⁶⁸

These and similar commitments echo many of the new international standards that have been developed around domestic work. Recent developments, including the adoption of the ILO Domestic Workers Convention, provide NHRIs with new tools to advance the rights of female migrant domestic workers. This section highlights two areas for possible NHRI involvement: creating an evidence base to support effective change and advocating for ratification of the ILO Domestic Workers Convention.

It is important to note, however, that the rights of female migrant domestic workers can be integrated into many other areas of the work of NHRIs. For example, NHRIs can address issues related to violence against female migrant domestic workers as part of their broader work on violence against women (Chapter 10).

266 Available at: www2.ohchr.org/english/bodies/cmw/cmw_migrant_domestic_workers.htm.

267 See APF, *Promoting and Protecting the Rights of Migrant Workers: The Role of National Human Rights Institutions*, 2012.

268 Seoul Guidelines on the Cooperation of NHRIs for the Promotion and Protection of Human Rights of Migrants in Asia, adopted at the International Conference on Human Rights of Migrants and Multicultural Society, Seoul, Korea, 10–12 November 2008, paras. 30–35.

They can promote their complaint handling system as an avenue of redress for migrant domestic workers whose rights have been violated (Chapter 6). They can develop public information campaigns for both the pre-departure and arrival stages to ensure that migrant domestic workers are equipped with reliable information and contact details if they encounter difficulties (Chapter 7). NHRIs can also raise issues and concerns regarding the rights of female migrant domestic workers through their engagement with the international human rights system (Chapter 8).

SRI LANKA: A SPECIALIZED RESPONSE TO MIGRANT WORKERS' RIGHTS

The mandate of the [Human Rights Commission of Sri Lanka](#) includes overseeing issues related to Sri Lankans who migrate for work. Figures from 2011 indicate that 85 per cent of Sri Lankan women who migrate for work intend to work in the domestic service sector. Accordingly, the Commission places particular importance on monitoring the situation of this group of migrant workers. In 2005, the Commission set up a Committee to Review Procedures for the Protection of Women Workers. This includes monitoring and advising government institutions responsible for foreign employment and, since 2009, independently handling migrant worker complaints. The Commission has also established a Focal Point for Migrant Workers. The Focal Point is responsible for monitoring the situation of migrant workers, including women domestic workers; facilitating collaboration and consultations between the Government and NGOs working on migrant workers' issues; formulating guidelines to promote and protect migrant workers' rights; and coordinating activities with other NHRIs (for example, a bilateral agreement has been established between the NHRIs of Sri Lanka and Qatar).



Sri Lankan women. Photo by Brett Davies, reproduced under a CC BY-NC-SA 2.0 license.

11.3.1. Establishing a strong evidence base

Any effective action to protect and promote the rights of female migrant domestic workers must be built on a solid evidence base. It is necessary for all countries to establish the nature and extent of the issues experienced by this group of workers and how they can respond appropriately.

A strong evidence base can be developed through a comprehensive examination of the legislative, policy and institutional structures relevant to the situation of female migrant domestic workers.

NHRIs can either lead or contribute to this process by, for example:

- Conducting an inquiry or study into the situation of female migrant domestic workers or to include this group within a broader inquiry on women migrant workers
- Leading one part of a comprehensive inquiry – for example, a legislative and policy review – while encouraging others, such as a trade union or NGO, to undertake research into the actual situation of female migrant domestic workers
- Providing information and data to other organizations engaged in developing an evidence base around the issue, including NHRIs in other countries.

The legal framework around female migrant domestic workers outlined above should provide the principal reference point for any inquiry or research into the situation of female migrant domestic workers. It should also provide a benchmark against which the actions of the State can be assessed.

Other important resources include the recommendations contained in the CEDAW Committee's General Recommendation No. 26 on women migrant workers and the Committee on Migrant Worker's General Comment No. 1 on migrant domestic workers. The checklist below is a useful tool for structuring an inquiry or study into the situation of female migrant domestic workers. It brings together all the relevant international standards and reflects good national practices. It was developed specifically to help policy makers formulate and implement national policies, laws and programmes that promote and protect the rights of domestic workers.



Child domestic workers in India. Photo by ILO/S.P.Ouseph, reproduced under a CC BY-NC-ND 2.0 license.

Checklist for evaluating the legal, policy and institutional framework around domestic workers²⁶⁹



RECOGNITION AS WORK

Does the relevant policy, legal and institutional architecture of the country acknowledge:

- The significance of the economic and social contribution of domestic workers?
- Its undervaluation and invisibility?
- Its performance largely by women and girls, many of whom are international migrants and/or members of disadvantaged communities and hence particularly vulnerable to social, economic, civil and labour market discrimination and other abuse?
- The special conditions under which domestic work is carried out, making it important to introduce appropriate measures to enable domestic workers to enjoy their rights fully?
- That domestic workers, like any other worker, need protection under labour legislation?

1. DEFINITION

- Is the relevant policy, law and institutional architecture of the country informed by and consistent with the definitions of “domestic work” and “domestic worker” as framed in ILO Convention No. 189 concerning decent work for domestic workers and of “migrant worker” found in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families?

2. COVERAGE

- Does the relevant policy, law and institutional architecture of the country cover all domestic workers, including migrants?
- Where categories of domestic workers are excluded from the relevant policy or law, are they provided with at least equivalent protection?

3. NATURE OF RIGHTS PROTECTED

- Does the relevant policy, law and institutional architecture of the country promote and protect the human rights and freedoms of domestic workers – including undocumented domestic workers – and include provisions against all forms of abuse, harassment and violence?
- Does the relevant policy, law and institutional architecture of the country guarantee the fundamental principles and rights at work, including freedom of association and right to collective bargaining, elimination of all forms of forced or compulsory labour, effective abolition of child labour, elimination of discrimination in employment and occupation, and protection of the rights of domestic workers, including migrant workers and their employers, to establish and join organizations, federations and confederations of their choosing?



²⁶⁹ The checklist (which has been slightly modified for the purposes of this Manual) was developed and agreed upon by Governments, civil society and United Nations agencies at the Global Forum on Migration and Development (GFMD) 2011 Global Thematic Workshops on Domestic Care Workers at the Interface of Migration & Development: Action to Expand Good Practice, organized in the Caribbean and Africa by the Governments of Jamaica (7–8 September 2011) and Ghana (20–21 September 2012), and at the GFMD Concluding Debate in Switzerland (December 2011). Citations have been omitted. The complete version is set out in UN Women and ITUC, *Domestic Workers Count Too: Implementing Protections for Domestic Workers*, 2013; available at: www.unwomen.org/en/digital-library/publications/2013/3/domestic-workers-count-too-implementing-protections-for-domestic-workers.

- Does the relevant policy, law and institutional architecture of the country provide for fair employment terms, decent working and living conditions, a minimum wage if it exists for other workers, an employment contract reflecting this, and for migrant domestic workers to receive their employment agreements before departure to the country of employment – unless covered by bilateral and multilateral agreements allowing free movement of persons?
- Does the relevant policy, law and institutional architecture of the country provide for social security protections, such as access to health services, health insurance, maternity protections, pensions, etc.?

4. NATURE OF RIGHTS GOVERNING CONDITIONS OF EXIT, ENTRY AND RESIDENCE

- Is the relevant policy, law and institutional architecture of the country free from sex-specific bans and restrictions on women's migration based on age, marital status, disability, pregnancy or maternity status, or restrictions requiring permission from spouses or male guardians to travel and obtain travel documents?
- Is the relevant policy, law and institutional architecture of the country free from provisions restricting women's employment in job categories dominated by men or excluding certain female-dominated occupations from visa schemes?
- Is the relevant policy, law and institutional architecture of the country free from provisions making the immigration status of migrant workers conditional on the sponsorship or guardianship of a specific employer? (Such arrangements may restrict the liberty of movement of migrant domestic workers and increase their vulnerability to exploitation and abuse, including conditions of forced labour and servitude.)
- Is the relevant policy, law and institutional architecture of the country free from bans on migrant domestic workers marrying nationals or permanent residents?
- Is the relevant policy, law and institutional architecture of the country free from provisions (a) resulting in loss or denial of work visas based on HIV-positive or maternity status and (b) calling for mandatory medical testing of migrant domestic workers for HIV or pregnancy?
- Does the law prohibit withholding of passports or identity documents by the employer or recruiting agency?

