

# INTEGRATING REPRODUCTIVE RIGHTS INTO THE WORK OF NATIONAL HUMAN RIGHTS INSTITUTIONS OF THE ASIA PACIFIC REGION

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A preliminary study of current views and practices,  
challenges and opportunities

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**ASIA PACIFIC FORUM**  
ADVANCING HUMAN RIGHTS IN OUR REGION



# Acknowledgements

This report was prepared by Dr Anne Gallagher, consultant to the United Nations Population Fund (UNFPA) and the Asia Pacific Forum of National Human Rights Institutions (APF). The consultant would like to express her appreciation for the time and effort that participating national human rights institutions put into ensuring the success of this initiative. Thanks are also due to Pip Dargan (APF), Anne Harmer and Luz Angela Melo (UNFPA) for their advice and support; to Angela Ha, who provided valuable assistance at all stages in the preparation of the report; and to Fabian Sack, who is responsible for rendering statistical data into graphs and tables.

The views expressed in the report are those of the consultant and, where indicated, of the participating national human rights institutions. They should not be taken to reflect, in whole or in part, those of UNFPA or APF.



# Table of Abbreviations

ACJ .....	APF Advisory Council of Jurists
APF .....	Asia Pacific Forum of National Human Rights Institutions
CEDAW .....	Convention on the Elimination of All Forms of Discrimination Against Women
CRC.....	Convention on the Rights of the Child
HRC .....	United Nations Human Rights Council
ICC.....	International Coordinating Committee of NHRIs
ICESCR.....	International Covenant on Economic, Social and Cultural Rights
ICPD .....	International Conference on Population and Development
IVF .....	In vitro fertilization
LGBT .....	Lesbian, Gay, Bisexual and Transgender
MDG .....	Millennium Development Goal
NGO.....	Non-governmental organization
NHRI.....	National human rights institution
Paris Principles.....	Principles Relating to the Status of National Human Rights Institutions
UNFPA .....	United Nations Population Fund



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# Preface

Reproduction is an elemental, life-changing 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.<sup>1</sup> 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 little 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 marginalised 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.

National human rights institutions (NHRIs) are now recognized as a major force for protection and promotion of human rights at the domestic level – in many cases helping to lessen the “implementation gap” between international rules and standards and the practice of human rights on the ground. NHRIs also appear to be uniquely placed to contribute positively and innovatively to rights protection in areas that are relatively new, sensitive and prone to misunderstanding. This Report acknowledges the unique position and strengths of such institutions in asking how NHRIs in the Asia Pacific region are currently working to protect and promote reproductive rights; what obstacles they have encountered; and how reproductive rights can be more effectively integrated into their important work.

The key findings of the Report are based on a comprehensive survey of NHRIs’ views and work practices in the field of reproductive rights, conducted through a detailed written questionnaire and follow-up interviews with fifteen of the seventeen member institutions of the Asia Pacific Forum of National Human Rights Institutions (APF) between July and November 2010. While the information received was necessarily limited, it nevertheless provided an important insight into how NHRIs understand and work with reproductive rights. The findings affirm, for example, that all NHRIs unequivocally recognize a mandate and responsibility to promote and protect reproductive rights in their work. Although significant challenges to reproductive rights exist in the form of limited knowledge and understanding as well as religious and cultural sensitivities, it is clear that NHRIs can play an influential role as experienced and innovative actors in initiating

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<sup>1</sup> Figures from Glasier et al, *Sexual and Reproductive Health: A Matter of Life and Death*, The Lancet Sexual and Reproductive Health Series (October 2006).



difficult conversations and forging new ground in the promotion and protection of reproductive rights.

### **National Human Rights Institutions**

National human rights institutions (NHRIs) are independent state bodies with a specific mandate to promote and protect human rights. They are either established by the Constitution or by law. Their responsibilities can include: to submit recommendations, proposals and reports on any matter concerning the protection and promotion of human rights; to analyze compliance of laws and policies with human rights standards and recommendations for harmonization; to make recommendations for redress in relation to any situation of violation of human rights or any individual or collective complaints on alleged violations; to prepare reports on human rights situations; to draw the attention of the government to situations in any part of the country where human rights are violated and make proposals to put an end to such situation; and to cooperate with international, regional and national agencies to protect and promote human rights.

National human rights institutions established in accordance with the United Nations' "Principles Relating to the Status of National Human Rights Institutions" (the Paris Principles) are recognized as important actors in the international human rights system. They regularly participate in human rights mechanisms including the United Nations Human Rights Council (HRC) and its Universal Periodic Review, human rights treaty bodies and Special Procedures. Participation at the HRC occurs in both in their individual capacity and through representative bodies including the International Coordinating Committee of National Human Rights and the Asia Pacific Forum of National Human Rights Institutions.

### **The Asia Pacific Forum of National Human Rights Institutions**

The Asia Pacific Forum of National Human Rights Institutions (APF) was established in 1996 to support the establishment and strengthening of national human rights institutions in the region. As a member-based, not-for-profit organization, the APF provides a framework for NHRIs to work together and cooperate on a regional basis through a wide range of services including training, capacity building, networks and staff exchanges. Full membership of the APF requires that the NHRI has been established and is functioning in accordance with the Paris Principles. The APF currently has 15 full members as well as two associate (or observer) member institutions. APF members represent a diverse range of countries from across the Asia Pacific region.<sup>2</sup> The Forum Council is the APF's decision-making body, and is made up of senior representatives from each full member institution. The APF secretariat implements the decisions of the Forum Council and manages the day-to-day operations of the APF.

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<sup>2</sup> As at January 2011 the APF's 15 full member institutions are the NHRIs of Australia, Afghanistan, India, Indonesia, Jordan, Korea, Malaysia, Mongolia, Nepal, New Zealand, Palestine, Philippines, Qatar, Thailand, Timor-Leste. The two Associate or Observer member institutions are the NHRIs of the Maldives and Sri Lanka.

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## **The United Nations Population Fund**

UNFPA, the United Nations Population Fund, 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 of HIV, and every girl and woman is treated with dignity and respect. Its three core areas of work are: (i) reproductive health; (ii) gender equality; and (iii) 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 (ICPD); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and the Millennium Development Goals (MDGs).



# Introduction

This report is a joint initiative of the Asia Pacific Forum of National Human Rights Institutions (APF) and the United Nations Population Fund (UNFPA). Its focus is on reproductive rights and the extent to which these rights are, or could be, integrated into the work of national human rights institutions. The report includes information and insights secured through a comprehensive survey involving 15 member institutions of the APF. It analyses the current work practices and views of these institutions and considers the major challenges and risks they face in dealing effectively with this important issue. The report also identifies the special features of NHRIs that make them uniquely appropriate vehicles for promoting and protecting reproductive rights. It explores how NHRIs can best be supported in this work and proposes a set of steps for APF and UNFPA to consider in taking this initiative forward.

## Background

At the 13th Annual Meeting of the APF, held in Kuala Lumpur, Malaysia in July 2008, APF Forum Councillors considered and formally approved a proposal to undertake joint activities with the UNFPA in the area of reproductive rights. The principal activity agreed between the APF and UNFPA is the development of a publication on integrating reproductive rights into the work of APF member institutions. That publication was intended to serve as the starting point for the development of targeted approaches by UNFPA and APF to promote and support the integration of reproductive rights into the work of NHRIs.

In discussions between UNFPA and APF it was agreed that the report would focus on the following:

- Mapping the extent to which national human rights institutions in the region are already addressing reproductive rights promotion and protection in their work; plus an identification of their perceived needs, gaps and challenges
- Identifying and analyzing case studies from the region that demonstrate good practice and lessons learned in relation to the integration of reproductive rights into the work of national human rights institutions
- A draft strategy containing selected interventions for follow up action by APF, UNFPA's Asia Pacific Regional Office, the Gender, Human Rights and Culture Branch in New York, and country offices to further strengthen the capacity of NHRIs to promote and protect reproductive rights and women's rights.

## Methodology

In developing the report, the following methodology was adopted:

- Review of relevant information including documentation provided by APF and UNFPA and individual NHRIs;

- Preparation and distribution of a detailed questionnaire seeking information and views on reproductive rights and their integration into the work of NHRIs (Annex 1);
- Analysis of responses to the questionnaire and preparation of a template for discussion via telephone and in person with staff of surveyed NHRIs working on or otherwise involved in the issue of reproductive rights (Annex 2);
- Telephone or in-person discussion with participating institutions;
- Further analysis of results, additional communication with respondents to verify information;
- Writing up of final report.

All seventeen APF member institutions were invited to participate in the study, including the two APF observer institutions. Fifteen out of a possible seventeen NHRIs participated.

Several methodological limitations deserve to be flagged at the outset. Perhaps the most important relates to the fact that the study sought only to collect “point-in-time” views, perceptions and impressions, and the data presented below should be read in that light. In addition, while efforts were made to ensure that NHRI leadership signed off on the questionnaire, it is not possible to accurately determine whether the information provided truly reflects the views and experiences of the institution as a whole, as opposed to an individual member or small group of members. Finally significant discrepancies were revealed between written responses to the questionnaire and information secured through follow-up discussions. For example, in their questionnaire responses, very few NHRIs identified lack of knowledge and expertise as a significant obstacle to the integration of reproductive rights. In follow-up discussions, this issue emerged as a major area of concern for all surveyed NHRIs.

