

HER Commission

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Introduction

Gender equality lies at the core of human rights and the recent Sri Lankan government proposal to set up a separate statutory body to pursue this goal must be welcomed. Thanks largely to a vibrant women's rights movement, gender equality has been placed on the forefront of the international human rights agenda. Despite the international concern and rhetoric however, the world's women have a long way to go to achieve an equality of status with the other sex. National institutions that will address gender inequality have been considered as one way of pursuing this objective. This note will look at the recent government proposal to set up a National Commission on Women as laid down in its bill of September 1998, and consider some options with regard to the proposed law and the law making process.

National Institutions for Women

In September 1998 the government of Sri Lanka released a bill seeking to establish a National Commission on Women. The objective of the proposed Commission, according to the long title of the Bill, was the "promotion, advancement and protection of rights of women in Sri Lanka." The existing National Committee on Women set up under the Women's Charter will be replaced by an institution with a statutory basis.

National institutions for women have been set up in many parts of the world. The Beijing Platform for Action notes that by 1995 almost all countries had set up national institutions though in many cases they were marginalised, lacked adequate staff and were under funded. India, Philippines and South Africa are among some of the countries which have established national institutions.

As far back as 1988 the Committee on the Elimination of Discrimination Against Women (CEDAW) adopted a recommendation which called upon governments to establish or strengthen their national machineries.¹

Most national mechanisms have been located within government. On the other hand some have been set up as independent entities, while still others have combined autonomy with limited government involvement. National institutions include bodies such as an Ombudsperson or an Equal Opportunity Commission, with responsibility for ensuring compliance with gender equality legislation.² They may also include bodies such as autonomous 'think tanks' supporting the gender mainstreaming process through research, analysis and evaluation activities.³

National Institutions as Conceptualized in Beijing

National mechanisms or "institutional mechanisms for the advancement of women", as they were termed, was one of the twelve critical areas identified in the Beijing Platform for Action. According to the Beijing Platform for Action:

A national machinery for the advancement of women is the central policy coordinating unit inside government. Its main task is to support government wide mainstreaming of a gender equality perspective in all policy areas.

The document goes on to state that the government should ensure that national machinery are located at the highest possible level of government, and even at the level of a Cabinet Minister.⁴

Though the Platform for Action focused on the role of national institutions inside government, a survey carried out by the Division for the Advancement of Women showed that one third of all national institutions are either a non governmental organization or have a mixed structure.⁵

CEDAW's Vision

CEDAW's conceptualization of national machinery in its Sixth General Recommendation was similar to that adopted by the Beijing Platform for Action. In its Sixth Recommendation CEDAW called upon states to:

Establish and/ or strengthen existing national machinery institutions and procedures at a high level of government, and with adequate resources, commitment and authority to

- (a) advise on the impact on women of all government policies;
- (b) Monitor the situation of women comprehensively;
- (c) Help formulate new policies and effectively carry out strategies and measures to eliminate discrimination;

Thus national institutions, as envisioned by both the Beijing Platform for Action and CEDAW's Sixth Recommendation, are entities located at the highest level of government with sufficient resources and visibility.

The Proposed National Commission on Women

The bill that was released in September 1998 is unfortunately structured along the Beijing model. It envisages an institution that will function under the control of the Ministry and work in close consultation with the Ministry. According to the Bill the main function of the Commission will be:

the promotion, advancement and protection of the rights of women within the framework of the guidelines provided by the Women's Charter of Sri Lanka.⁶

However, the Women's Charter, which is only a policy document, is not incorporated as part of the legislation. Apart from this general function, the Commission will have the power to:⁷

Entertain, consider and mediate complaints, regarding a denial or violation of women's rights with the consultation of the relevant Ministry where the woman is employed and refer such complaints to the relevant authorities for investigation and redress. (Emphasis added)

Advise the government on the promotion of the welfare of, and the protection and advancement of the rights of women;

Take all such measures as are necessary, in consultation with the relevant Ministries, local authorities, district and divisional secretariats, public and private sector organisations, to further safeguard the interests and rights of women.

Initiate and recommend schemes for the promotion of the welfare of and protection of the rights of women.

Ensure the adoption of, and compliance with relevant international declarations and conventions relating to women.

Maintain accurate statistics relating to women and the services available to women.

Make the public aware of the conditions and needs of women through publications and other programmes.

Monitor programmes and schemes formulated, initiated and implemented by government and by voluntary organisations and bodies for the upliftment of women.