5. SERVICES AT ALL STAGES OF MIGRATION, INCLUDING TO STRENGTHEN ACCESS TO JUSTICE

- Do policies, laws and institutional architectures in countries of origin, transit and destination, as applicable, provide for gender-sensitive human rights-based pre-departure, on-site and on-return services (socio-economic, information dissemination, health and legal services, emergency shelter, etc.) that promote (a) the use of safe and legal migration channels, (b) protection of human and labour rights including decent work, (c) protection against abuse and victim support, (d) effective access to justice and (e) reintegration on return?
- Do policies, laws and institutional architectures in countries of origin and destination, as applicable, provide for gender-sensitive services for efficient remittance transfers and their productive investment?
- Do policies, laws and institutional architectures in countries of origin and destination, as applicable, provide for gender-sensitive pre-departure, on-site and on-return information dissemination, awareness raising and training for domestic workers on (a) labour and immigration laws and employment contracts, (b) skills enhancement, (c) how to access socio-economic and legal services and (d) how to access complaints and redress mechanisms, at all stages of migration?

- Do policies, laws and institutional architectures in countries of origin and destination, as applicable, facilitate worker contact with families and family support services back home or provide for dependent services in countries of destination?

6. UNDOCUMENTED MIGRATION, SMUGGLING AND TRAFFICKING

- Do policies, laws and institutional architectures of the country ensure that migrant domestic workers have effective access to regular channels of migration based on actual demand, to reduce the necessity of undocumented migration and resort to smuggling channels, as well as to protect migrant domestic workers from falling prey to human trafficking?
- Do policies, laws and institutional architectures in countries of origin, transit and destination protect the human rights of undocumented domestic workers and their children, regardless of the parents' immigration status, including providing for gender-sensitive regularization programmes to avoid or address situations in which migrant domestic workers are undocumented or are at risk of becoming undocumented?

7. COOPERATION BETWEEN STATES, INCLUDING BILATERAL, REGIONAL AND MULTILATERAL FRAMEWORKS AND AGREEMENTS

- Does the policy, law and institutional architecture of the country provide for co-operation among States, including bilateral and multilateral co-operation between countries that promotes, supports and protects the human and labour rights of migrant domestic workers?

8. REGULATIONS FOR RECRUITING AGENCIES, EMPLOYERS, NATURE OF REMEDIES, MONITORING, COMPLAINT, REDRESS AND ACCOUNTABILITY MECHANISMS

- Does the country have laws, regulations or practices governing the operation of (a) private employment agencies recruiting or placing domestic workers and (b) employers of domestic workers to protect domestic workers from abuse (e.g. obligations of private recruiting agencies and employers towards domestic workers, etc.)?
- Does the policy, law and institutional architecture of the country ensure that adequate machinery and procedures – including labour inspections with due respect for the privacy of households – exist to monitor employers, employment agencies and agents and to investigate complaints, alleged abuses and fraudulent practices by private recruiting agencies and employers against domestic workers?
- Does the policy, law and institutional architecture of the country provide for a mix of civil and criminal remedies?
- Does the policy, law and institutional architecture of the country have effective and accessible complaint and redress mechanisms (courts, tribunals or other dispute resolution procedures) that are not less favourable than those available to workers generally, including for migrant domestic workers and their families?
- Does the law have provisions for penalizing employers, employment agencies, agents and public officials who abuse domestic workers?

9. COORDINATED MULTI-SECTOR CONSULTATIONS AND PARTNERSHIPS, INCLUDING PARTICIPATION OF DOMESTIC WORKERS' ORGANIZATIONS AT ALL STAGES OF THE POLICY PROCESS

- Does the policy, law and institutional architecture of the country provide for the coordinated multi-sector response of key government agencies, sustained participation of domestic workers' organizations and their support groups, employment agencies, agents and others at all stages of the policy process – formulation, implementation, monitoring and evaluation of the law?

10. TRAINING AND AWARENESS RAISING FOR PUBLIC OFFICIALS, RECRUITING AGENCIES AND EMPLOYERS

- Does the relevant policy, law and institutional architecture of the country mandate the government to provide (a) regular training and education, including on the human and labour rights of migrant domestic workers, for police officers, prosecutors, the judiciary, social workers and other public officials, (b) targeted awareness raising for recruiting agencies and employers and (c) public awareness raising to promote and protect the rights of domestic workers?

11. RESEARCH, DATA COLLECTION AND ANALYSIS

- Does the relevant policy, law and institutional architecture of the country mandate governments to conduct and support research, data collection and analysis on the concerns of domestic workers, including migrant domestic workers, for (a) effective policy formulation and implementation and (b) policy impact assessments?

12. MONITORING AND EVALUATION

- Is monitoring and evaluation of effectiveness and impact built into the relevant policy, law and institutional architecture of the country?
- Does the relevant policy, law and institutional architecture of the country have provisions placing specific responsibility on agencies to compile data on complaints, cases of exploitation or abuse and remedies and relief measures?

13. RESOURCE ALLOCATION

- Does the relevant policy, law and institutional architecture of the country provide for sufficient financial and capacitated human resources to be allocated by governments for effective implementation of policies and programmes that promote and protect the rights of domestic workers?

11.3.2. Advocating for ratification of the ILO Domestic Workers Convention and changes in national laws and policies

Once an ILO convention is adopted, all ILO member States are under a legal obligation to submit the convention to their Government so that it can decide whether or not to ratify and/or accede to the convention. That requirement, which does not exist in relation to human rights treaties negotiated through United Nations, provides NHRIs and others with a valuable opportunity to promote ratification.

NHRIs can, for example, work to ensure that their Government meets its obligation to submit all ILO conventions to the Parliament and that parliamentarians are aware of these conventions and their provisions.

The ratification process for the ILO Domestic Workers Convention will vary between countries. In some countries, it is necessary to first ensure that the national law complies with the provisions of the Convention. This will generally require a review and revision of relevant legislation and policies. NHRIs can provide technical assistance in this process and thereby facilitate rapid ratification. In countries where ratification can precede legislative change, the role of NHRIs is equally important in ensuring that the Government meets its obligations under the Convention.

NHRIs can be a valuable resource for workers' organizations, NGOs and others that seek to promote ratification of the ILO Domestic Workers Convention. They can help explain how international treaties are incorporated into domestic law and advise advocates for ratification on possible strategies and targets. They can also become more directly involved in the campaigns organized others by, for example, helping draft information materials and speaking at public events.

NHRIs can also help with the critical process of integrating the obligations of the ILO Domestic Workers Convention – and other relevant international standards – into national laws and policies. As shown in the text box below, a number of States in the Asia Pacific region have already taken action. NHRIs within those States can work to consolidate and extend these developments, while NHRIs in other countries can help establish a momentum for change.

LEGISLATION AND POLICIES TO PROTECT DOMESTIC WORKERS: RECENT DEVELOPMENTS IN SOUTH-EAST ASIA²⁷⁰

INDIA

In 2008, the Government of India, through the Ministry of Labour and Employment, launched Rashtriya Swasthya Bima Yojana (RSBY), a health insurance scheme for “below poverty line” families and some categories of workers employed in the unorganized sector, including domestic workers. In September 2012 and February 2013, both houses of Parliament – the Lok Sabha and Rajya Sabha – passed a Bill protecting women, including those working as domestic workers, from sexual harassment in employment. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 received the assent of the President on 22 April 2013.