### **Structure of the Report**

The Report is divided into five parts. **Part One** provides an introduction and overview to the issue of reproductive rights, identifying their relevance to the work of NHRIs. **Part Two** presents key findings related to the work of NHRIs in the area of reproductive rights. In this sense it provides an overview of the current landscape, not just in relation to activities but also in terms of views and insights. **Part Three** considers emerging good practices and lessons learned in the area of reproductive rights. These are grouped around the major themes that emerged during the research: awareness raising and education; advice and advocacy, identifying and responding to violations; overcoming cultural and religious resistance; and NHRI work practices. **Part Four** identifies the challenges and risks that are facing many NHRIs in integrating reproductive rights into their work, as well as the opportunities that are available for moving this important effort forward. **Part Five** looks to the future: recognising that the current divergences in the understanding of and approaches to reproductive rights preclude advancing a draft strategy without further consultation, this Part instead considers the ways in which NHRIs could be

supported in their efforts to integrate reproductive rights; the possibility of the APF taking on an advocacy or influencing role in this area; and the question of a strategy for moving the issue of reproductive rights forward within and between NHRIs of the Asia-Pacific region. The Report contains three **annexes**: a list of participating NHRIs; the questionnaire; and the follow-up template for telephone / in-person discussions.



## Reproductive rights and their relevance to the work of national human rights institutions

This part seeks to provide a framework and context for the study by briefly considering the substantive content of reproductive rights as well as the applicable legal and policy framework. It also makes some preliminary observations on the relevance of reproductive rights to the work of national human rights institutions.

### 1.1. Understanding reproductive rights

While reproductive rights are based upon and cover already existing rights, there is no standard definition of the term. The most definitive statement of reproductive rights emerged from the United Nations International Conference on Population and Development (ICPD) 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.”<sup>3</sup>*

While critically important to shaping and reflecting international consensus on the concept of reproductive rights, the statement reproduced above is clearly insufficient for a full understanding of rights and obligations in this area. Since 1994, the international community and the international human rights system has sought to flesh out the substantive content of reproductive rights. As detailed below, much progress has been made. However, it is important to acknowledge that even within the international human rights system, 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. The first two of these issues were raised by many NHRI surveyed for this report and are therefore considered further below.

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<sup>3</sup> Report of the International Conference on Population and Development, Cairo, 5-13 September 1994, UN Doc. A/CONF.171/13/Rev.1 (1994).



### Issues and controversies: Abortion

Abortion is one of the most polarising and contested reproductive rights issues in international human rights law. However, no practice-based discussion of reproductive rights would be complete without considering whether any right to abortion exists in international human rights law and, if so, the extent of that right.

International human rights law has not traditionally engaged with abortion in depth. The ICPD Program of Action explicitly reserves abortion as falling within the State's national domain: 'Any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process.'<sup>4</sup> Inter alia, the ICPD Program of Action provides with respect to abortion that:

In no case should abortion be promoted as a method of family planning. All Governments and relevant intergovernmental and non-governmental organizations are urged to strengthen their commitment to women's health, to deal with the health impact of unsafe abortion as a major public health concern and to reduce the recourse to abortion through expanded and improved family planning services. Prevention of unwanted pregnancies must always be given the highest priority and all attempts should be made to eliminate the need for abortion. Women who have unwanted pregnancies should have ready access to reliable information and compassionate counselling. Any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process. In circumstances in which abortion is not against the law, such abortion should be safe. In all cases women should have access to quality services for the management of complications arising from abortion. Post-abortion counselling, education and family planning services should be offered promptly which will also help to avoid repeat abortions.<sup>5</sup>

Unsafe abortion is defined as a procedure for terminating an unwanted pregnancy either by persons lacking necessary skills or in an environment lacking the minimal medical standards or both.<sup>6</sup> The Fourth World Conference on Women reaffirmed the ICPD agreement and in addition recommended that countries "consider reviewing laws containing punitive measures against women who have undergone illegal abortions."<sup>7</sup> Coerced abortion is explicitly recognized as a violation of basic rights and principles. The position of the UNFPA is in line with these international soft law instruments.

Beyond this, a useful framework for understanding the extent of any right to abortion is to distinguish the different contexts in which abortion may be sought: because of threat to the woman's life or health; in situations of rape, incest or foetal impairment; on the basis of social or economic reasons; and abortion on request. There is some limited recognition in international human rights law of a right to abortion in cases of threat to life or health, and in situations of rape, incest or foetal impairment.

<sup>4</sup> Ibid. at para. 8.25.

<sup>5</sup> Ibid.

<sup>6</sup> World Health Organization, *The Prevention and Management of Unsafe Abortion*, Report of a Technical Working Group, Geneva, 12-15 April 1992, UN Doc. WHO/MSM/92.5

<sup>7</sup> United Nations, *Report of the Fourth World Conference on Women*, Beijing, 4-15 September 1995, UN Doc. A/CONF.177/20/Rev.1 (1996).

UN human rights treaty bodies have affirmed a right to abortion under certain circumstances. In the matter of *KL v Peru*<sup>8</sup> before the Human Rights Committee, a seventeen-year-old woman's foetus was diagnosed with a fatal neural condition with no prospect of survival beyond a few days after birth. The refusal of an abortion in accordance with Peruvian law was found to breach the prohibition against torture and cruel, inhuman and degrading treatment, as well as the author's right to health and to special protection as a minor. Additionally, the Human Rights Committee,<sup>9</sup> the Committee on Economic, Social and Cultural Rights,<sup>10</sup> the Committee on the Elimination of Discrimination against Women,<sup>11</sup> the Committee against Torture<sup>12</sup> and the Committee on the Rights of the Child<sup>13</sup> have all expressed concern in their Concluding Observations over absolute prohibitions on abortion, and recommended that abortion be enabled where medical grounds exist and in cases of rape or incest.<sup>14</sup> At the time of the ICPD Program of Action, approximately ninety per cent of all countries, representing ninety-six per cent of the world's population allowed abortion under some circumstances.<sup>15</sup>

Outside cases of threat to life or health and situations of rape, incest or foetal impairment, the parameters of any right to abortion law are unclear. There is no established international human right to abortion under these circumstances.

Reproductive rights intersect with many other areas of human rights. The United Nations human rights system has linked reproductive rights to other rights – for example, the right to health. In 2003, the former Commission on Human Rights<sup>16</sup> 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”.<sup>17</sup>

<sup>8</sup> UN Human Rights Committee, *KL v. Peru*, Communication No. 1153/2003, UN Doc. CCPR/C/85/D/1153/2003, 22 November 2005.

<sup>9</sup> Colombia, 26 May 2004, UN Doc. CCPR/CO/80/COL, at para. 13; Argentina, 3 November 2000, UN Doc. CCPR/CO/70/ARG, at para. 14; Ireland, 21 July 2000, UN Doc. A/55/40[VOL.1](SUPP), paras. 422-451, at paras. 444-445.

<sup>10</sup> Philippines, 1 December 2008, UN Doc. E/C.12/PHL/CO/4, at para. 31; Nicaragua, 28 November 2008, UN Doc. E/C.12/NIC/CO/4, at para. 26; Costa Rica, 4 January 2008, UN Doc. E/C.12/CRI/CO/4, at para. 46; Mexico, 9 June 2006, UN Doc. E/C.12/MEX/CO/4, at para. 44; Chile, 1 December 2004, UN Doc. E/C.12/1/Add.105 at para. 53; Malta, 14 December 2004, UN Doc. E/C.12/1/Add.101 at para. 41; Monaco, 13 June 2006, UN Doc. E/C.12/MCO/1 at para. 23; Nepal, 24 September 2001, UN Doc. E/C.12/1/Add.66 at para. 55.

<sup>11</sup> Dominican Republic, 15 July 2004, UN Doc. A/59/38(SUPP), paras. 268-315, at para. 309; Jordan, 26 January 2000, UN Doc. A/55/38(SUPP), paras. 139-193, at para. 181.

<sup>12</sup> Nicaragua, 10 June 2009, UN Doc. CAT/C/NIC/CO/1, at para. 16 (where pregnancy results from rape, incest or other gender violence, denial of abortion ‘entails constant exposure to the violation committed against her and causes serious traumatic stress and a risk of long-lasting psychological problems such as anxiety or depression’); Peru, 25 July 2006, UN Doc. CAT/C/PER/CO/4, at para. 23.

<sup>13</sup> Palau, 21 February 2001, UN Doc. CRC/C/15/Add.149, at paras. 46-47.

<sup>14</sup> Art. 14(2)(c). Note that the right to abortion under these same limited circumstances is also recognised in the African Women's Protocol. The Protocol is the only binding human rights instrument to explicitly affirm a right to abortion, requiring States parties to: ‘protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.’

<sup>15</sup> *Report of the International Conference on Population and Development*, Cairo, 5-13 September 1994, UN Doc. A/CONF.171/13/Rev.1 (1994), at para. 8.19.

<sup>16</sup> The UN Commission on Human Rights was replaced by the UN Human Rights Council in 2006; refer to [www.ohchr.org/english/bodies/chr/index.htm](http://www.ohchr.org/english/bodies/chr/index.htm).

<sup>17</sup> UN Commission on Human Rights, ‘The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health’, UN Doc. E/CN.4/RES/2003/28 (22 April 2003), at Preamble.

### ICPD 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.”<sup>18</sup>

The Committee on Economic, Social and Cultural Rights and the Special Rapporteur on the right to health have 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, physical and mental disability, and HIV status, is essential to ensure the enjoyment of the right to sexual and reproductive health.<sup>19</sup>

<sup>18</sup> *Report of the International Conference on Population and Development*, Cairo, 5-13 September 1994, UN Doc. A/CONF.171/13/Rev.1 (1994), at para. 7.2.

<sup>19</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, UN Doc. E/C.12/2000/4 (11 August 2000), at Part I; UN Special Rapporteur on the Right to Health, *The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Report of the Special Rapporteur, Paul Hunt*, UN Doc. E.CN.4/2004/49 (16 February 2004), at paras. 24 to 47.