In addition the Commission is given the power to require any person to provide information or appear before the Commission.⁸ Failure to comply is an offence and is punishable after trial before a Magistrate.⁹ The Commission is given the power to raise funding from sources other than government, both in Sri Lanka and abroad.

However, the bill does not provide for security of tenure for the Commission's members. The members and the chairperson are to be appointed by the Minister of Women's Affairs with the concurrence of the President.¹⁰ The members could be removed by the Minister with the concurrence of the President for "cause as-

signed".¹¹ Moreover it is the Minister who is given the power to make regulations and not the Commission.¹² The Commission is given the power to make rules which have to be approved by the Minister.¹³ The Commission is also required to furnish "information in relation to its activities" to the Minister whenever the Minister makes such a request.¹⁴

South African Commission on Gender Equality

By way of contrast, the South African Commission on Gender Equality (CGE) has been established by that country's constitution and is an autonomous body. It is one of the six state institutions supporting constitutional democracy recognized by that country's constitution. The constitution declares that all these institutions, including the CGE, are to be independent institutions and must exercise their powers impartially and perform their functions without fear, favour or prejudice.¹⁵

According to the South African Constitution, the CGE must promote respect for gender equality and the protection, development and attainment of gender equality.¹⁶ The functions of the Commission are broader than the proposed Sri Lankan Commission. They include the power to:¹⁷

Monitor and evaluate the policies and practices of government, the private sector and other organisations to ensure that they promote gender equality.

Engage in public education.

Investigate inequality.

Commission research and make recommendations to Parliament or other authorities.

Investigate complaints on any gender related issue.

Monitor and report on compliance with international instruments.

The Commission on Gender Equality has recently been involved in a pioneering initiative. Together with the South African Human Rights Commission and the South African National NGO Coalition (SANGOCO), the Commission on Gender Equality has been conducting country-wide hearings on poverty. These "Poverty Hearings" resulted in a report titled "Poverty and Human Rights" which has identified the main obstacles to poverty and gaining access to economic and social rights. The National Poverty Forum – a government cum civil society grouping--which was established after the hearings, is now developing a National Programme of Action to Eradicate Poverty.¹⁸

This initiative highlights at least two things. First, the range of possible initiatives a Women's Commission can engage in, if it is prepared to be creative and dynamic. Secondly, the willingness of the South Africa commission to interact with civil society in the pursuit of its objectives.

Sri Lankan Institutions for the Advancement of Women

Sri Lanka currently has three institutions dealing with women: the Ministry of Women's Affairs, the Women's Bureau and the National Committee on Women. All three institutions are located within government although the National Committee on Women, because it has comprised of some leading members from the women's movement, has in practice operated with a little more autonomy. The Ministry has also established a network of gender focal points in different ministries and government agencies.

The Women's Bureau

The Women's Bureau was set up in 1978 and given the ambitious mandate of formulating, initiating and coordinating government policies in relation to women. It was also required to stimulate research, build networks and act as a watchdog with regard to discrimination against women.

The Bureau functioned initially from the Ministry of Plan Implementation, directly under the President. It was moved to the Ministry of Women's Affairs in 1983 and continues to function from within that institution.

Ministry of Women's Affairs

A Ministry of Women's Affairs was established as a division of the Ministry of Teaching Hospitals and Women's Affairs in 1983. In 1997 a separate Ministry of Women's Affairs with a Minister and Deputy Minister was set up.

The National Committee on Women

The Women's Charter adopted by the government in 1993 established a National Committee on Women which was mandated to examine the progress made in the realization of the Charter obligations and to monitor the achievement of the Charter objectives. The Committee functions from within the Ministry of Women's Affairs.

The Committee was given the power to receive complaints alleging gender discrimination and to direct them to the appropriate authorities for action, or refer them to non-governmental organisations for legal aid or other supporting services. The Committee can monitor the action taken by the administration and also require them to submit annual reports of progress. The Committee has recently set up a complaints mechanism and begun to receive complaints, although public awareness on the mechanism is still inadequate. The proposed Women's Commission will take over from this Committee.

An Independent Entity or an Entity within Government?

There are three broad options with regard to national institutions for women:

First, to have an institution located within government which will interact with government institutions and organisations to ensure that these institutions integrate gender into their programmes and policies.

A second model would be to have an institution independent of government with the freedom and capacity to act on its own initiative in advancing women's rights.

A third alternative would be to combine limited autonomy with limited state involvement.

Given that Sri Lanka already has two institutions located within government, (the Ministry of Women's Affairs and the Women's Bureau), with the capacity to interact with government institutions, my preference would be for the creation of an independent institution outside government that will be able to engage in a variety of initiatives to achieve gender equality.

