

Asia Pacific Forum of National Human Rights Institutions

Regional Workshop on the Role of National Human Rights  
Institutions and other mechanisms in Promoting and Protecting  
Economic, Social and Cultural Rights

Hong Kong, Special Administrative Region, Peoples Republic of China  
11<sup>th</sup> to 13<sup>th</sup> July 2001

CONCLUDING STATEMENT AND RECOMMENDATIONS

1. Participants expressed their appreciation to the host institution, the Hong Kong Equal Opportunities Commission and to the Asia Pacific Forum of National Human Rights Institutions for holding the Workshop.
2. The Workshop welcomed the participation of (i) the member national human rights institutions of the Asia Pacific Forum from Australia, Fiji, India, Indonesia, Nepal, New Zealand, the Philippines and Sri Lanka; (ii) relevant institutions from Malaysia, Mongolia and Thailand (iii) Professor Virginia Dandan, Chairperson of the UN Committee on Economic, Social and Cultural Rights, Mr Vasu Pillai, member of the UN Committee on the Elimination of Racial Discrimination and Professor Arjun Sengupta, UN Independent Expert on the Right to Development, (iv) Government and institutional representatives from Australia, Bangladesh, Britain, China (including the Hong Kong and Macau Special Administrative Regions), India, Indonesia, Myanmar, Nepal, New Zealand, Pakistan and the Philippines and (v) representatives from non-governmental organizations (NGOs), corporations, associations, academic institutions and the judiciary.
3. Participants expressed their warm appreciation to the Office of the United Nations High Commissioner for Human Rights for co-sponsoring, financially supporting and participating in the workshop and to the Government of Australia for the provision of financial support, through AusAID.
4. Participants thanked the Deputy Secretary for Home Affairs, Mr Leo Kwan for his opening address to the workshop and the Secretary for Home Affairs, Mr W.K. Lam, the Secretary of Justice, Ms Elsie Leung and the Acting Chief Executive, Mr Donald Tsang, for their support and participation in the workshop.

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

5. The Workshop affirmed the importance of international standards on economic, social and cultural rights, particularly those enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Participants urged governments of the region that have not become Parties to the Covenant to do so.
6. The Workshop called on governments to ensure that the international standards relating to economic, social and cultural rights are effectively implemented through legislative,

administrative and all other appropriate means. Governments and national human rights institutions have a responsibility to ensure that no peoples are discriminated against in their enjoyment of economic, social and cultural rights. National human rights institutions should encourage Governments and non-State actors to adopt a rights-based approach rather than simply a 'needs' or welfare based approach in addressing economic, social and cultural rights issues. National human rights institutions should also promote the integration of economic, social and cultural rights into education curriculums.

7. The Workshop urged all national human rights institutions to actively participate in the ICESCR treaty monitoring and reporting process. This could occur in a number of ways:
  - In reviewing and providing comments on the draft initial and periodic ICESCR reports prepared by their governments prior to the submission of these reports to the United Nations Committee on Economic, Social and Cultural Rights;
  - Working with NGOs to facilitate consultation and participation in ICESCR reporting processes, including through hosting information sessions and the provision of training and resource materials;
  - In providing relevant information directly to the UN Committee and/or assisting in the preparation of alternate/parallel reports;
  - In the dissemination of the Committee's Concluding Observations;
  - Initiating dialogue with government on follow-up action in relation to issues raised in the Concluding Observations.
8. The Workshop called on governments to cooperate with NGOs in the preparation of their reports to the United Nations Committee on Economic, Social and Cultural Rights and to draw on NGO expertise in fulfilling their obligations to comply with the Covenant.
9. National human rights institutions and NGOs should actively monitor government reporting obligations under ICESCR and other international human rights instruments.
10. The development and dissemination of the UN Committee on Economic, Social and Cultural Rights 'General Comments' also provides another area of important interaction for national human rights institutions. National human rights institutions can assist the Committee in more effectively disseminating its General Comments to interested parties at the national level in order that they can be taken into consideration in the formulation and implementation of policy. The development of the expertise of national human rights institutions with regard to specific economic, social and cultural rights in different national contexts clearly also has the potential to contribute to the Committee's development and adoption of General Comments. The Workshop therefore encourages the Committee to consult with national human rights institutions in the formulation of future General Comments.
11. The Workshop requested the UN Committee on Economic, Social and Cultural Rights to consider holding a meeting in the Asia Pacific region to consider reports from regional countries and to raise the profile of economic, social and cultural rights and the role of United Nations Treaty monitoring procedures within the region. The workshop also requested that the Forum and individual national human rights institutions to increase their cooperation with the treaty body mechanisms.
12. In situations where the ratification, implementation and dissemination of, and reporting on, international instruments could be facilitated by technical cooperation/ financial assistance,

the Workshop called on donor governments and international organizations to support appropriate projects. The Workshop requested the Forum to research information on training and assistance opportunities that may be available through the United Nations or donor governments on these and other human rights issues and to provide it to national human rights institutions, NGOs and, where appropriate, governments of the region.