**Elements of the right to sexual and reproductive health may include the following:**

- **Reproductive decision-making** including voluntary choice in marriage, family formation and determination of the number, timing and spacing of one's children; 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 and services to adolescent girls and boys**
- **Freedom from harmful practices** such as early marriage, sale in marriage, female cutting/female genital mutilation, 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 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, physical and mental disability, and HIV status, 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**

Reproductive rights and reproductive health have been recognized as critical to human development and security. The Millennium Development Declaration, adopted in 2000, and the eight Millennium Development Goals (MDGs), developed in 2001, initially omitted the ICPD goal of universal access to reproductive health. This was amended in 2007 however, and became effective on 1 January 2008, when target 5b 'achieve universal access to reproductive health' and four related indicators, was introduced. It is also clear that reproductive rights are essential to the attainment of a number of the MDGs including Goal 3 (promoting gender equality and empowering women); Goal 4 (reducing the child mortality rate) and Goal 5 (reducing maternal mortality). The link between reproductive rights and improvement in maternal health is especially strong. As shown in the text box below, the international community recognizes that this goal can only be achieved by reducing maternal mortality and improving access to reproductive health services.

**Millennium Development Goal (MDG) 5: Improve maternal health****Target 5a: Reduce by three quarters the maternal mortality ratio**

Indicators:

- 5.1 Maternal mortality ratio
- 5.2 Proportion of births attended by skilled health personnel

**Target 5b: Achieve universal access to reproductive health**

Indicators:

- 5.3 Contraceptive prevalence rate
- 5.4 Adolescent birth rate
- 5.5 Antenatal care coverage
- 5.6 Unmet need for family planning

**Links and differences: reproductive rights and violence against women**

Violence against women is closely related to but distinct from the concept of reproductive rights. Whereas violence against women refers to violence directed against a woman because she is a woman, or which affects women disproportionately,<sup>20</sup> reproductive rights refers to a whole package of rights related to the capacity and right of women and men alike to make free and responsible decisions concerning reproduction, and the right to the sexual and reproductive health.

The relationship between violence against women and reproductive rights is complex. Violence against women, particularly domestic violence, impacts women's autonomy to exercise voluntary reproductive choice free from violence and coercion. 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 of the prohibition on violence against women will coincide: for example, in relation to forced marriage; sexual violence; forced sterilisation 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.

While recognizing links and overlaps, it is important not to collapse reproductive rights into the general category of violence against women. This can distract from a clear analysis of what is being done (and what remains to be done) to promote and protect reproductive rights.

<sup>20</sup> UN Committee on the Elimination of All Forms of Discrimination Against Women, *General Recommendation No. 19: Violence Against Women*, UN Doc. A/47/38 (29 January 1992), at para. 6

## 1.2. Reproductive rights and the work of national human rights institutions

Over the past two decades, there has been a growing recognition of the value of a national institution that, while created by the State, is able to play a central role in promoting and protecting human rights at the domestic level. The United Nations has been especially active in promoting the establishment and effective functioning of such bodies including through the development and adoption of a set of principles (the “Principles Relating to the Status of National Human Rights Institutions”, or the “Paris Principles”) that establish core standards for the structure, composition and functioning of NHRIs.<sup>21</sup> Today, in many countries, NHRIs occupy an important part of the national human rights machinery. Their influence often extends beyond national borders and, through membership bodies such as the International Coordinating Committee of NHRIs (ICC) and APF, many NHRIs are playing an important part in regional and international human rights discussions and debates.

The Paris Principles are clear on the point that such NHRIs should be provided as broad a mandate as possible, based on universal human rights standards.<sup>22</sup> Breadth of mandate is seen as critical to an NHRI’s effectiveness and relevance, and is a key criterion for deciding whether an applicant institution fulfils the membership requirements of both the ICC and the APF. In practice, most NHRI member institutions of the ICC and APF are empowered to work on the full range of rights recognized in the core human rights treaties. Particularly in recent years, NHRIs have used the breadth of their mandates to expand engagement into less traditional areas such as violence against women, disability, health (including HIV/AIDS), migration and trafficking.

It has been recognized for some time that NHRIs have a potentially important role to play in promoting and protecting reproductive rights. This recognition appears to be related to national institutions’ increasing engagement 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 the traditional field of civil and political rights.

In 2002, a regional workshop on the issue of reproductive rights, organized by the United Nations (Office of the High Commissioner for Human Rights and UNFPA) and the Inter-American Institute for Human Rights, brought together representatives of 17 national institutions from Latin America, the Caribbean and Canada.<sup>23</sup> The objectives of that meeting were very similar to those of the present report: to analyze work carried out to date; to examine obstacles and opportunities faced by women in the exercise of their reproductive rights and to identify ways in which NHRIs can contribute to the promotion and protection of reproductive rights.

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<sup>21</sup> UN General Assembly, ‘Principles Relating to the Status of National Institutions’ UN Doc. A/RES/48/134 (20 December 1993), Annex.

<sup>22</sup> Ibid. at para. 2.

<sup>23</sup> See Inter-American Institute for Human Rights, *Promotion and Defense of Reproductive Rights: A New Challenge for the National Human Rights Institutions*, Instituto Interamericano de Derechos Humanos, San José, Costa Rico (2003).

The focus of the workshop was reproductive and sexual rights: to that extent broader than the subject matter of the present report and UNFPA's main focus, which remains on reproductive rights. It is nevertheless useful to summarize the key findings of this important meeting:

- Universal human rights include sexual and reproductive rights.
- The violation of people's reproductive rights restricts, interferes with and infringes upon their enjoyment of other rights, such as: the right to life, liberty, security and personal integrity; the right to decide the number and spacing of their children; the right to privacy, health, employment and social security; the right to education, development, equality and non-discrimination; the right to raise a family, to have access to appropriate, accurate and timely information, to legal protection and due process; and the right to a life without violence.
- Given their universal, integral, indivisible and interdependent character, the promotion and protection of human rights – including sexual and reproductive rights – should be considered in the context of the search for human development; and
- The application and effective exercise of sexual and reproductive rights is of benefit both to women and men, although women are the ones who suffer the most serious consequences of the non-observance of these rights in their daily lives.

In their general recommendations for action, workshop participants noted the important role that NHRIs can play in monitoring State compliance with international legal obligations to protect and promote reproductive rights. The recommendations also noted various ways in which NHRIs can integrate reproductive rights into their work on educating and raising awareness about reproductive rights.

As this report shows, reproductive rights are still a new issue for NHRIs of the Asia-Pacific region. While many are doing important work in this area, no NHRI has a program, policy or area of work devoted specifically to reproductive rights. Despite the acknowledged obstacles, all NHRIs consulted expressed a strong commitment to reproductive rights and a firm belief that their mandate required them to work in this area.

This report confirms that NHRIs are well positioned to make a unique contribution to the realization of reproductive rights. As independent national bodies with a responsibility to promote and protect all human rights, NHRIs are able to help rights-holders claim the rights to which they are entitled; monitor and report on the implementation of rights; educate officials and the community about reproductive rights; and sometimes even contribute to the delivery of services. Perhaps more effectively than any other national body, NHRIs may be able to provide the space within which the inevitable sensitivities and controversies that surround reproductive rights can be explored and managed.



## Reproductive rights in the work of national human rights institutions: key findings

A major objective of this report is to document, as clearly and accurately as possible, the current landscape with respect to NHRI engagement with reproductive rights. This means much more than reporting what individual NHRIs have actually done in this field. It also encompasses how NHRIs view reproductive rights: what priority they attach this area of human rights; the target groups and issues they are most concerned about, and the challenges they have encountered or foresee.

The key findings of the questionnaire and follow-up discussions are set out below. Note that these findings are explored further in other parts of this report, most particularly in Part 3, which identifies good practices, and Part 4, which considers challenges and opportunities.

### 2.1. Key findings related to mandate, responsibilities and priorities

#### 2.1.1 All NHRIs recognize a mandate and responsibility to promote and protect reproductive rights

In their responses to the questionnaire, NHRIs overwhelmingly agreed that they have a current or future role in promoting and protecting reproductive rights in the areas suggested by the questionnaire. Further analysis of NHRI views on specific reproductive rights issues is provided at Part 2.2 below.

#### Members' views on whether they have a role in protecting and promoting reproductive rights

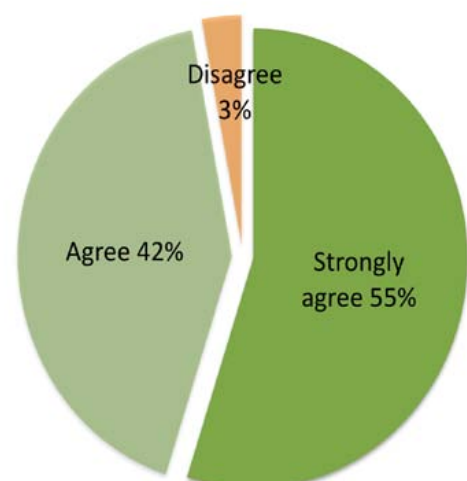


Figure 1



During the follow-up discussions, all surveyed NHRIs confirmed that their mandate extended to reproductive rights: that on a technical or legal level, there was no obstacle to their engaging with reproductive rights. The way in which the reproductive rights mandate was identified and described differed significantly (see text box below). Some NHRIs with a broad mandate considered that the issue of reproductive rights fell generally within the “protection and promotion of human rights”. Others noted that their mandates were linked to treaties and national constitutions or legislation protecting, for example, economic, social and cultural rights or the rights of women and children, and that these instruments provided the mandate for engagement in the area of reproductive rights.

Several NHRIs stated that while their mandate did not refer specifically to reproductive rights, the relevant matters could be dealt with under the right to health and thereby brought within the scope of the institution’s work.

#### **Perceptions of NHRIs’ role/mandate with respect to reproductive rights**

“[Our Commission] has a role in advancing the reproductive rights as they are the integral part of the right to health.”

“[Our] primary role is the promotion and protection of human rights, which includes the promotion and protection of reproductive health rights.”

“[We have] a mandate to promote, protect, and monitor all human rights, including reproductive rights.”

“[Our] role is to promote and protect all rights including economic, social, cultural & civil and political rights. Health is guaranteed by the ICESCR as well as other relevant conventions ratified by [our country] including the CEDAW and CRC.”

“[Reproductive rights] are integral to the highest standard of health and to equality between men and women.”

“As the national human rights institution ... [we] can and should undertake strong advocacy measure on reproductive and sexual health rights.”