Possible Activities for a Commission on Women

There are many activities a Commission on Women could do:

1. Examine proposed legislation, policies and budgets to see that they are consistent with international standards on women, and ensure that the impact they will have on both women and men have been taken into account.
2. The reform of existing legislation and policies to ensure that they function in a non-discriminatory manner.
3. Advise government departments and institutions on ways to integrate gender into their administrative practices, budgets, policy and legislation.
4. Advise the private sector on the integration of gender into their work including advice on how to set up mechanisms to deal with sexual harassment and other forms of sex-based discrimination in the workplace.
5. Conduct public inquiries in cases where there is evidence of systemic or widespread discrimination.
6. Engage in programmes of awareness-raising and education for the public at large, and also for specific groups such as the judiciary, the media, the public service and the private sector.
7. Inquire into and resolve complaints of sex discrimination brought by members of the public.
8. Inquire into issues pertaining to sex discrimination on its own initiative.
9. Litigate before the courts in appropriate cases.
10. Collect materials, facilitate the creation of documentation centres and engage in or promote research.

11. Develop national action plans for the advancement of women.
12. Facilitate the preparation of the country report, in consultation with civil society groups, for submission to CEDAW.
13. Prepare an Annual Report to be submitted to Parliament and be placed before the public.
14. Write periodically to government institutions and request them to submit information on how they have integrated gender into their policies and programmes.
15. Conduct periodic consultations with the public and private sectors on the progress achieved in realizing women's rights.
16. Interact regularly with the media to see that gender concerns figure in media reports and analysis.
17. Set up regional or provincial sub commissions to facilitate public access and help it conduct the above activities.

An independent entity set up under statute, with security of tenure for its members, would be better equipped to perform all these functions. It will have greater freedom to engage in education and awareness-raising activities and more importantly be better situated to monitor and evaluate government policies and laws and recommend change. Autonomy would also be important to get the government to honour its international commitments.

An independent body will also be better situated to interact more closely with civil society groups and would have the freedom to choose more effective strategies and programmes of action. In the case of resolving and mediating complaints of sex discrimination, independence from government would be essential, especially in those cases where the complaint is against a government entity.

In the current Sri Lankan context, locating the National Commission within government would have the effect of duplicating an already existing institution. A better approach would be to strengthen the existing capacities of the Ministry of Women's Affairs and Women's Bureau, and create an independent Women's Commission outside government.

Unfortunately the government has chosen to locate the proposed Women's Commission within government. Under the proposed legislation the Commission would have to work very closely with the Ministry of Women's Affairs and as conceptualized in the September 1998 Bill will function as an appendage of the Ministry.

Incorporating a Statement of Women's Rights

While the proposed law makes a reference to the Women's Charter it does not incorporate this document as part of the legislation. The Women's Charter currently has no legal status in Sri Lanka and could only have some status if a court chooses to use it in one of its judgements.

It would be extremely helpful if the law that sets up the Women's Commission contains a statement of women's rights. The Women's Charter is one of the best statements of women's rights in the local context and the incorporation of a revised version of the Charter in the legislation would considerably strengthen the work of the proposed National Commission on Women. It is understood that the Attorney General's Department is opposed to the incorporation of the Women's Charter in the proposed legislation.

I would also favour a smaller commission of 5 - 7 members, of whom at least two should function as full time members. Appointment could be by the President after a consultative process with women's groups. Since the legislation deals with women's rights, it would be appropriate if gender neutral language could be employed in the legislation.

The Law Making Process

Women have the right to participate in the formulation of laws and policies that will affect them.

This principle is contained in many human rights documents and is too fundamental to need restatement. Yet, in many cases, the principle is flouted and laws and policies are framed with little input from those who are supposed to be its beneficiaries.

Given the importance of the proposed law, the law making process clearly needs to be transparent and as participatory as possible. Women and women's groups, not just in the urban centres, but also in the rural areas, should be given an opportunity to comment on the proposed law.

A process that would enable as many women and women's groups to comment on the proposed law could be an empowering experience and help in creating awareness, not just about the proposed law, but about women's rights in general. Another useful initiative prior to the final drafting of the law would be a consideration of how national machinery in other parts of the world have functioned. A consultation that would bring together members from a few representative commissions would help strengthen the proposed legislation.