INDONESIA

A draft domestic workers law is pending and will be taken up in 2013.

PHILIPPINES

In November 2012, both houses of Parliament approved a Domestic Workers Act, which mandates contracts, a minimum wage, social protection and other benefits for domestic workers. The Act was signed into law on 18 January 2013.

SINGAPORE

In 2012, the Ministry of Manpower introduced a Regulation that entitles all foreign domestic workers whose work permits are issued on or after 1 January 2013 to a weekly day of rest. Singapore has also implemented a reform capping the recruitment fees that may be deducted from a domestic worker's salary to two months, a significant reduction from the prevailing practice of eight to ten months out of a two-year contract.

THAILAND

On 30 October 2013, a Ministerial Regulation was approved specifying that domestic workers are entitled to at least one day off each week, paid sick leave and paid overtime for work on holidays. Hiring domestic workers aged under 15 years is strictly forbidden and children aged under 18 years may only be employed as domestic workers if permission is granted by the Labour Inspector. Restrictions on their hours of work apply.



²⁷⁰ Adapted from Human Rights Watch, 2012: *A Year of Progress for Domestic Workers*, 2013.

KEY POINTS: CHAPTER 11

- The discrimination and exclusion experienced by female migrant domestic workers is the result of a combination of factors including: their status as migrants; their sex; and the fact that they are working in a hidden sector, engaged in occupations that in all societies has traditionally been undervalued as “women’s work”.
- International law extends fundamental rights to all persons and does not permit discrimination in the treatment of nationals and non-citizens. Differential treatment may only be justified in exceptional circumstances and with reasonable justification.
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families sets out the full range of rights that apply to all migrant workers and their families, without distinction of any kind.
- Migrant domestic workers – and domestic workers in general – are subject to special consideration in international law and policy, including through laws that protect human and labour rights, counter-trafficking laws and the ILO Domestic Workers Convention.
- NHRIs can promote and protect the rights of female migrant domestic workers in different ways, including by advocating for legal and policy reforms based on international human rights standards and the principles of equality and non-discrimination.
- NHRIs can advocate for ratification of the ILO Domestic Workers Convention and help with the critical process of integrating the obligations of the Convention and other relevant international standards into national laws and policies.
- Any effective action to promote and protect the rights of female migrant domestic workers must be built on a solid foundation of evidence. NHRIs can lead or contribute to this process. The international legal and policy framework should provide the principle reference point for any inquiry or research and the benchmark against which the actions of the State can be assessed.
- The rights of female migrant domestic workers can be integrated into other areas of the work of NHRIs, including their education, complaint handling, monitoring and reporting functions.





Part IV: Integrating gender and the human rights of women and girls



Chapter 12:

The challenge of integration: Practical issues and approaches

KEY QUESTIONS

- What are the differences between “specialization” and “mainstreaming” and why is it important for NHRIs to use both approaches?
- Is there an optimal institutional structure to support gender and the human rights of women and girls?
- In what areas of their own work and operations can NHRIs integrate considerations of gender and women’s and girls’ human rights?
- What good practice examples can NHRIs draw on for inspiration and guidance?



BASIS FOR NHRI INVOLVEMENT

APF ACTION PLAN ON THE HUMAN RIGHTS OF WOMEN AND GIRLS: PROMOTING GENDER EQUALITY

APF member institutions agree to:

- [Contribute to] developing and implementing a blended learning training programme on the human rights of women and girls and the role of NHRIs (paragraph 13)
- Provide good practice case studies on the promotion and protection of women’s and girl’s human rights to the APF for a possible compilation (paragraph 14)
- Strive for gender equality across all levels of governance, leadership and staff positions in NHRIs and ensuring that NHRI workplaces are free of sexual harassment, violence and bullying (paragraph 15)
- Report on these actions and developments at APF annual meetings starting from 2013 (paragraph 15).



12.1. INTRODUCTION

The work practices of NHRIs are directly related to their capacity to effectively integrate gender and the rights of women and girls. For example, the way in which the NHRI's complaint handling procedure is structured, or the way in which monitoring is undertaken, can determine whether or not particular issues, such as reproductive rights or violations against particular groups, such as migrant domestic workers, are brought to the attention of the NHRI. In addition, the way in which the NHRI develops its work programme and organizes its reporting can also have an effect on the integration of gender and the human rights of women and girls.

This chapter brings together many issues and themes that have been addressed earlier in the Manual. It commences with a discussion of both “mainstreaming” and “specialization” as strategies to improve the effectiveness of NHRIs in relation to their work on the human rights of women and girls. It also addresses topics such as planning and priorities; structure and budgeting; and leadership and work practices.

The chapter has been designed as a preliminary reference tool for NHRIs that are looking to incorporate gender and the human rights of women more consistently and effectively into all aspects of their work. NHRIs should note that this can be a difficult and complex exercise. Those institutions seeking to make substantive changes may benefit from specialist advice that is tailored to their particular situation and needs.

12.2. THE CONCEPT OF “MAINSTREAMING” AND “SPECIALIZATION”

Major world conferences have confirmed the strong link between the gendered nature of human rights violations and obstacles to the advancement of women's and girls' rights. At the 1993 World Conference on Human Rights, States declared that “[t]he human rights of women should form an integral part of the United Nations human rights activities including the promotion of all human rights instruments relating to women”.²⁷¹ They also affirmed the importance of a gender-based approach to the work of the human rights treaty bodies. Two years later, in the Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women, States committed to promote an active and visible policy of mainstreaming a gender perspective into all policies and programmes, including with regard to human rights of women.²⁷²

Since then, considerable progress has been made to integrate a gender perspective and the human rights of women throughout the United Nations system, both within the international human rights system and in its work on issues as diverse as development, health and security. This progress is important for NHRIs for several reasons.

Firstly, it has established a clear mandate for the integration of a gender perspective and the human rights of women into the work of NHRIs and other bodies. It is now widely accepted that a credible human rights mechanism must be cognizant of the fact that women experience violations in different ways to men and this affects how violations must be understood and addressed.

Secondly, international developments have helped build an understanding that securing women's human rights does not happen automatically as a result of the overall protection and promotion of human rights. Rather, the goals of equality and non-discrimination need to be addressed explicitly and systematically at all stages.

Thirdly, experience at the international level has highlighted the limitations of women-specific approaches, which often fail because they are marginalized within broader institutions, structures and processes. Mainstreaming of gender and women's and girls' human rights is a way of overcoming this marginalization by bringing issues of equality and non-discrimination to the centre.

²⁷¹ Vienna Declaration and Programme of Action, para. 18.

²⁷² Beijing Declaration (para. 38) and Platform for Action (para 229); see A/CONF.177/20/Rev.1, pp. 5 and 92.

Finally, progress within the international system provides important guidance to NHRIs in understanding what mainstreaming actually means and how it can be effectively secured.

The idea of “mainstreaming a gender perspective” means more than just adding a number of women to existing structures and activities. The accepted understanding is much broader, as expressed by the United Nations Economic and Social Council in 1997:

*Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.*²⁷³

Mainstreaming is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. Its goal is to achieve gender equality. As noted in Chapter 2, the concept of equality means more than treating everyone in the same way, as the equal treatment of people in unequal situations will inevitably operate to perpetuate rather than eradicate injustice. Genuine equality usually only emerges from efforts directed towards addressing and correcting these situational imbalances.

While mainstreaming must be a central part of any NHRI’s approach to promoting gender and the human rights of women and girls, it is unlikely to be sufficient. Experience at both the international and national levels has confirmed that even with the best-intentioned mainstreaming strategy in place, issues of concern to women and girls may continue to be minimized or ignored without specialist, targeted attention. Many NHRIs have acknowledged this reality through the establishment of special units or focal points to deal with women’s human rights or broader issues of equality and non-discrimination.