### **Justiciability**

13. The workshop affirmed that economic, social and cultural rights are fundamental human rights – not simply aspirational statements. The Workshop therefore encouraged legal practitioners to actively pursue legal recognition of these rights.
14. National human rights institutions have a strategic role to play in the further development and recognition of economic, social and cultural rights. National institutions should take a four-pronged approach by:
  - (i) providing advice to Legislatures/Parliaments in the development of laws affecting economic, social and cultural rights and monitoring the enforcement of existing laws;
  - (ii) advocating the appropriate development and recognition of economic, social and cultural rights, including through the legal process;
  - (iii) seeking to ensure the enforceability and implementation of economic, social and cultural rights; and
  - (iv) undertaking education activities to sensitize the judiciary and the legal profession about economic, social and cultural rights.
15. The workshop also strongly encouraged Governments to actively support the development of an optional protocol to the International Covenant on Economic, Social and Cultural Rights to enable individuals to complain about violations of the rights contained in the Covenant.

### **Right to Development**

16. The Workshop called on governments to cooperate internationally to promote the right to development and to create and/or strengthen national mechanisms for the advancement of all human rights, including economic, social and cultural rights.
17. National development planning needs to take account of Governments' obligations to respect and ensure economic, social and cultural rights. National development planning decisions on the allocation of resources need to reflect the obligation to progressively realize the rights in the ICESCR using available resources.
18. National human rights institutions, with their increasing expertise on economic, social and cultural rights should be increasingly involved in the national development planning process, particularly with respect to the likely impact on the economic, social and cultural rights of the poorest and most vulnerable sections of society.
19. National human rights institutions and governments should also ensure that national human rights action plans and other relevant national plans, in particular in the areas of economic development and social policy, explicitly incorporate economic, social and cultural rights.

20. Greater integration of national human rights action plans with national development planning should involve the training of senior public officials in relevant government departments in economic, social and cultural rights.
21. National institutions should assist in the development of monitoring tools (benchmarks and indicators) to measure the progressive realization of economic, social and cultural rights. These monitoring tools should be country specific so that national institutions could, for example, monitor Government resource allocation to the social sector.
22. With moves in many societies toward the decentralization of governments, national human rights institutions should give consideration to also working with local government officials and civil society to increase their understanding and awareness of government responsibilities to economic, social and cultural rights and to promote participatory development.

### **International Development Agencies and National Human Rights Institutions**

23. International development agencies also have a particular responsibility to ensure that economic and social development reform proposals take into account economic, social and cultural rights. They should ensure that the programs and projects they fund do not violate economic, social and cultural rights or other human rights or undermine the capacity of national governments to protect, promote and ensure these rights. International development agencies should give particular attention to the impact of their proposed programs and policies on the rights of the poor, vulnerable and marginalized sectors of society. In this regard the Workshop specifically noted that women and children are often disproportionately adversely affected by development programs and policies that violate human rights.
24. National human rights institutions have a significant role to play in ensuring that human rights are a central consideration in discussions between international development agencies and governments. They can assist in the training of government officials taking part in these discussions and they can be invited to formally participate in the development dialogue. They can also provide, subject to available resources, advice and analysis of the human rights outcomes of specific programs and policies, particularly their impact upon the poor, marginalized and particularly vulnerable communities. The workshop therefore encourages Governments to ensure that representatives and officials participating in bilateral and multi-lateral development discussions receive training in economic, social and cultural rights, are aware of the important obligations these rights impose upon Governments and are instructed to reflect these obligations in negotiations on development planning.
25. The increasing emphasis by international development agencies on the importance of civil society participation in the development planning process and in the preparation of poverty reduction strategies is welcomed. National human rights institutions should further explore how they can contribute to the promotion of a greater awareness and understanding within civil society of economic, social and cultural rights so that people's participation in development discussions can be informed by an awareness of their rights.

### **Racism**

26. The Workshop is concerned that racism frequently fuels or compounds violations of economic, social and cultural rights. The Workshop affirmed the importance of international standards on the elimination of racial discrimination, particularly those enshrined in the

International Convention on the Elimination of Racial Discrimination (CERD). Participants urged governments of the region that have not become Parties to the Convention to do so.