“Reproductive rights are related to women’s rights which is considered one of our main areas of concern.”

“As a NHRI, we do have a role to play regarding the measures taken by the State to protect and promote women’s rights, including those encompassed within reproductive rights.”

### **2.1.2 There are similarities but important differences between NHRIs in terms of their identification of the most important reproductive rights issues**

All NHRIs were asked to list the most important issues facing their country with respect to reproductive rights. The issues most commonly identified as important included the following:

- Maternal mortality
- Infant & 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 about the number and spacing of children
- The question of 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

Most NHRIs also 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 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 realization of reproductive rights.

Some NHRIs highlighted issues that may be broader than or not completely overlapping with reproductive rights such as the right to health, HIV/AIDS, and trafficking for sexual exploitation. While most respondents confirmed that they engaged with the international human rights system in various ways, very few were able to provide specific examples of such engagement relating directly to reproductive rights issues.

The majority of NHRIs cited at least one issue that appeared to be country-specific. The following issues were mentioned as important by just one or two NHRIs:

- Access to in vitro fertilisation (IVF) including for sexual minorities
- Foetal alcohol syndrome in indigenous communities
- Work-related discrimination against mothers and pregnant women

- Health and nutrition during pregnancy
- Self-immolation
- Gender bias leading to sex-selective abortion
- Inadequate health insurance for reproductive services
- Drug taking by young pregnant women.

### **2.1.3 There are strong similarities between NHRIs in terms of their identification of the groups most vulnerable to weak recognition of reproductive rights**

All NHRIs, with just one exception, noted that individuals (particularly women) who are isolated, poor and socially marginalized or excluded are especially vulnerable to weak recognition of their reproductive rights. The group most frequently mentioned was rural women. The following groups were mentioned by at least several respondents:

- Persons with disabilities (physical and intellectual)
- Young people
- Migrants including migrant workers and refugees
- Poor/excluded communities and individuals (such as scheduled castes)
- Religious communities
- Indigenous communities
- Sexual minorities

As one respondent pointed out, it is women and girls within these generally vulnerable groups who are particularly at risk.

## **2.2. Key findings on attitudes/perceptions related to reproductive rights**

### **2.2.1 NHRIs hold different views on particular rights issues and on the place of these issues in the work of the Institution**

Respondents were asked to consider a range of reproductive rights issues and areas (for example, reproductive decision-making, freedom from harmful practices, right to privacy) and to express a view on whether they see a current or future role for their institution in relation to these areas.

The relevant results are presented below at Figure 2. In summary, they show that there are relatively high levels of agreement about NHRI engagement in relation to certain issues/areas, and lower levels of agreement in relation to others. For example, almost all respondents agree or strongly agree that universal access to reproductive health services including family planning is an appropriate area of engagement for their institution. Importantly, no NHRI recorded a ‘strongly disagree’ response in relation to any of the listed components of reproductive rights.

### Members’ views on whether they have a role in promoting and protecting specific reproductive rights

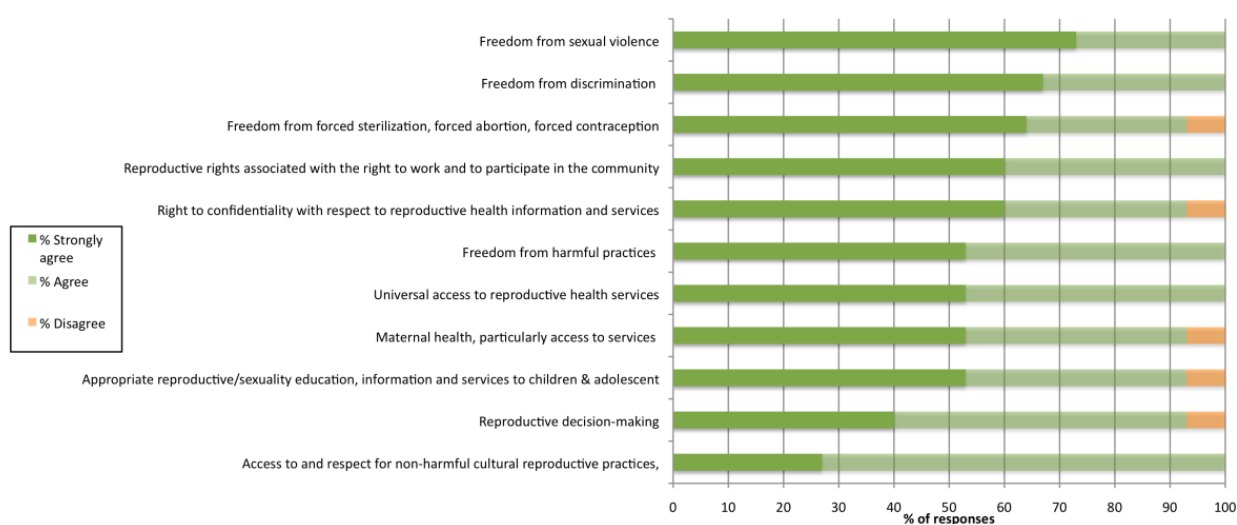


Figure 2

While all except one respondent agreed or strongly agreed that they saw some role for their institution in relation to reproductive and sexuality education, either currently or in the future, in their answers to the written questionnaire, the feedback received during follow-up discussions revealed much more ambivalence on this issue. In fact, only a few respondents agreed, during discussions, that their institution had a role to play in relation to the provision of sexuality education, information and services to children and adolescents. As one respondent noted “other agencies are more appropriate to provide [this information]”.

In follow-up discussions, respondents generally indicated that they were most ‘comfortable’ engaging with issues that had a clear human rights dimension. For example, most institutions strongly agreed that they should be involved in working to prevent sexual violence and discrimination related to reproductive rights.

#### 2.2.2 On controversial or contentious issues, there are significant differences of opinion

Respondents were asked to indicate whether their institution agreed or disagreed with a set of four statements that expressed a view on unsettled/contentious areas of reproductive rights

(e.g. rape in marriage should be criminalized, contraception should be freely available). The question did not relate to the work of the institution but only to its view on the identified issue. The relevant results are presented below at Figure 3. In summary, they show there is no clear agreement amongst respondents on all four issues. In particular, they reveal that a significant number of NHRIs record “no institutional opinion” with respect to certain of the contentious statements.

### Members’ views on contentious issues

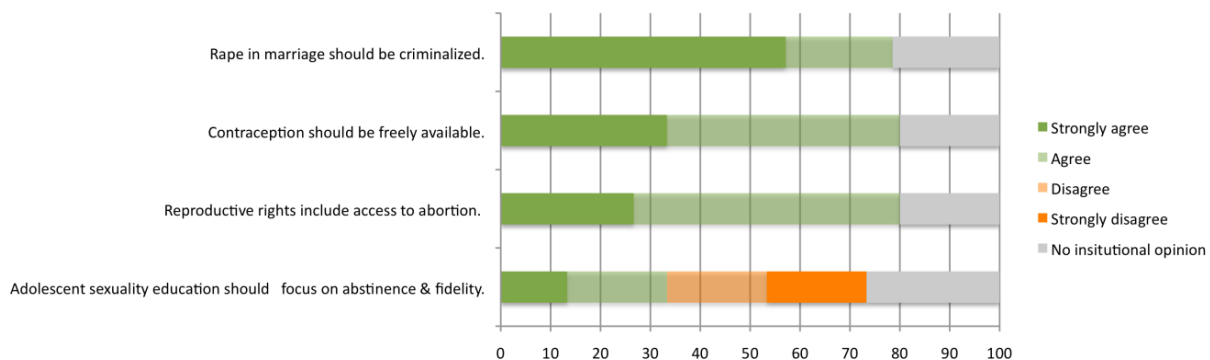


Figure 3

As seen in the results above, “no institutional opinion” results aside, there was consistent, in principle, support for the following propositions:

- Reproductive rights include access to abortion under at least some conditions
- Rape in marriage should be criminalized
- Contraception should be freely available, e.g. regardless of marital status, to both individuals and couples.

The most controversial statement was that adolescent sexuality education should be predominantly focused on abstinence or fidelity.

In follow-up discussions, several respondents confirmed that their institution’s views did not necessarily translate into practice. For example, the fact that a NHRI that believes rape in marriage should be criminalized, does not mean it has or intends to take a stand or otherwise engage with this issue. Of those NHRIs that agree or strongly agree that abortion should be available under at least some circumstances, only a few had taken steps to identify abortion as a potential area of interest or concern for the institution. During follow-up discussions, it became clear that those NHRIs recording “no institutional opinion” were generally of the view that the Institution’s legitimacy and position required it to step back from contentious issues. This should be seen not as a failure to respond but as a positive decision to refrain from responding.

## 2.3. Key findings on work practices and experiences

### 2.3.1 No NHRI has a program, focal point, strategy or work area dedicated to reproductive rights

Even amongst those NHRIs that did report substantive activities or achievements in the area of reproductive rights, none were able to point to a dedicated area, focal point or program of work. Many of the innovations and good practices reported in Part 3, for example, were one-off activities or undertaken through existing programs related to the right to health or to women's rights.

*“We have looked at some issues (such as on sexual violence, discrimination, criminalization of abortion, etc), but not as part of an overall strategy on reproductive rights.”*

NHRI Respondent: written communication (emphasis in original).

### 2.3.2 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 respondents were able to describe activities or achievements that were directly relevant to core issues of reproductive rights. Most of these are reflected or explored in more detail in the following part. Examples provided generally fall within the following broad categories:

- Raising awareness about reproductive rights through research, production and dissemination of information, the holding of workshops and seminars, etc.
- Providing advice to government on legislation and policy related to reproductive rights
- Advising or advocating on specific issues related to reproductive rights
- Referring individuals to service providers;
- Mediating/responding to complaints of violations of reproductive rights;

Several respondents noted that although they were able to provide some examples, they had in fact done very little work on reproductive rights. One explained that: “we have done limited work because others - NGOs, government agencies and community health services – are active”.