Mother and daughter from the Philippines. Photo by Kap Shiwram, reproduced under a CC BY-NC-ND 2.0 license.

273 A/52/3/Rev.1, p. 23.

12.3. STRUCTURE AND CAPACITY

Many NHRIs with a general human rights mandate have found that a mainstreamed approach to gender and the human rights of women is not sufficient to ensure that these issues receive the attention and support they require to make a difference and that specialized structures are necessary. There is no single model of specialization. Some NHRIs have created a Commissioner-level position to deal exclusively with issues related to the human rights of women and girls. It has been noted that this approach – which is especially appropriate when there is not a separate, specialized national commission or similar body – can create an internal and visible authority structure for women’s equality issues,²⁷⁴ thereby helping to raise the profile of women’s rights and gender within the NHRI and externally. Other NHRIs have appointed focal points or established departments, units or centres for activities related to women’s and girls’ human rights. In some NHRIs, a combined approach is taken, where a dedicated Commissioner or other high-level official leads a specialized unit.

NHRIs AND SPECIALIZED STRUCTURES

PHILIPPINES: WOMEN’S RIGHTS PROGRAM CENTER

The Women’s Rights Program Center is a specialized unit within the [Philippines Commission on Human Rights](#) that investigates human rights violations against women and initiates legal action or provides assistance in legal matters that involve discrimination; non-recognition; women’s rights as human rights; multiple burdens; unequal access to land; violence against women; politics and governance; justice and peace and order; and employment, health and education.

AFGHANISTAN: WOMEN’S RIGHTS UNIT

The goal of the Women’s Rights Unit within the [Afghanistan Independent Human Rights Commission](#) is to promote and ensure women’s rights, to monitor the situation of women in Afghanistan and to work to eliminate/reduce the discriminatory attitudes towards women in Afghan society.

The objectives of the Women’s Rights Unit are to:

- Bring changes in the situation of women by promoting human rights values in Afghan society
- Raise awareness by convening workshops and seminars, as well as using the mass media and other communication resources
- Develop a national strategy for the advancement of women’s rights in the country, based on international human rights principles and standards



AUSTRALIA: SEX DISCRIMINATION COMMISSIONER

The Sex Discrimination Commissioner is one of a number of specialized commissioners working within the [Australian Human Rights Commission](#). She has specific responsibility for administering key legislation, including the Sex Discrimination Act, which gives effect to Australia’s obligations under CEDAW. The Sex Discrimination Commissioner undertakes research, policy and educative work designed to promote greater equality between men and women. Recent projects have concentrated on paid maternity leave for women workers; eliminating sexual harassment from the workplace; establishing a “male champions of change” group; and investigating the treatment of women in the Australian Defence Force.

274 Equitas, *Equality for Women: A Handbook for NHRIs on Economic, Social and Cultural Rights*, 2008, pp. 90-91.

Specialized structures within a broadly-mandated NHRI are generally vested with responsibilities across all areas of the NHRI's work. They may be involved in research and data collection, promotion and education activities and conducting inquiries with a substantial focus on gender or the rights of women and girls. They may also assume responsibility for investigating complaints that relate to sex-based discrimination or other violations of women's and girls' human rights.

Specialization has worked well for many NHRIs. However, it is important to be aware of the associated risks. For example, a failure to adequately resource the specialized position or structure can do serious damage to the credibility of the NHRI and throw into question the depth of its commitment to women's human rights. There is also a very real risk that the specialized position or structure becomes isolated from the mainstream work of the NHRI, enabling other parts of the NHRI and other staff to avoid responsibility for women's human rights and the integration of a gender approach. This risk can best be managed by incorporating elements of both specialization and mainstreaming.

The question of structure is fundamentally related to the question of **capacity**; in other words, does the NHRI have the ability to discharge its responsibilities with respect to gender and the human rights of women and girls? Specialization can be an important capacity development strategy in its own right, bringing together those who have a strong technical grasp of the issues and an ability to perform specialized tasks. However, it is important to get the balance right between specialization and mainstreaming. The ability to deal with human rights of women and girls, or to identify the gender dimensions of a particular issue or violation, must exist across the institution as a whole. The capacity development required to secure this level of generalized expertise can be achieved through a range of different approaches, including training and mentoring.

NHRIs can also improve their capacity in the areas of gender and the rights of women and girls by cooperating with others that also have responsibility for, or a commitment to, promoting and protecting the rights of women, such as women's rights NGOs and community service organizations, as well as independent and governmental commissions or agencies specifically working on these issues.

STRUCTURE AND CAPACITY: KEY QUESTIONS²⁷⁵

- Is there a specialized structure in the NHRI for women's rights and gender equality?
- Is it adequately resourced and are its responsibilities appropriate to its resourcing and capacities?
- What protocols are in place to ensure that NHRI staff are aware of this structure/focal point and know when to consult? How is the work of sections/focal points integrated into the work of the rest of the organization?
- Are external stakeholders made aware of these specialized structures and are they encouraged to communicate with them and share information?
- Does the specialized structure have adequate responsibility and authority in the NHRI to ensure that gender perspectives are properly integrated and managed?
- Does the specialized structure have the capacity to discharge its responsibilities effectively?
- How can the NHRI develop its structure to enhance its ability to address women's rights?



²⁷⁵ Adapted from OSCE, *Handbook for National Human Rights Institutions on Women's Rights and Gender Equality*, 2012, p. 77.

12.4. KNOWLEDGE MANAGEMENT AND REPORTING

Knowledge management refers to activities related to research and data collection, as well as the development of effective information systems to manage the data.²⁷⁶ “Knowledge” may be generated by NHRIs through research projects or their complaint handling functions. It may also be acquired from external sources, such as government departments, NGOs, academic institutions and research bodies.

Effective management of knowledge around gender and the human rights of women and girls can improve the effectiveness of NHRIs in a number of ways, such as helping to identify trends or to evaluate the impact of a particular intervention. NHRIs can use both externally sourced and internally generated knowledge to support their advocacy efforts around women’s and girls’ human rights or to identify the need for particular initiatives, such as a national inquiry or a public information campaign.

NHRIs should seek to generate and analyse **sex-disaggregated data**.²⁷⁷ Complaint management processes, for example, should be supported by information technology that enables the disaggregation of data in relation to women’s and girls’ rights. This information can help NHRIs to track progress and carry out trend and case analysis. This information can, in turn, improve the quality and efficiency of programme delivery in the area of women’s and girls’ rights.

Research and publications can be a useful way for NHRIs to generate, manage and disseminate knowledge about gender and the rights of women and girls. Most APF member institutions have produced publications that have contributed to awareness of and changes in laws, policies and practices.

NEW ZEALAND: REPORTING ON WOMEN’S HUMAN RIGHTS

The **New Zealand Human Rights Commission** has issued two reports on the state of human rights in New Zealand (2004 and 2010). The 2010 report²⁷⁸ includes a chapter on the rights of women, which outlines the relevant international human rights instruments relating to women, notably CEDAW, as well as articles in other conventions which refer to the rights of women. The analysis of women’s progress towards achieving their rights focuses on four critical areas: economic equity; representation and participation; violence against women; and maternity protections.

The report also includes a section on sexual and reproductive health rights in a chapter on the right to health. This section is largely descriptive. It does not advocate a particular position but seeks to document and describe the conversation around sexual and reproductive rights in New Zealand. The Commission views constructive conversation about such issues as important but difficult to initiate and mediate. It notes that the human rights framework provides a useful vehicle in this regard.

The report draws on a range of statistics and data to provide empirical evidence to complement the legal and policy analyses and highlight gaps in data. For example, the report notes that data is severely limited in relation to people with disabilities and those from sexual and gender minorities.



²⁷⁶ Equitas, *Equality for Women: A Handbook for NHRIs on Economic, Social and Cultural Rights*, 2008, p. 94.

²⁷⁷ Ibid.