27. Participants welcomed the decision to hold the *World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance*, in South Africa in 2001. It urged the Conference to recognize that national human rights institutions generally have mandates to deal with discrimination and other forms of racial intolerance and to consider ways in which the role of such institutions can be strengthened, in particular with respect to the protection and promotion of economic, social and cultural rights – without discrimination on the grounds of race, ethnic origin or related factors.
28. The Workshop urged national human rights institutions in the Asia Pacific region and the Asia Pacific Forum to give a high priority to providing material to the World Conference on practical programs and strategies to effectively prevent or combat racism and racial discrimination and its impact on the protection and promotion of economic, social and cultural rights. It also urged all national human rights institutions in the region to accord the highest priority to effective follow up after the World Conference.
29. The Workshop noted the dual disadvantage and impact of racism on women. National institutions need to specifically address this issue in developing strategies to combat racism.
30. The Workshop urged national institutions to ensure that States immigration and asylum polices and laws are developed and implemented on a racially non-discriminatory basis. The Workshop also called upon Governments to ratify the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
31. The Workshop noted the comments of the UN Committee on Economic, Social and Cultural Rights urging the Hong Kong Special Administrative Region to enact comprehensive racial anti-discrimination legislation to ensure its full compliance with article 26 of the ICESCR. The Workshop further noted that the Government of the Hong Kong Special Administrative Region recently decided to undertake a consultation process to examine this issue. The Workshop welcomed this initiative and strongly encouraged the Government to urgently develop comprehensive racial anti-discrimination legislation and to ensure that the Hong Kong Equal Opportunities Commission is provided with sufficient powers and resources for its effective implementation.

### **Globalization and the Role of the Corporate Sector**

32. The capacity of national governments to protect, promote and ensure the human rights of their people is increasingly affected by international factors. The workshop called on all governments to ensure that globalization takes place in accordance with the human rights treaty obligations that governments have undertaken to implement.
33. While the primary responsibility for protecting and promoting human rights falls on States, the corporate sector has a significant and growing influence on the protection, promotion and implementation of economic, social and cultural rights. One way in which States should fulfill their international human rights obligations is through the passage of appropriate laws or the creation of non-legislative regulatory mechanisms to govern the actions of non-State actors. National human rights institutions can, for example, develop and monitor relevant codes of conduct for businesses and encourage dialogue between Governments, the corporate sector and NGOs to ensure the effective implementation of these codes as a basis for the

regulation of corporate activities. There is, however, a clear need to supplement any legal and non-legal regulatory mechanisms with a more effective dialogue and engagement with businesses on strategies and programs to ensure the effective protection and promotion of economic, social and cultural rights. National human rights institutions, with their expertise across a broad range of rights, have an important role to play in facilitating this dialogue.

34. National human rights institutions should proactively engage and develop strategic partnerships with non-State actors, in particular the corporate sector, in promoting and protecting economic, social and cultural rights. The Workshop was encouraged to note the increasing commitment made by corporations to the protection and promotion of human rights. The Workshop was further encouraged to note the initiatives taken by the UN human rights system to evolve principles relating to the human rights conduct of companies. National institutions working in concert with relevant stakeholders should promote internationally recognized human rights standards. Good corporate governance embracing the protection and promotion of human rights is not only a desirable objective in its own right but one that also has positive implications for the financial success of corporations.

#### **Role of National Human Rights Institutions and the Asia Pacific Forum**

35. The Workshop welcomed the Asia Pacific Forum's consistent emphasis on economic, social and cultural rights and noted the papers on this issue prepared for the Forum's Annual Meetings in 1998, 1999 and 2000.
36. The Workshop welcomed the establishment of national human rights institutions for the promotion and protection of human rights in many countries of the Asia Pacific Region. Participants urged other governments to move quickly toward the establishment of independent and pluralistic institutions through an adequate consultative process with civil society and in accordance with the United Nations' Principles Relating to the Status of National Human Rights Institutions (the Paris Principles). The Workshop urged the Office of the High Commissioner and the Asia Pacific Forum to promote networks and financial and technical assistance that will accelerate this process.
37. The Workshop called on Governments to ensure that national human rights institutions are provided with a broad mandate that reflects the interdependence and indivisibility of all human rights.
38. Participants also considered that, for national human rights institutions to promote and protect economic, social and cultural rights effectively, they needed to ensure that all members and staff are fully informed of the range of economic, social and cultural rights issues and are committed to pursuing them energetically. The Workshop called on national human rights institutions to review their internal training programs and to provide effective training courses, consistent with their mandate, to ensure a satisfactory awareness of economic, social and cultural rights.
39. The Workshop affirmed the natural partnership and the necessity of cooperation between national human rights institutions and international, regional and national NGOs in the promotion and protection of economic, social and cultural rights. The Workshop emphasized the important role and expertise of human rights, social services and development NGOs in the promotion and protection of economic, social and cultural rights.

40. Participants also welcomed the priority that the High Commissioner for Human Rights has given to the establishment of effective independent national human rights institutions and to developing effective regional and sub-regional strategies. They urged the Forum to continue to explore ways in which it can formally enhance its activities and cooperation with the Office of the High Commissioner.