Three NHRIs stated that, to date, they had undertaken no substantive activities with respect to reproductive rights. Two of the three cited competing priorities as the main reason why they had not engaged with this issue. The other NHRI explained that lack of activity in this area was due to a lack of knowledge about reproductive rights. The same respondent noted that the questionnaire had prompted an internal discussion as to how this issue could be advanced in the future.

### Work to protect and promote reproductive rights reported by Member NHRIs

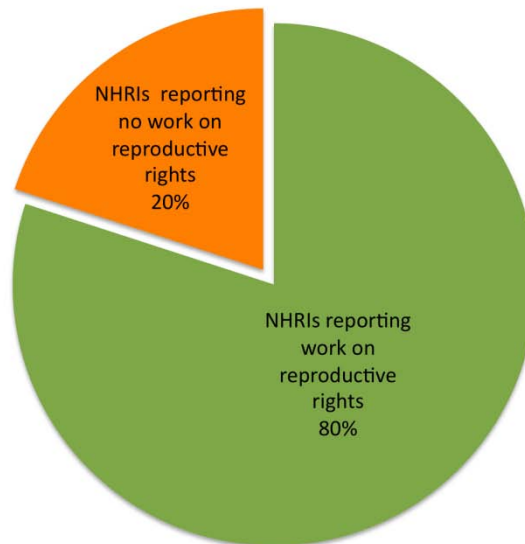


Figure 4

#### 2.3.3 Complaints about violations of reproductive rights are rare

Most NHRIs report that they have never received a complaint about violations of reproductive rights. Some NHRIs did report receiving such complaints but further inquiry revealed that the matter was not specifically related to reproductive rights but rather situated within a broader context of rights denial (e.g. trafficking, discrimination in general relating to sexual orientation/HIV status). Of those NHRIs reporting complaints related specifically to reproductive rights, the number of such complaints was generally very low. Only two NHRIs reported a high number of complaints. 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 reasons for low levels of complaints are explored further in Part 4. Briefly, it appears that lack of knowledge about reproductive rights within the institution itself is an important factor. Institutional confusion and uncertainty about reproductive rights often means that the NHRI itself does not contribute to raising awareness amongst rights-holders and duty-bearers. As a result, those who may have suffered a violation of their reproductive rights are not sufficiently informed to bring that violation to the attention of the NHRI.

## Reporting of complaints related to reproductive rights by Member NHRIs

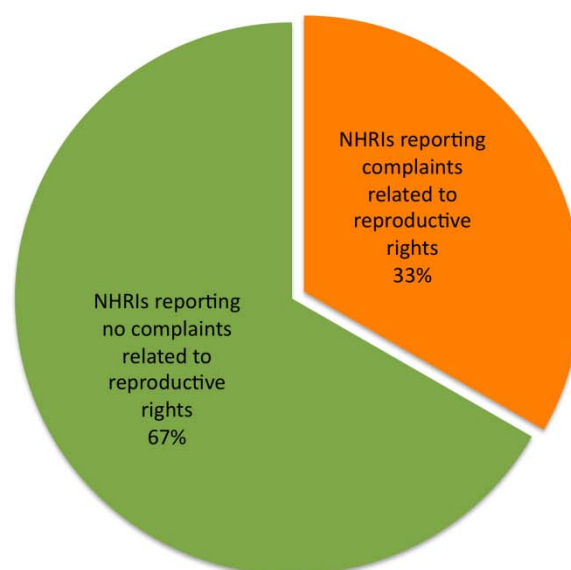


Figure 5

## 2.4. Key findings related to challenges

The questionnaire did not directly address challenges, rather asking respondents to consider the extent to which certain external and internal obstacles impacted on their ability to work effectively to protect and promote reproductive rights. The results of that part of the questionnaire are set out below at Figure 6. Follow-up discussion proved to be very useful in securing further information and insight from NHRIs on this matter. As the issue of challenges is addressed more fully in Part 4, the following should be considered a summary.

## Members' views on factors that are obstacles to protecting and promoting reproductive rights

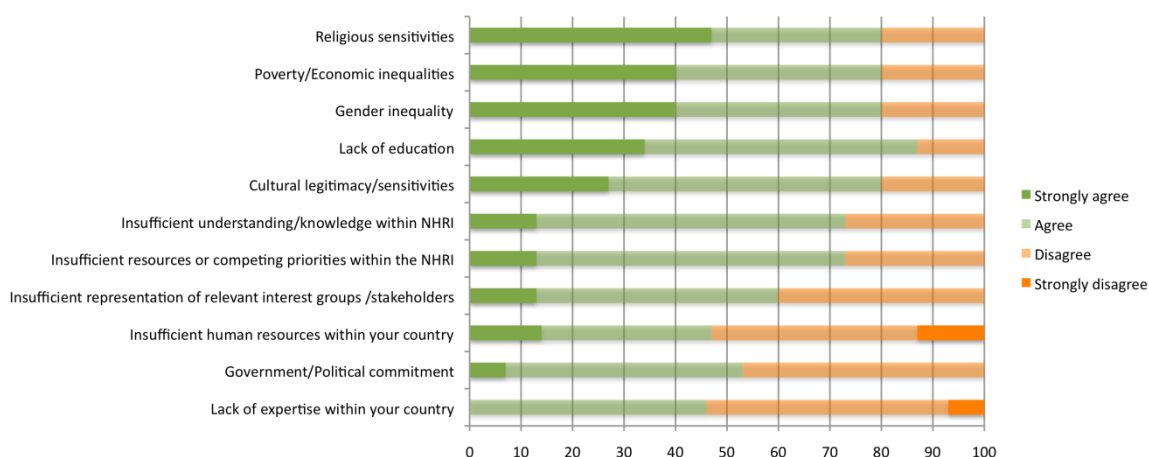


Figure 6



Over 80% of respondents agreed or strongly agreed that the following structural and cultural factors were obstacles to protecting and promoting reproductive rights:

- Cultural legitimacy/sensitivities
- Religious sensitivities
- Gender inequality
- Lack of education
- Poverty/Economic inequalities

While there was no clear consensus found in the questionnaire responses on whether political and institutional factors were obstacles, a stronger picture emerged from the follow-up discussions, as discussed at Part 2.4.2 as well as Parts 4.1 and 4.2 below.

#### **2.4.1 Culture and religion are seen as major impediments to integration of reproductive rights**

Most respondents identified conservative culture and religion as factors that directly limited the extent to which they are able to engage effectively in the area of reproductive rights. In follow-up discussions, respondents expressed a general feeling that culture and religion are often antagonistic to reproductive rights and that working on these issues risks a backlash that may well compromise the reputation, credibility or future work of the institution. More than half of all respondents noted that issues of culture and religion went beyond the immediate concern of reproductive rights: contributing, 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.

In follow-up discussions, most respondents noted that religious and cultural sensitivities around reproductive rights require them to work in different, often innovative ways. Several examples are provided in Part 3 below.

#### **2.4.2 Other obstacles include competing priorities, limited resources and lack of expertise**

When questioned about other obstacles to the effective integration of reproductive rights, several respondents pointed to competing priorities. For some NHRIs, internal armed conflict or other pressing national emergencies have forced them to ruthlessly prioritise. As a result, there has been no time, energy or resources to devote to “non-core” issues such as reproductive rights. It is well established that the traditional focus of the human rights system on civil and political rights (at the expense of economic, social and cultural rights) has carried over to NHRIs.<sup>24</sup> While

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<sup>24</sup> See Office of the United Nations High Commissioner for Human Rights, *Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions*, UN Sales No. E.04/XIV.8 (2005).

the situation is changing, the major priorities of many NHRIs continue to lie in the traditional areas of civil and political rights with a particular focus on non-discrimination. This has meant that areas related to reproductive rights, such as the right to health, have received relatively less attention.

At the same time, NHRIs are coming under increasing pressure to widen their areas of focus to accommodate emerging issues. Examples cited by respondents include HIV/AIDS, sexuality, disability, trafficking, and human rights violations associated with responses to terrorism. The resources required to deal with these new areas effectively are often not forthcoming. In short, NHRIs are being asked to “do more with less”. The inclusion of another issue, such as reproductive rights, into their already crowded agenda, is seen to present a real risk of dilution of effort and impact.

During follow-up discussions – though significantly not in the written questionnaire – most NHRIs cited lack of expertise as a major obstacle to the effective integration of reproductive rights into their work. As this issue is discussed in detail at various places in this report, the main points only will be highlighted. Lack of expertise is of course related to the issues of competing priorities and limited resources discussed above. However, it also reflects the relative newness of the issue and the absence of a strong legal and policy framework around reproductive rights at the international level. In other words, many NHRIs feel that it is ‘difficult’ to cultivate expertise in this area, particularly without external guidance and support. Even those officials who are working on related areas, such as the right to health and violence against women, disclaim any real knowledge of or expertise in reproductive rights.



## Integrating reproductive rights: innovations and emerging good practices

As detailed above, reproductive rights are, with only a few exceptions, a new issue for most NHRIs. Among those institutions that have begun to work in this area, their activities have not been sufficiently broad or deep enough to support robust case studies. Accordingly, it is not yet possible to identify lessons learned or even established good practices at the systemic level.

The purpose of this present section is a correspondingly modest one: to provide information on activities, policies and approaches of individual institutions that serve to illustrate how NHRIs are beginning of the process of integrating reproductive rights into their work. It is important to acknowledge that at least some examples cited below may be limited in their ‘transferability’ to other institutions and settings. Nevertheless, in addition to their illustrative value, the examples also serve to reinforce other aspects of this report: illustrating many of the trends and findings identified in the previous section and providing additional context for both challenges and opportunities discussed in Part Four, below.