²⁷⁸ Available at www.hrc.co.nz/your-rights/human-rights/our-work/human-rights-new-zealand-2010/.

The way in which NHRIs **report** on gender and the human rights of women and girls can be an important indicator of the priority given to these issues within the organization. An optimal approach will likely combine elements of both specialization and mainstreaming. For example, in its annual report, the NHRI might highlight issues or activities of particular concern to women, while also integrating these issues into more general parts of the report. The right knowledge management systems will help to ensure that the necessary information is available to support both approaches.

KNOWLEDGE MANAGEMENT AND REPORTING: KEY QUESTIONS

- Does the NHRI record and disaggregate its data – including complaints data – by the sex of the complainants or victims? Does it use other categories for recording data, such as type of discrimination or category of the alleged violation?
- Does the NHRI undertake research that is specifically aimed at developing an evidence base for its work on gender and the human rights of women and girls? Are women and girls appropriately involved in the planning and conduct of such research?
- How does the NHRI report on its work on women's and girls' rights? For example, does it allocate a separate section to women's and girls' rights in its annual report? Are there sections on issues of particular concern to women, such as reproductive rights or violence against women?



12.5. STRATEGIC PLANNING, PRIORITY SETTING AND BUDGETING

12.5.1. Strategic planning and priority setting

All NHRIs engage in **strategic planning** that involves assessing the external situation and their internal capacities, as well as identifying **priority areas** towards which they will direct their resources.²⁷⁹ Strategic planning is critical to the successful functioning of NHRIs. It helps direct energy and resources towards important, achievable initiatives; it links planning to what is happening externally; and it provides a mechanism through which progress can be measured.²⁸⁰

Strategic planning provides an important entry point for integrating gender and the human rights of women and girls into the work of NHRIs. To this end, NHRIs can usefully ask some key questions, such as:

- What are the most pressing issues facing women and girls in our country? If we are unsure, how do we find out?
- What does our own information (e.g. complaints or research data) tell us about the issues that we should treat as priorities? What does the external data tell us?

NHRIs can use the answers to these questions to develop realistic activities and programmes that address the priority issues that have been identified. However mainstreaming gender into the **planning process** itself is also important. This requires that NHRIs consider the gender perspective of planning assumptions, as well as specific proposals. For example, are the assumptions that underlie the planning process equally valid for women and men, girls and boys? Will the broad strategic direction and identified priorities contribute towards realizing the human rights of women and girls?

²⁷⁹ Equitas, *Equality for Women: A Handbook for NHRIs on Economic, Social and Cultural Rights*, 2008, p. 83.

²⁸⁰ Ibid.

Improving the lives of women and girls is a long-term goal. There is a risk that without careful planning, longer-term initiatives, such as those devoted to women's and girls' human rights, can be marginalized. This is a reflection of the fact that the workload of most NHRIs is increasing steadily and they are being asked to take on more responsibilities and allocate scarce resources to new areas and new priorities. Most NHRIs do not have the funds or the personnel to undertake the work that is already required of them and choices must be made as institutions strive to match limited resources with identified needs and priorities. The strategic planning process can help ensure that the attention given to women's and girls' human rights is not superficial or sporadic. As the Organization for Security and Co-operation in Europe (OSCE) has noted:

*Establishing women's issues as priorities starts with planning for them. The planning process can help to manage competing objectives and other priorities, especially as urgent matters can easily overtake longer-term projects ... While planning is important within the entire organization and work of the NHRI, it is especially relevant, if not critical, for women's rights and gender equality. Long-term investments are required to sustain the efforts needed to achieve a culture change and to eliminate systemic gender-based bias and discrimination.*²⁸¹

When NHRIs work alongside specialized institutions focused on gender, the human rights of women and equality, a strategic and collaborative approach to planning will be particularly important²⁸² in order to maximize synergies and reduce the risk of duplication, gaps or a less-than-optimal allocation of resources.

12.5.2. Budgeting

*Budgets are never neutral. They are economic policy choices that reflect who, what and whose lives and work are valued or devalued.*²⁸³

Many NHRIs have begun to monitor national budgets in an effort to draw attention to the way in which the allocation of government resources is "gendered".²⁸⁴ However, much less attention appears to have been paid to the way in which funding decisions are made within NHRIs themselves. For example, if a focal point, unit or other specialized structure has been established, it is important to question whether it has been appropriately resourced. More generally, NHRIs should determine whether specific funds have been allocated in the budget for activities supporting the human rights of women and girls and whether those funds are sufficient to successfully implement the strategic plan and address the identified priorities.

As the OSCE has noted, a commitment to integrating gender considerations into budgeting does not necessarily mean that funds have to be allocated to a "gender" budget line. "Instead, NHRIs should be able to identify how resources are allocated to or directed at programmes and policies aimed at advancing women's rights and gender quality."²⁸⁵

281 OSCE, *Handbook for National Human Rights Institutions on Women's Rights and Gender Equality*, 2012, pp. 72-73.

282 Ibid. p. 73.

283 "Gender responsive budgeting and NHRIs", presentation by Ms Pregs Govender, Deputy Chair, South African Human Rights Commission, to the ICC's 11th International Conference, 5-7 November 2012.

284 Equitas, *Equality for Women: A Handbook for NHRIs on Economic, Social and Cultural Rights*, 2008, pp. 131-134. See also UNDP and OHCHR, *Toolkit for Collaboration with National Human Rights Institutions*, 2010, pp. 95-97.

285 OSCE, *Handbook for National Human Rights Institutions on Women's Rights and Gender Equality*, 2012, p. 79.

STRATEGIC PLANNING, PRIORITY SETTING AND BUDGETING: KEY QUESTIONS²⁸⁶**PLANNING AND PRIORITIZING**

- Does the NHRI undertake regular strategic planning for its decision-making and to identify its priorities? Who is involved and how is the process conducted? Is there any space for external stakeholder consultation?
- How is the gender perspective integrated into the planning process? How does the NHRI identify the most significant priorities for women and for gender equality? Does the planning process engage with specialized institutions in the country (e.g. a National Commission on Women)?
- Are strategic plans implemented through operational or action plans containing appropriate, targeted and resourced activities and programmes?
- Does the NHRI train its own staff on how to undertake strategic planning and does this integrate issues related to gender?
- How are strategic decisions reinforced internally with staff and communicated externally to stakeholders?
- How are gender considerations analysed and integrated into the planning process throughout the organization?
- When an organization is planning a new programme or activity, are the organization's internal gender focal points consulted?
- How are the equality and rights perspectives of vulnerable women integrated into the NHRI's work?
- How is gender mainstreaming evaluated within the NHRI?

**BUDGETING**

- What steps can the NHRI take to improve a gender-responsive approach to budgeting? (For example, offering training and orientation to its own staff on gender budgeting.)
- How are budgeting, and gender-responsive approaches to budgeting, addressed during the strategic planning process of the NHRI?
- How does the NHRI report on its budget from a gender perspective?

12.6. LEADERSHIP AND WORK PRACTICES

As the OSCE and others have noted, institutional leadership is fundamental to how women's rights and gender equality are perceived, both internally and externally.²⁸⁷ Taken together, APF member institutions demonstrate a strong commitment to the pluralism and diversity of composition required under the Paris Principles.²⁸⁸ For example, the NHRIs of Afghanistan, Australia, Indonesia, the Maldives, the Philippines and Thailand are all currently²⁸⁹ headed by women. However, equitable institutional leadership should also be displayed throughout the NHRI, with particular attention focused at the senior management level.

²⁸⁶ Ibid, pp. 75-76 and 79.

²⁸⁷ Ibid, p. 78.

²⁸⁸ Paris Principles, "Composition and guarantees of independence and pluralism", para. 1.

²⁸⁹ As at July 2013.

Of course, it is not sufficient for women to be in positions of leadership. All NHRI leaders and senior managers should demonstrate, through their work, a commitment to the principles of equality and non-discrimination, both within and outside the NHRI.