Moving forward

CEDAW requires governments to take all appropriate means to eliminate discrimination against women including the adoption of legislative and other measures. The Convention also requires governments to abolish laws, practices and customs which are discriminatory of women and to establish adequate legal protection for women.¹⁹ CEDAW further requires governments to ensure that public authorities and institutions do not discriminate against women.²⁰ The National Commission on Women then is being set up by the government in the discharge of these obligations.

In many parts of the world national institutions for the protection and promotion of human rights, not just women's rights, have been set up. Unfortunately the debate with regard to national machinery for women does not seem to have been influenced by the developments that have occurred with regard to national institutions for human rights. Although the Sri Lankan Human Rights Commission has had limited impact during the past two years, the legal framework setting up the institution is very good.²¹ Those framing the Women's Commission law may well take a look at the Human Rights Commission Act and consider some of the global developments that have occurred in this area.

As was observed in Beijing, many of the national institutions for women set up in different parts of the world have had limited impact.²² Institutions do not function in a vacuum. If Sri Lanka does obtain an independent Commission on Women, then its impact on the rights of women would depend not only on how dynamic and creative the Commission is, but on civil society groups as well. Women's and other groups, will need to interact closely with the Commission and monitor its performance if the Commission is to have a significant impact.

A Commission for Women can combine the advantages of a semi-official entity, with the creativity and imagination of a non governmental organisation. Its semi-official status will allow it to interact with government departments and state agencies closely, while the flexibility of the strategies it can pursue, can potentially make it a dynamic and proactive institution. The Ministry of Women's Affairs, the National Committee on Women and others involved in the drafting of this legislation need to reconsider the law so that it will allow the proposed commission to develop the imagination and creativity it would require.

Notes

1. *A Bill to provide for the establishment of a National Commission on Women for the promotion, advancement and protection of rights of women in Sri Lanka, issued on 14th September 1998.*
2. *Beijing Platform for Action para 196.*
3. *General Recommendation No 6, adopted by CEDAW at its Seventh Session (1988).*
4. A Sri Lankan NGO, the Law & Society Trust, is currently in the process of preparing draft legislation for an Equal Opportunities Commission.
5. *Report of the Expert Group Meeting on National Mechanisms for Gender Equality, Santiago, Chile, 31 August - 4 September 1998. Organised by the United Nations Division for the Advancement of Women (DAW) and the Economic Commission for Latin America and the Caribbean (ECLAC), paras 48 and 49.*

6. *Beijing Platform of Action, paragraph 201.*
7. *Id. para 203.*
8. *Report of the Expert Group Meeting on National Mechanisms for Gender Equality, Santiago, Chile, 31 August - 4 September 1998. Organised by the United Nations Division for the Advancement of Women (DAW) and the Economic Commission for Latin America and the Caribbean (ECLAC), para 16.*
9. *General Recommendation No 6, adopted by CEDAW at its Seventh Session (1988).*
10. *A Bill to provide for the establishment of a National Commission on Women for the promotion, advancement and protection of rights of women in Sri Lanka, issued on 14th September 1998.*
11. *Section 13.*
12. *Section 14.*
13. *Section 27 (1).*
14. *Sections 28 and 29.*
15. *Section 3(2). The Commission will also include one ex officio member who shall be the Secretary or Additional Secretary of the Ministry, see section 3(1)(a).*
16. *Sections 5(2) and 6(1).*
17. *Section 21.*
18. *Section 22.*
19. *Section 30.*
20. *Article 181 of the Constitution of South Africa (1996). The other five are the Public Protector, the Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Auditor General and the Electoral Commission.*
21. *Article 181 (2).*
22. *Article 187(1).*
23. *Article 187(2) of the Constitution and Act No 39 of 1996.*
24. *"Poverty and Human Rights" A report of the South African Poverty Hearings organised by the South African Human Rights Commission, the Commission on Gender Equality and the South African National NGO Coalition (SANGOCO).*
25. *Gerd Holmboe-Ottesen and Sissel Salomon, Plan for Future Activities and Reorganisation of the Womens Bureau, a consultancy report commissioned by NORAD (November, 1985) and Radhika Coomaraswamy, "Report on the Women's Bureau, Sri Lanka: An Agenda of Issues", a report commissioned by NORAD (July 1983).*
26. According to the September 1998 bill there will be 16 members, section 3.
27. *Article 2.*
28. *Ibid.*
29. *Ibid.*
30. *Human Rights Commission Act, No 21 of 1996. See Mario Gomez, "Sri Lanka's New Human Rights Commission", (1998) 20 Human Rights Quarterly 281.*
31. *Beijing Platform for Action, para 196.*