### 3.1. Innovations and good practices in relation to awareness raising and education

The Paris Principles identify human rights education and awareness raising as central functions of national human rights institutions.<sup>25</sup> All APF member institutions are mandated to engage in human rights education and awareness raising, and a recent UN report noted that around 90% of NHRIs in the Asia Pacific region are actively working in this area.<sup>26</sup> Typical activities include: production and distribution of information materials; organizing of seminars, workshops and discussion groups; research into particular human rights issues; mainstreaming of human rights into existing curricula within the formal education system; and delivery of technical training to specialist groups such as government officials and criminal justice agencies.

All NHRIs participating in the present study identified for themselves a current or potential role in raising awareness and educating about reproductive rights. Identified targets include vulnerable groups (women, young women, rural women, members of ethnic or religious

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<sup>25</sup> UN General Assembly, ‘Principles Relating to the Status of National Institutions’ UN Doc. A/RES/48/134 (20 December 1993), Annex. at paras. 3(f) and 3(g).

<sup>26</sup> UN Office of the High Commissioner for Human Rights, *Survey on National Human Rights Institutions: Report on the Findings and Recommendations of a Questionnaire Addressed to NHRIs Worldwide* (2009), pp. 34 and 55.

minorities, migrant women, sex workers); government officials; and employers. Several NHRIs noted that men and boys should also be targeted for awareness raising and education about human rights.

### **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”). The Guide clearly set out the nature and scope of reproductive rights and explained how these rights are protected under international and national law. It used human rights law to identify the following as key reproductive rights:

- Right to life
- Right to liberty and security of the person
- Right to equality and freedom from all forms of discrimination
- Right to privacy
- Right to freedom of thought
- Right to information and education
- Right to choose whether or not to marry and to found and plan a family
- Right to decide whether or not to have children
- Right to health care and health protection
- Right to freedom of assembly and political participation
- Right to be free from torture and ill-treatment.

### **New Zealand: Community Leaders’ Dialogue on Sexuality, Gender and Human Rights**

In 2008, the New Zealand Commission for Human Rights in collaboration with Family Planning International brought together community activists and leaders to discuss sexuality, gender and human rights. The dialogue session touched upon 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 report reflected upon 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. The report of the dialogue can be found at:

[http://www.hrc.co.nz/hrc\\_new/hrc/cms/files/documents/12-Jan-2009\\_16-26-13\\_FPI\\_HRC\\_Voices\\_Booklet\\_14\\_Nov\\_08\\_Final.pdf](http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/12-Jan-2009_16-26-13_FPI_HRC_Voices_Booklet_14_Nov_08_Final.pdf).

### **Australia: Pregnancy Guidelines for Employers**

Discrimination in relation to pregnancy status was identified by several NHRIs as a major issue of concern. Women may lose their jobs once their pregnancy becomes known. They may be refused employment in the first place because the employer believes that they are, or are likely to become, pregnant. Women who have taken leave to have a baby can find that their employment conditions have been unfairly changed once they attempt to return to work. In 2001 the Australian Human Rights Commission issued *Pregnancy Guidelines*, which set out, in clear language the rights of employees and the obligations of employers in relation to pregnancy. The Guidelines, which were prepared after consultation with unions and employers, cover issues of pregnancy discrimination through all aspects of the employment relationship, including recruitment, employment and dismissal. They also address the overlap between discrimination and industrial and occupational health and safety obligations. The Guidelines use basic principles and case studies to illustrate rights and responsibilities and to provide practical advice. They can be accessed through: [www.humanrights.gov.au/sex\\_discrimination/publication/pregnancy/guidelines.html](http://www.humanrights.gov.au/sex_discrimination/publication/pregnancy/guidelines.html).

### **Malaysia: Teaching school students about reproductive rights**

The Human Rights Commission of Malaysia conducts regular sessions with school students to raise awareness about human rights issues. The Commission has recently developed a revised curriculum that will enable it to use these sessions to discuss issues related to reproductive rights that are of greatest concern to young people.

## **3.2. Innovations and good practices in relation to advice and advocacy**

The Paris Principles confirm that a core function of NHRIs is to provide advice to governments, parliaments or other competent bodies and to promote and ensure the harmonization of national legislation, regulations and practices with relevant international instruments and their effective implementation.<sup>27</sup> All APF member institutions are empowered to undertake advisory and advocacy functions. There were multiple examples of activities in this area that related directly to reproductive rights.

### **India: Action to reduce maternal anaemia**

In 1996-1997 the National Human Rights Commission of India identified maternal anaemia as a violation of the right to life and the right to health. Easily avoidable iron and iodine deficiencies were causing serious health problems among pregnant women as well as death and mental disabilities in infants. Over the following years, the Commission worked with government ministries both at the central and state levels and other partners to deal with the problem. In the year 2000, it organized a workshop on 'Health and Human Rights in India with Special Reference to Maternal Anaemia'. This workshop made some valuable recommendations and

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<sup>27</sup> UN General Assembly, 'Principles Relating to the Status of National Institutions' UN Doc. A/RES/48/134 (20 December 1993), Annex, at paras. 3(a)-3(b).

contributed to a wider recognition of the right to health. It also resulted in some important changes in national health practice including national distribution of supplements to pregnant women; nutrition education; and improved mother and child health services in rural areas. During the year 1999-2000, the Commission examined the observations and recommendations of the CEDAW Committee before which the Government of India had presented its first country report, and recommended several steps that the Indian Government should take to reduce maternal anaemia. It recommended, in particular, the gender sensitization of health workers, and a specifically targeted health care campaign to combat discrimination against girls and women with regard to access to nutrition so as to effectively combat maternal anaemia. It also recommended the strengthening of the National Reproductive and Child Health Programme and called for concerted efforts to upscale the National Nutritional Anaemia Control Programme from the point of view of bringing down maternal mortality and low birth weight amongst children.

### **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 should 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. The report of the Colloquium can be accessed at <http://india.unfpa.org/drive/ColloquiumReport.pdf>. 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 adopting a rights approach to population stabilization that should be based on the principles of choice, equity and quality of care.

### **Malaysia: Involvement in development of national policy on reproductive and social health**

The Human Rights Commission of Malaysia was involved in consultation for the development of a national policy on reproductive and social health. While not all the Commission’s recommendations were accepted, its involvement helped to strengthen the link between reproductive issues and human rights. The Commission also identified several matters that had come to its attention as issues of concern that should be reflected in the population policy. These included the stigma around unwed motherhood leading to procurement of unsafe abortions by adolescents and abandonment of babies. The Commission subsequently provided recommendations to the Government on how these problems could be effectively addressed in a way that promotes human rights.

**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 (dealing with marriage, family, etc.). 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.

**Afghanistan and Timor Leste: Supporting legislation to deal with violence against women**

In Afghanistan, violence against women is a major obstacle to effective realization of reproductive rights. The Afghanistan Independent Human Rights Commission has accordingly prioritized this issue. In 2008, the Commission worked closely with the government in drafting a new law on violence against women. The law has been finalized and is now in force. A new department, dealing with violence against women, has been established in the Office of the Attorney -General and is now operating in several provinces. In Timor Leste, the Provedor for Human Rights and Justice was involved in the development of legislation relating to domestic violence, an issue with direct implications for a range of reproductive rights in that country.

**The Philippines: Advisory opinion on law restricting access to birth control**

The Commission on Human Rights of the Philippines has recently provided the national government with a written advisory opinion on the legality of a local government ordinance restricting access to birth control. Prior to drafting the opinion, the Chair of the Commission held a dialogue with relevant non-governmental organizations and other stakeholders. The advisory opinion evaluated the ordinance in light of the obligations of the Republic of the Philippines under international human rights law – most particularly the CEDAW Convention. It found that the law breached those obligations. The Commission has further called for a public inquiry into this issue.

**Timor Leste and Republic of Korea: Involvement in national discussions on abortion law**

The Provedor for Human Rights and Justice of Timor Leste was involved in national discussions regarding the criminalization of abortion, where together with other civil society members and the Government, it undertook a concerted effort to bring the provisions of the draft criminal code in line with the CEDAW. The Human Rights Commission of Korea has recently 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 current situation and options for legal and policy reform. The Commission considers itself well situated to moderate these sensitive discussions, which must, by necessity, involve all stakeholders.



### **India: Research into prenatal sex selection and female infanticide**

The National Human Rights Commission of India first took up the issues of prenatal sex selection and female infanticide in 2004, during regional and national consultations on “Public Health and Human Rights”. 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 the cases registered by the States/Union Territories under the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT) and identify the hurdles in filing of such cases and the final orders passed on these cases, thus focussing on the impediments in the implementation of 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 analyze the existing problem of prenatal sex selection in India and create awareness about issues, concerns and actions relating to it. With regard to the issue of prenatal sex selection, the Commission had earlier also recommended that a vigorous and comprehensive national campaign needs to be undertaken as it is a matter which requires urgent and utmost concern of the Government of India and the State Governments.

### **3.3. Innovations and good practices in relation to identifying and responding to violations**

The Paris Principles recommend that the mandate of NHRIs extend to reporting and recommending on “any situation of violation of human rights”.<sup>28</sup> To that end NHRIs should be empowered to collect information from all sources and, preferably, to hear and respond to complaints of violations from individuals and others.<sup>29</sup> All member institutions of the APF undertake at least some work that can be described as protecting and responding to human rights violations. Much of this work is undertaken through a complaints mechanism. However some institutions work outside the complaints system to identify and respond to violations of human rights through, for example, the conducting of enquiries suo moto and visits to detention facilities.

In relation to reproductive rights there were significant differences in the way in which (and the extent to which) participating NHRIs were involved in actually identifying and responding to violations. For example, while most institutions reported that they had received no complaints about violations of reproductive rights, some reported very high numbers of such cases. A small number of NHRIs were actually involved in service delivery: providing victims of human rights violations with support and assistance and referring them to appropriate agencies for further care.

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<sup>28</sup> Ibid. at para.1(a)(ii)-(iv).

<sup>29</sup> Ibid. at para. 3.