Integration of gender and the human rights of women and girls into the work of the NHRI should extend to the institution's own personnel policies and practice. They should explicitly seek to ensure that women and men are able to participate and advance in the NHRI on an equal footing.²⁹⁰ Freedom from sexual harassment and discrimination related to pregnancy and marriage, the availability of childcare and provision for flexible working hours all contribute to an environment that is conducive to women's human rights and a work environment that is both respectful and supportive of women and men.

NEPAL: SUPPORT FOR COMMISSION STAFF WITH BABIES AND YOUNG CHILDREN

In December 2008, the **National Human Rights Commission of Nepal** opened a childcare centre (crèche) that provides care for the infants and babies of its staff. The initiative – which drew on various provisions in the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and CEDAW – sought to address unsatisfactory maternity leave entitlements provided to all government employees. Funding for the childcare centre is provided through the Commission's operating budget. It is hoped that this initiative may encourage the establishment of similar childcare centres in other government and private sector organizations.



A mother and baby sit in a classroom in Naubise, Dhading, Nepal. Photo by Aisha Faquir/World Bank, reproduced under a CC BY-NC-ND 2.0 license.

290 OSCE, *Handbook for National Human Rights Institutions on Women's Rights and Gender Equality*, 2012, p. 78.

LEADERSHIP AND WORK PRACTICES: KEY QUESTIONS²⁹¹

- Does the NHRI have policies in place to protect its staff (and job-seekers) from pregnancy-related discrimination?
- Does the NHRI provide staff who are new parents with adequate leave options and does it guarantee the positions (or equivalent positions) of those staff when they return to work?
- Does the NHRI offer flexible work arrangements to staff who are parents of young children/new parents and staff who are the primary caretakers of relatives requiring care at home? (For example, flexible hours and work-at-home arrangements.)
- Are there sufficient women in senior positions within the NHRI? If not, what steps can be taken to ensure that the NHRI leadership (both Commissioners and staff) is balanced between men and women?
- How does the NHRI track the gender balance among its own staff, particularly senior staff?
- Are there policies in place to ensure equitable hiring practices and, if the NHRI considers it necessary, to actively promote the employment of qualified women?
- Do hiring and training decisions take into account the need to build expertise on gender and the human rights of women and girls throughout the organization?
- Are there internal written policies on employment equity, equal opportunity and harassment, including sexual harassment?
- Is quality training made available for Commissioners and staff on gender and the human rights of women and girls?

**12.7. ACCESSIBILITY**

The *Handbook for NHRIs on Women's Rights and Gender Equality* highlights the critical importance of accessibility.²⁹² In other words, to be effective advocates for the human rights of women and girls, NHRIs must be open and accessible to women and girls, especially those who are vulnerable to violations of their human rights.

Accessibility should never be taken for granted. As noted at various points throughout this Manual, many women experiencing violations of their human rights will not be in a position to approach the NHRI or to otherwise benefit from its services. In the case of reproductive rights, for example, there may be questions of privacy and confidentiality, as well as cultural concerns, which present a barrier to access. In the case of female migrant domestic workers, their secluded existence, perhaps exacerbated by restrictions on their freedom of movement, can be a physical impediment to accessing the NHRI. Language barriers can also prevent migrant women from feeling confident to approach the NHRI – or even knowing about its existence and functions.

The NHRI can take a number of steps to improve its accessibility for women and girls. This could include reviewing its hours of operation; providing alternative sources of communication that do not require a person to physically attend its office (e.g. toll-free telephone or online services); providing private interview rooms; and establishing satellite offices or “mobile clinics” in regional, rural or remote areas.

²⁹¹ Adapted from Equitas, *Equality for Women: A Handbook for NHRIs on Economic, Social and Cultural Rights* (2008), pp. 88-89; and OSCE, *Handbook for National Human Rights Institutions on Women's Rights and Gender Equality*, 2012, pp. 78-79.

²⁹² OSCE, *Handbook for National Human Rights Institutions on Women's Rights and Gender Equality*, 2012, pp. 85-87.

The issue of accessibility also relates to the activities and programmes of the NHRI. It should critically examine the pathways and contacts it uses to learn about issues related to women and girls and to involve them in their work. Are NGO partners sufficiently representative? Are there alternative avenues available through which the NHRI can establish direct contact and develop direct relationships with women and girls? How accessible are the information resources produced by the NHRI? For example are reports and studies, as well as brochures explaining the role of the NHRI, written in a way that is clear and easily understood? Are they available in other languages to ensure they reach the main target groups?

ACCESSIBILITY: KEY QUESTIONS²⁹³

- What steps can the NHRI take to ensure that it is accessible to women? For example, can the public access the NHRI easily, from both urban and rural areas, using public transport? Is the office open after normal business hours (in cases where in-person attendance is required) and is some form of childcare provided?
- How can the NHRI increase its accessibility to women from vulnerable groups, such as refugee women, migrant women or women with disabilities?
- Can human rights complaints be filed online or can information be sought via a toll-free telephone service?
- Can the NHRI maintain the confidentiality of women who are victims of or witnesses to violence/violations and ensure their protection? Does the location and layout of the NHRI office support the need for confidentiality?
- What steps are necessary to ensure that women from disadvantaged, minority or migrant groups can access the NHRI?
- Does the NHRI cooperate with women's organizations and NGOs that may have better access to women and girls who are victims of human rights violations?



A NGO worker helps a migrant labourer in Thailand. Photo by Trinn Suwannapha/World Bank, reproduced under a CC BY-NC-ND 2.0 license.

293 Ibid, pp. 78-79.

KEY POINTS: CHAPTER 12

- Mainstreaming is the process of assessing the implications for women and men of any planned action, including legislation, policies and programmes, in all areas and at all levels. Its goal is to achieve gender equality.
- Mainstreaming must be a central part of any NHRI's approach to gender and the human rights of women and girls. However, it should be complemented by specialization strategies.
- NHRIs can adopt a number of specialization models. For example, they may establish special units or focal points to deal with women's and girls' human rights or broader issues of equality and non-discrimination. They can also establish a Commissioner-level position to deal exclusively with issues related to the human rights of women and girls.
- It is important that NHRIs:
 - Be aware of and manage the risks associated with specialization
 - Strike the right balance between specialization and mainstreaming.
- The way in which NHRIs develop their work plans or organize their reporting can have an effect on the integration of gender and the human rights of women and girls. For example, NHRIs can:
 - Use externally sourced and internally generated knowledge to support their advocacy efforts around women's and girls' human rights or to identify the need for a particular initiative, such as a national inquiry
 - Use strategic planning as an entry point for integrating gender and the human rights of women and girls into their work
 - Mainstream gender considerations into their own planning processes
 - Examine the way in which funding decisions are made within their institutions.
- Equitable institutional leadership should be reflected throughout NHRIs, with particular attention focused at senior management levels.
- To be effective advocates for the human rights of women and girls, NHRIs must be open and accessible to women and girls, especially those who are vulnerable to human rights violations.

**FURTHER READING AND RESOURCES**

Canadian Human Rights Commission, *Gender Integration Framework*; www.chrc-ccdp.ca/sites/default/files/gender_integration_framework.pdf.

Equitas – International Centre for Human Rights Education, *Equality for Women: A Handbook for NHRIs on Economic, Social and Cultural Rights*, 2008

Organization for Security and Co-operation in Europe, *Handbook for National Human Rights Institutions on Women's Rights and Gender Equality*, 2012



Summary

Chapter 1: Why focus on women's and girls' human rights?

- Human rights are proclaimed to be inherent, universal, inalienable, indivisible and interdependent. In practice, however, these principles are not always respected when it comes to the human rights of women and girls.
- All human rights apply equally to women and girls. However, many different factors operate to prevent human rights from applying equally to women and girls. These factors have also had a direct impact on how human rights were conceived and how the international human rights system itself has evolved over time.
- The idea of “women’s human rights” recognizes that women and girls experience their human rights – and experience violations of their human rights – in ways that are different to men. It also recognizes that women are vulnerable to human rights violations in ways that reflect the fact they are women and the structures and expectations that are built into the idea of what it is to be “female”.
- Human rights issues of special concern to women include violence against women; discrimination in employment; discrimination in access to justice; discrimination in access to education and resources; discrimination in relation to family life; reproductive health; participation in public life and decision-making; the links between rights and between violation of rights; and instances of multiple discrimination.
- Human rights issues of special concern to girls include child marriage; discrimination in education; physical and sexual violence; and harmful traditional practices.

Chapter 2: The international legal framework around women's and girls' human rights

- The concept of equality means more than treating all persons in the same way. Genuine equality will usually only result from efforts that seek to address and correct existing obstacles that create or exacerbate disadvantage and discrimination. This broader view of equality has become the underlying principle and the ultimate goal in the struggle for recognition and acceptance of the human rights of women.
- Under CEDAW, discrimination against women encompasses any difference in treatment on the grounds of sex which: intentionally or unintentionally disadvantages women; prevents society as a whole from recognizing women’s rights in both the domestic and public spheres; or prevents women from exercising the human rights and fundamental freedoms to which they are entitled.
- States parties to CEDAW accept obligations to respect, protect and fulfil women’s rights to non-discrimination and to the enjoyment of equality. They also commit themselves to undertake a series of measures to end all forms of discrimination against women and girls.
- The Optional Protocol to CEDAW sets out two procedures for dealing with complaints of violations of women’s rights: a communications procedure and an inquiry procedure.
- International law places an obligation on States to *protect*, *respect* and *fulfil* human rights. A State will generally be held responsible for a harmful outcome if it can be shown that: the State could have acted to prevent the violation and did not do so; the State failed to respond to the violation; or the State failed to provide victims with access to remedies.
- All women and girls who have experienced violation of their human rights have an internationally recognized legal right to access fair and adequate remedies. Remedies are a practical means by which victims can both access and receive justice. Forms of remedy include restitution, compensation, rehabilitation, satisfaction and the guarantee of non-repetition.
- In addition to binding international law, non-treaty instruments can be important sources of guidance and interpretation on the human rights of women and girls.

Chapter 3: The institutional framework for women's and girls' human rights

- The institutional framework around women's and girls' human rights includes a range of different mechanisms and procedures, operating at both international and regional levels.
- The Human Rights Council is the principal intergovernmental body responsible for human rights within the United Nations. The Council oversees the UPR process and the special procedures, as well as the system of human rights treaties and their implementation.
- NHRIs can raise human rights concerns relevant to women and girls at the international level through their participation in the UPR process and the work of the treaty bodies. The activities of the special procedures can also support NHRIs in promoting and protecting the rights of women and girls.
- The Rome Statute of the International Criminal Court identifies certain crimes against women, including sexual violence and gender-based persecutions, as crimes under its jurisdiction. NHRI investigations, research and reports could contribute to a brief of evidence for the Court.
- The CEDAW Committee is the primary international body for implementation of the international legal framework around women's human rights. It monitors the performance of States parties in meeting their obligations under CEDAW. It also makes recommendations on matters relating to the implementation or interpretation of CEDAW or on broader issues affecting the human rights of women and girls.
- The work of many special procedures will have a distinct gender dimension. However, several thematic special procedures deal with issues that are specifically or primarily focused on women and girls, including the Special Rapporteur on violence against women, its causes and consequences and the Working Group on the issue of discrimination against women in law and practice.
- The Commission on the Status of Women is the principal global policy-making body dealing with gender equality and advancement of women. It prepares recommendations and reports to the Economic and Social Council on promoting women's rights in political, economic, civil, social and educational fields; makes recommendations on urgent problems requiring immediate attention; and may also receive communications from individuals and groups concerning discrimination against women.
- Regional human rights bodies, as well as courts and tribunals, also have an important role to play in protecting and clarifying the human rights of women and girls.

Chapter 4: Supporting a strong national legal and policy framework

- A country's legal framework should provide the foundation for ensuring that the human rights of all persons within its jurisdiction are promoted and protected.
- National laws and policies should fully reflect the needs of women and girls and fully protect their rights. NHRIs can contribute to strengthening national laws and policies by:
 - Encouraging ratification or accession by the State to key human rights treaties to which it is not yet party
 - Promoting compliance with the human rights treaties to which the State is party
 - Encouraging the withdrawal of reservations to treaties to which the State is party
 - Helping develop tools, such as human rights indicators and national action plans, to assist States implement their obligations and monitor the situation with respect to the rights of women and girls
 - Promoting community awareness about national laws and policies and practices, as well as relevant international laws, policies and good practices.
- NHRIs can examine the national legal framework to identify weaknesses in national laws and policies that affect women and girls and the realization of their human rights. This involves asking whether laws and policies have the purpose or effect of impacting negatively on women and their rights.
- Areas for analysis may include: the general legal framework, including anti-discrimination laws; election laws; laws and policies on marriage and the family; laws related to violence against women; laws and policies on trafficking in persons; labour and workplace laws; laws and policies affecting minority groups; social security laws; and laws and policies affecting people with disabilities.

- NHRIs should seek to engage and collaborate with a range of stakeholders, including government, civil society, business and industry. This can enhance the NHRI's ability to influence changes in law and policy around the human rights of women and girls.
- NHRIs can help ensure that national human rights action plans integrate a gender perspective and explicitly commit to promoting and protecting the human rights of women and girls. They can also play an important role in monitoring the implementation of these commitments.

Chapter 5: Responding to complaints of violations of women's and girls' human rights

- NHRIs should ensure that their complaint handling procedures are effective; that they promote access to justice; and that they provide practical redress for women and girls who have been treated unlawfully.
- Complaint handling procedures are an important vehicle for promoting and protecting the human rights of women, including by fostering greater understanding of national and international human rights standards within government, business, civil society and the broader community.
- NHRIs should ensure their complaint handling procedures are accessible to women and to those who support women to defend their rights. NHRIs should consider the ways in which they can encourage complaints from women generally, as well as from groups of women who are particularly vulnerable to human rights violations. Strategies may include:
 - Building awareness about their own work amongst vulnerable communities
 - Reflecting on their own knowledge, understanding and commitment to particular issues or a particular group
 - Extending communication strategies to NGOs and government agencies working with vulnerable women
 - Improving the accessibility of their NHRIs and complaint handling procedures.
- Integrating a gender perspective into NHRI complaint handling procedures will be most effective when the procedure itself is robust and accessible.
- Alternative dispute resolution processes can be an effective tool for resolving complaints and helping change attitudes and behaviour. However, it will not be appropriate for complaints that involve very serious violations, criminal offences or a significant power imbalance between the parties.
- NHRIs will not be able to address every issue or complaint involving violations of the human rights of women and girls. They should develop the capacity to make referrals to appropriate complaint handling and support agencies.

Chapter 6: Conducting inquiries into systemic violations of women's and girls' human rights

- A public or national inquiry is an open, comprehensive and focused process that examines a systemic human rights problem in detail.
- For those NHRIs that are empowered to conduct such inquiries, these can be an important tool for addressing the systemic issues that often lie at the heart of violations of women's and girls' human rights.
- A number of steps need to be taken to establish any national inquiry. Some of these steps may have a gender dimension or may require particular consideration of gender if the inquiry relates to the human rights of women and girls.
- When inquiries deal with the rights of women, or issues that affect women differently or disproportionately, NHRIs should ensure that their information and communication strategy is specifically targeted to reach those who are most affected.
- All national inquiries should result in a set of detailed and specific recommendations. They should acknowledge past violations and aim to prevent future ones from occurring.
- The inquiry report provides an opportunity to build public understanding of women's human rights, how they are violated and how they can be protected. The report should tell a clear, evidence-based and persuasive story that generates broad community support for change and for implementing the inquiry's recommendations.