**Afghanistan and Jordan: Mediating complaints of violations of reproductive rights**

Mediation, with its focus on resolving conflict and repairing relations rather than addressing underlying problems, may not be the optimal method for dealing with allegations of severe human rights violations. However in some cases and in some countries, mediation may offer the only opportunity to improve individual situations. The Afghanistan Commission noted that because of serious weaknesses in public administration, even the most egregious violations of reproductive rights occurring in that country often remain unresolved. In attempting to respond to these challenges, the Commission has had some success with mediating cases involving violations of reproductive rights. Particularly when such cases involve 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. The National Centre for Human Rights of Jordan has adopted a flexible approach to handling complaints that appears to be 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 lack of access to essential services (the 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 ministry.

**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 sterilising procedures being performed on persons with disabilities, particularly girls and young women. In a series of court cases (including *In re Marion* in the High Court of Australia in 1992) the Commission argued for improved legal scrutiny of decisions to perform sterilising medical or surgical procedures. The Commission subsequently monitored the implementation of the important legal principles that emerged from this case, publishing major research papers in 1997 and 2001 about sterilisation being performed on young women with disabilities for various purposes. The Commission has continued to argue for improvement in the legal framework that applies to decision-making in respect of sterilisation of children. Its research provided commentary on the distinction between therapeutic and non-therapeutic sterilisation and the key principles of best interests of the child and procedure of 'last resort'. The research analysed the reasons that are commonly given in support of the sterilisation of girls and young women and identified alternative and less invasive procedures by which similar outcomes might be achieved.

**Australia: Responding to pregnancy-related discrimination**

More than one in five complaints received by the Australian Human Rights Commission relate to pregnancy-based discrimination (2008-2009 figures). In addition to dealing with these complaints, the Commission has highlighted the issue of pregnancy-related discrimination in its "Gender Equality Blueprint 2010" which makes specific recommendations for legislative and policy reform.

**Republic of Korea: Using the complaints procedure to change policy towards mothers**

The National Human Rights Commission of Korea has recently dealt with two complaints in a way that has already led, in one instance, to important policy changes within government. The first complaint related to the right of incarcerated women to keep their infants with them in detention and the availability of facilities to make this possible. The second complaint related to the exclusion of a girl from school on the basis of her pregnancy. Both cases were resolved in favour of the complainant. In the school exclusion case, a submission by the Commission to the relevant government department resulted in substantial policy changes that have since been fully implemented. In the detention case, the Commission's recommendation to the government is currently under consideration.

**3.4. Innovations and good practices in relation to overcoming cultural and religious resistance**

Almost every NHRI consulted for this study emphasized the sensitive and potentially controversial nature of reproductive rights. Particularly during follow-up discussions, many respondents 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. Several NHRIs were able to cite examples of activities or innovations that were specifically designed to overcome cultural and religious resistance to full recognition of reproductive rights.

**Afghanistan: Building alliances and partnerships**

For a multitude of reasons, including lack of resources, the Afghanistan 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 forced marriage, wife beating and self-immolation.

**Malaysia: Acting as a bridge between government and civil society**

In Malaysia, as in many other countries, there can be differences of opinion in relation to reproductive rights issues between the Government and civil society groups. The Malaysian Human Rights Commission plays an important role in bringing the Government and civil society together. It has, for example, organized meetings between non-governmental organizations and the government on certain sensitive issues related to reproductive rights. It appears that the government in particular is more amenable to dialogue with civil society when this is facilitated or mediated by the Commission.

### **Jordan: Involving religious authorities in discussion of sensitive issues**

The National Centre for Human Rights of Jordan recently 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 conventions would allow abortion in such circumstances. The Centre ensured that the debate included a cleric who was able to pronounce on 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 to participate in discussions on a future strategy for reproductive health rights (see further below).

## **3.5. Innovations and good practices related to NHRI working methods and procedures**

The work practices of NHRIs are directly related to their capacity to effectively integrate reproductive rights. For example, the way in which the complaints procedure is structured, or monitoring is undertaken, can determine whether or not issues of reproductive rights are brought to the attention of the NHRI. The capacity of the NHRI to establish and maintain strong working relations with relevant government ministries and service providers is also relevant. Several respondents pointed out that these bodies had the information, data and contacts that allowed the NHRI 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”.

*“National 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”*

Afghanistan Independent Human Rights Commission: telephone communication

Another relevant consideration is whether the NHRI has created a ‘space’ within which reproductive rights can be considered, addressed and reported on. It was noted in the previous section that very few NHRIs have identified reproductive rights as a specific area of work for their institution. This is slowly changing and several NHRIs are currently engaging in consultations aimed at providing the structure for a future work plan or strategy on reproductive rights. One NHRI has begun to include information on reproductive rights in its annual reports.

Several institutions consulted for this study pointed out that reproductive rights affect the staff of NHRIs as well as their constituencies. Integration of reproductive rights into the work of a NHRI should therefore extend to the institution's own personnel policies and practices. Freedom from discrimination related to pregnancy and marriage; the availability of childcare; and provision for flexible working hours can all contribute to ensuring an environment that is conducive to reproductive rights of NHRI staff.

### **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. 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.

### **The Philippines: Community consultation for a reproductive rights strategy**

The Commission on Human Rights of the Philippines has recently decided to develop a reproductive health rights program. In developing this program the Commission will begin by holding discussions at 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. They will also enable the Commission to gain an insight into the situation of reproductive rights. In addition to their monitoring value, such insights will help to clarify needs and priorities as well as to identify obstacles to the effective realization of reproductive rights.

### **Qatar: Community survey and consultation on reproductive rights**

In February 2011, the National Human Rights Committee of Qatar will conduct a community survey on reproductive rights. The survey will involve the production and distribution of a questionnaire to 1,000 women. Five hundred of these will be women living in remote communities, identified by the Committee as a particularly vulnerable group with respect to reproductive rights matters. The Government will help to distribute the survey to women in remote communities but will otherwise not be involved in this exercise. The purpose of the survey is to assess the situation (nature, size and scope of the problem); to identify the priorities of women in relation to reproductive rights; and to gauge community reaction to a proposed engagement by the Committee in this area. The results of the survey will be published in the Committee's 2011 annual report. On the basis of those results the Committee expects to develop training courses, seminars/roundtables and other events aimed at raising awareness about reproductive rights and addressing issues of concern that have been identified.

**Mongolia: Using the Millennium Development Goals and public health data to monitor reproductive rights**

The National Human Rights Commission of Mongolia uses the MDGs (especially as they relate to child and maternal mortality) as one of its benchmarks when monitoring or advocating around reproductive rights. The Commission sees this as an affirmative ground for advocacy: the MDGs have universal support and are well understood by the Commission's partners, particularly within government where much important data is generated. In monitoring reproductive rights, the Commission works closely with the health ministry. This relationship ensures that its own information position is strong, enabling effective policy development and follow-up. A Commission official noted that: "this cooperation helps to make sure that our activities are relevant and cohesive". The MDGs are also used by the Malaysian Human Rights Commission in its monitoring of sexual and reproductive rights.

**New Zealand: Reporting on sexual and reproductive rights**

The New Zealand Human Rights Commission issues an annual "State of Human Rights" report. From 2011 the Report will include a section on sexual and reproductive rights. This section will be largely descriptive. It will avoid advocating a particular position on issues, rather seeking 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.

**Nepal: Support for Commission staff with babies and young children**

In December 2009, the National Human Rights Commission of Nepal opened a baby care centre (crèche) that provides care for the infants and babies of staff. This initiative found its authority in various provisions under the CRC and CEDAW and sought to address unsatisfactory maternity leave entitlements that affect all Government employees. Funding for the Centre is drawn from the Commission's operating budget. It is intended that this initiative may facilitate the opening of similar childcare centres in other Government and private offices.





## Challenges, risks and opportunities

Part 2 summarized the findings of this study with respect to challenges facing NHRIs in effectively integrating reproductive rights into their work. The present Part explores the identified challenges in more detail. It also considers the *risks* that NHRIs may face in seeking to implement their acknowledged mandate to protect and promote reproductive rights.

While challenges and risks are a major theme of this study, it is important to emphasize that NHRIs are being presented with valuable opportunities to take this issue forward. Some of the opportunities identified below are common to most, if not all, NHRIs. Other opportunities will be more relevant to particular institutions, or to groups of institutions which operate in similar ways or in similar environments.

### **4.1. Challenge: Lack of knowledge, common understanding and expertise**

In their written responses, most NHRIs did not identify lack of knowledge, understanding or expertise as a significant obstacle to the effective implementation of reproductive rights. However, as detailed above, a very different picture emerged during the follow-up discussions. At that point, almost every NHRI admitted that this was a major obstacle. In most cases, this situation referred to the NHRI itself: the institution as a whole was characterised as lacking formal knowledge in this area. Staff were said to be “unaware” of reproductive rights. They were also said to be “confused” about what the term actually includes. No NHRI consulted was able to identify true institutional expertise in the area of reproductive rights. This lack of expertise means that staff are not trained or even made aware of the various issues that arise in connection with reproductive rights. This impacts on all areas of the institution’s work: from monitoring to human rights education.

Lack of knowledge of reproductive rights can both reflect and compound a lack of knowledge of the situation of reproductive rights. Several respondents noted that they did not have a strong understanding of what were the most pressing problems. As one noted: “we need research. We need more information to find the neglected issues and work out where to focus our attention.”

One NHRI representative pointed out that there appears to be two different understandings of reproductive rights: a narrower one that refers solely to the rights that related directly to reproduction (access to family planning, rights implicated in pregnancy and birth, etc.); and a much broader understanding (which the questionnaire appeared to have adopted), that includes more tangential issues such as violence against women and discrimination in relation to civil status. During interviews and in their written communications, several NHRIs referred only to “reproductive health rights”. When questioned on this term, they noted that its use reflected



their understanding of the core focus of reproductive rights. One respondent suggested that the association of reproductive rights with health rights was almost uniform across the institution. Some added that bringing reproductive rights under the rubric of the right to health was a useful (or even vital) means of de-sensitizing the issue.