- The NHRI should develop a follow-up strategy to promote the inquiry's findings and build broad community support for its recommendations.
- An evaluation of the inquiry should be conducted to assess the effectiveness of the inquiry and to inform future work to promote the rights of women and girls.

Chapter 7: Promoting and monitoring the human rights of women and girls

- NHRIs have a responsibility to promote the realization of the human rights of women and girls, which places on them an obligation to:
 - Develop programmes and initiatives that are directly targeted to the needs of women and girls
 - Integrate gender and the human rights of women and girls into their general programme of work.
- NHRIs should seek to build a solid understanding of the major human rights issues facing women and girls and the obstacles that can impede the realization of their rights.
- NHRIs can promote community awareness of women's and girls' human rights using both integrated and specialized strategies. They should look for opportunities to ensure that their general community awareness activities include and reflect the human rights of women and girls. In addition, NHRIs should identify ways to directly build community awareness about women's and girls' human rights.
- NHRIs have a responsibility to monitor the activities of business and report on any adverse impacts on women's and girls' enjoyment of their human rights. They can help businesses and employers to build their understanding of human rights and to improve the realization of women's human rights at work.
- Training is an important process through which NHRIs can develop relationships with professional groups and improve their capacity to protect and promote the human rights of women and girls. An effective approach for professional human rights training will combine both "mainstreaming" and "specialization" approaches.
- Research on issues relevant to the human rights of women and girls can add value to the broader work of NHRIs.

Chapter 8: Engaging with international and regional mechanisms

- International and regional engagement benefits NHRIs and also helps to advance the broader international agenda around women's and girls' human rights.
- To advance the human rights of women and girls at all levels, NHRIs can interact with key international human rights bodies and mechanisms, including:
 - the Human Rights Council
 - the universal periodic review
 - the special procedures
 - the human rights treaty bodies, especially CEDAW
 - the Commission on the Status of Women
 - international organizations such as UN Women, UNICEF, UNFPA and OHCHR.
- NHRIs can engage with the regional human rights systems that have been established in Africa, the Americas and Europe.
- NHRIs can also collaborate with each other, through the ICC or regional coordinating committees of NHRIs, such as the APF, to share good practice and build capacity to promote and protect the human rights of women and girls.

Chapter 9: Reproductive rights

- Reproductive rights include the right to the highest attainable standard of sexual and reproductive health, the right of all to decide freely and responsibly the number, spacing and timing of their children, and on matters related to their sexuality, and to have the information and means to do so free from discrimination, violence or coercion.²⁹⁴

²⁹⁴ Amman Programme of Action, para. 25.

- The international human rights system has explicitly linked reproductive rights to the right to health. The right to health includes both freedoms and entitlements. In the context of sexual and reproductive health, *freedoms* include a right to control one's health and body and *entitlements* include access to a system of health protection and universal access to services, including family planning, pre- and post-natal care and other maternal health needs.
- NHRIs can play an important role in promoting and protecting reproductive rights. Awareness of reproductive rights within NHRIs is an important prerequisite for effective action in this area, as is the capacity of NHRIs to establish and maintain strong working relations with relevant government and non-government agencies and service providers.
- NHRIs can undertake a comprehensive review of laws and policies in the areas of family, sexual and reproductive health.
- NHRIs can engage the community on the issue of reproductive rights through education, awareness raising and research activities. They can integrate information about reproductive rights into their mainstream education and awareness activities and develop specific education or awareness raising initiatives in response to identified needs.
- NHRI monitoring and reporting functions in the area of reproductive rights should be directed towards establishing a strong evidence base across the full range of violations of reproductive rights.

Chapter 10: Violence against women and girls

- Violence against women and girls is a common issue in the work of NHRIs in the area of women's human rights.
- Gender-based violence is violence that is directed against a woman because she is a woman or that affects women disproportionately. Violence against women is any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women.
- NHRIs are uniquely placed to contribute to rights protection in this area. For example, NHRIs can:
 - Promote and support the adoption of laws against domestic and family violence, sexual assault and all other forms of violence against women, in accordance with international human rights standards
 - Be advocates for the development of a strong, rights-based national action plan to address violence against women
 - Engage the community on the issue of violence against women through activities such as education, awareness raising, campaigns and research.
- The mandate of NHRIs should extend to monitoring, reporting on and responding to violence against women. Activities in this area may include:
 - General monitoring and reporting on the situation with respect to violence against women
 - Conducting national inquiries into issues related to violence against women
 - Responding to individual complaints of human rights violations.

Chapter 11: Female migrant domestic workers

- The discrimination and exclusion experienced by female migrant domestic workers is the result of a combination of factors including: their status as migrants; their sex; and the fact that they are working in a hidden sector, engaged in occupations that in all societies has traditionally been undervalued as "women's work".
- International law extends fundamental rights to all persons and does not permit discrimination in the treatment of nationals and non-citizens. Differential treatment may only be justified in exceptional circumstances and with reasonable justification.
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families sets out the full range of rights that apply to all migrant workers and their families, without distinction of any kind.

- Migrant domestic workers – and domestic workers in general – are subject to special consideration in international law and policy, including through laws that protect human and labour rights, counter-trafficking laws and the ILO Domestic Workers Convention.
- NHRIs can promote and protect the rights of female migrant domestic workers in different ways, including by advocating for legal and policy reforms based on international human rights standards and the principles of equality and non-discrimination.
- NHRIs can advocate for ratification of the ILO Domestic Workers Convention and help with the critical process of integrating the obligations of the Convention and other relevant international standards into national laws and policies.
- Any effective action to promote and protect the rights of female migrant domestic workers must be built on a solid foundation of evidence. NHRIs can lead or contribute to this process. The international legal and policy framework should provide the principle reference point for any inquiry or research and the benchmark against which the actions of the State can be assessed.
- The rights of female migrant domestic workers can be integrated into other areas of the work of NHRIs, including their education, complaint handling, monitoring and reporting functions.

Chapter 12: The challenge of integration: Practical issues and approaches

- Mainstreaming is the process of assessing the implications for women and men of any planned action, including legislation, policies and programmes, in all areas and at all levels. Its goal is to achieve gender equality.
- Mainstreaming must be a central part of any NHRI's approach to gender and the human rights of women and girls. However, it should be complemented by specialization strategies.
- NHRIs can adopt a number of specialization models. For example, they may establish special units or focal points to deal with women's and girls' human rights or broader issues of equality and non-discrimination. They can also establish a Commissioner-level position to deal exclusively with issues related to the human rights of women and girls.
- It is important that NHRIs:
 - Be aware of and manage the risks associated with specialization
 - Strike the right balance between specialization and mainstreaming.
- The way in which NHRIs develop their work plans or organize their reporting can have an effect on the integration of gender and the human rights of women and girls. For example, NHRIs can:
 - Use externally sourced and internally generated knowledge to support their advocacy efforts around women's and girls' human rights or to identify the need for a particular initiative, such as a national inquiry
 - Use strategic planning as an entry point for integrating gender and the human rights of women and girls into their work
 - Mainstream gender considerations into their own planning processes
 - Examine the way in which funding decisions are made within their institutions.
- Equitable institutional leadership should be reflected throughout NHRIs, with particular attention focused at senior management levels.
- To be effective advocates for the human rights of women and girls, NHRIs must be open and accessible to women and girls, especially those who are vulnerable to human rights violations.



ASIA PACIFIC FORUM
ADVANCING HUMAN RIGHTS IN OUR REGION

Asia Pacific Forum of National Human Rights Institutions

GPO Box 5218
Sydney NSW 1042
Australia

E: apf@asiapacificforum.net
W: www.asiapacificforum.net