Confusion and lack of knowledge about reproductive rights within NHRIs appears to reflect the relatively unstructured and crosscutting nature of this area of rights. It was noted by many NHRIs that, unlike some other areas of their work, reproductive rights do not enjoy a strong and unified international legislative and policy framework. There is no detailed and definitive explanation of reproductive rights as understood under international law. There is also no international committee or body dedicated to monitoring reproductive rights. In the words of one respondent, “it is difficult to weave together the various instruments into a simplified, basic reference framework for reproductive rights.” Several NHRIs pointed out that they had been unable to access a concise statement of reproductive rights: the introduction to the questionnaire for the present study was, for several NHRIs, the very first coherent articulation of reproductive rights they had ever seen.

*“To be honest, we don’t really know much about reproductive rights. Before this [completing the questionnaire] I could not really have told you what reproductive rights really were”.*

NHRI Respondent: telephone communication

All NHRIs emphasized that lack of knowledge of reproductive rights extends to their constituencies. Rights-holders, most particularly women and girls, were seen to be uninformed about reproductive rights and unaware of the entitlements of protection and respect that these rights bring. Some NHRIs identified particular groups in relation to which lack of knowledge about reproductive rights was felt to be especially troubling. In most cases these groups are characterised by their relative isolation (rural women and girls, women and girl members of minority groups, conservative religious women and girls) or a particular set of vulnerabilities (disabled women and girls, migrant workers, sex workers). Several NHRIs pointed out that lack of knowledge among rights holders impacted on the work of the institution. An absence of complaints of violations of reproductive rights is one example. Lack of knowledge and awareness was also identified among those responsible for protecting and respecting reproductive rights including government officials, health workers and employers.

Widespread confusion and lack of knowledge about reproductive rights has a cascading effect on the ability of NHRIs to effectively integrate these rights into their work. Within the institution, officials working on training, outreach and monitoring may have a commitment to reproductive rights but insufficient knowledge or skills to incorporate the issue into their work. The most obvious result is that the NHRI does not engage on the issue at all. However, such lack of engagement also means that the NHRI itself is unable to contribute to raising awareness amongst rights-holders and duty-bearers. This contributes to a cyclical situation whereby those in a position to bring issues (or even allegations of violations) to the attention of the NHRI are not

sufficiently informed to do so. It can be expected that the very low rate of complaints related to reproductive rights reported by most institutions is an example of this cascading effect.

## 4.2. Challenge: Competing priorities and resource constraints

Most NHRIs are entrusted with a broad mandate to contribute to the promotion and protection of the full range of human rights. However, most institutions do not have the funds or the personnel to undertake the work that is already required or demanded of them. Choices must be made as institutions strive to match limited resources with identified needs and priorities. For some NHRIs, this means that without external support, focused attention on reproductive rights is simply not achievable in the short- or medium-term. For others, competing priorities and resource constraints mean that the current approach of ad-hoc consideration of reproductive rights in the context of other thematic areas, such as health or women's rights, must be continued.

*“The present staffing limitations, both in terms of numbers but also expertise, impede the institution to be fully involved in these issues for the next few years at least”.*

Provedore of Timor Leste: written communication

The majority of NHRIs consulted for this study had either formally or informally decided to focus their attention on particular issues or areas of concern. The Australian Human Rights Commission, for example, has identified human rights education and violence as the overarching theme of its work for the next few years. All activities and programs must relate to and reinforce these priorities. While reproductive rights can certainly be incorporated into these two issue areas, the opportunities for this to happen without active effort are likely to be limited. The Human Rights Commission of Sri Lanka provides another, very different example of an institution whose priorities have been set by national circumstances, in this case a protracted internal armed conflict. In relation to reproductive rights, the Commission's observation that “[o]ther priorities have taken precedence. We have not had time to think about these issues too carefully”, is not surprising. The Human Rights Commission of Nepal reported a similar focus on conflict-related violations, to the exclusion of less high profile issues such as reproductive rights.

*“We do care about reproductive rights and we think this is an important issue. However, sometimes these things are just a question of resources”.*

NHRI respondent: telephone discussion

There is a clear link between awareness of particular rights and the manner in which an institution's needs and priorities are identified. In other words, issues or areas that are not well understood within a NHRI, its constituency or the broader community will generally not be prioritized for action. The Australian Human Rights Commission used the example of a ‘listening tour’ conducted by its Sex Discrimination Commissioner. Reproductive rights were not directly addressed during this exercise and were not identified as a major issue by those

consulted. Accordingly, the priorities identified by the Sex Discrimination Commissioner do not specifically include reproductive rights.

With some exceptions, issues related to reproductive rights generally fall with the “economic, social and cultural rights” rubric. It is relevant for the present study to consider whether the general tendency of human rights systems and processes to prioritize civil and political rights has impacted on the way in which NHRIs have or have not integrated reproductive rights into their work. When asked for their views on thematic areas of reproductive rights that NHRIs could be engaged in, respondents tended to agree most strongly with a potential role for NHRIs in areas that related to civil and political rights. When questioned, most NHRIs were quick to point out that their work covered all areas of rights, and that there was greater awareness of, and decreasing resistance to economic, social and cultural rights. Several institutions went further, identifying a marked shift in their work towards a more holistic view of human rights. However some institutions noted that bias towards more traditional conceptions of human rights was still very strong. The Commission for Human Rights of the Philippines, for example, was subject to a legal challenge for its work in the area of economic, social and cultural rights. The Commission is expecting to be similarly challenged as it begins to work more directly on issues related to reproductive rights.

### **4.3. Challenge/Risk: Sensitivities and controversies related to reproductive rights**

All NHRIs consulted for this study confirmed that at least some aspects of reproductive rights are sensitive and/or controversial and that this has affected the extent to which reproductive rights have been integrated into the work of the institution. However, the present study has found that the nature and depth of sensitivities and controversies differ significantly from institution to institution.

*“These matters are still taboo. We need to expand the society’s visions related to reproductive rights.”*

National Centre for Human Rights of Jordan: telephone communication

While most NHRIs did not view sensitivities around reproductive rights as an internal problem, a small number noted that reluctance to court controversy or negative attention could lead the NHRI to self-censor its work. One NHRI pointed to the political process by which Commissioners are appointed. The strong influence of religious institutions in that country meant that those appointed with support of the religious community did not want to touch sensitive issues that could offend or upset those who were responsible for their appointment.

For some NHRIs operating in highly conservative and patriarchal societies, it is the link between reproductive rights and women’s empowerment that appears to be particularly problematic. Political, social and cultural resistance to genuine equality between women and men presents an initial hurdle to engaging in reproductive rights that can be very difficult to surmount. As a result,

even a preliminary conversation between the NHRI and its constituency or the government about reproductive rights is very difficult to initiate.

The National Human Rights Commission of Afghanistan reports to be operating in such an environment, where discussion about reproductive rights within government and society is felt to be “taboo”. Reproductive decision-making is firmly in the hands of men and there is no strong community commitment to changing this entrenched situation. Other NHRIs reported similar difficulties.

*“The patriarchal culture that dominates our country and the deep influence of the [dominant religion] are hindrances to the advancement and effectiveness of the protection and promotion of women’s rights including some reproductive rights”*

NHRI Respondent: questionnaire

Other NHRIs are working within societies in which only some aspects of reproductive rights are sensitive or controversial. For example, in countries as diverse as the Maldives, Malaysia, Mongolia, Thailand and Jordan, family planning services are freely available. In theory at least, couples are able to exercise control over reproductive decision-making including the number and spacing of their children. However, in these same countries, other aspects of reproductive rights can be strongly curtailed or social pressures can mean that in-principle access to information and services does not procure the desired result. In Jordan for example, issues around reproductive rights are still too sensitive to be discussed openly, a situation that contributes to lack of information and inability of some parts of the community to access services. In Malaysia, culture and tradition mean that some individuals are reluctant to seek out family planning services. In Mongolia, systemic rights problems affecting the rural poor were identified as responsible for limiting access to reproductive rights and services.

A small number of NHRIs do not feel overly constrained by sensitivities or controversies around many issues related to reproductive rights. The NHRIs of Australia, South Korea and New Zealand stand out in this regard. Nevertheless, even these institutions reported that the way in which they approached certain issues around reproductive rights was affected by perceptions of potential controversy. For example, the NHRIs of both Australia and New Zealand have been careful not to become involved in broader community discussions around abortion: it is considered that the risks to the institution of weighing into community debates on this issue would likely outweigh potential benefits. In contrast, as noted previously, the NHRI of Korea considers itself well situated to moderate sensitive discussions around abortion law reform and will be convening community discussions on this issue.

#### **4.4. Opportunity: NHRI mandate for and commitment to reproductive rights**

As reported at Part 2 above, all NHRIs participating in this study were emphatic that working to protect and promote reproductive rights is a part of their mandate and an important institutional responsibility. In their written responses to the questionnaire and in follow-up discussions, all institutions expressed their full commitment to reproductive rights.

*“We believe reproductive rights are important and that our Commission should be protecting them”*

National Human Rights Committee of Qatar: telephone discussion

Mandate and commitment are essential pre-requisites to the effective integration of reproductive rights into the work of NHRIs. For that reason, the existence of a common mandate and the expression of common commitment should both be viewed as important opportunities. While the obstacles in relation to knowledge and expertise are acknowledged as significant, they are not viewed as insurmountable. In other words, all NHRIs participating in this study believe: (i) that they are capable of playing a role in this area; and (ii) that they are able to improve on the work currently being undertaken. These two beliefs could provide a strong foundation on which integration efforts or capacity-building efforts can be built upon with NHRIs.

As noted previously, many NHRIs have shifted away from an exclusive focus on civil and political rights and towards a more holistic view of human rights. This shift has important consequences for reproductive rights that tend to cut across a wide range of rights categories. Some NHRIs for example, have located their mandate to work on reproductive rights within the right to health. As noted above, this approach can have important strategic benefits, particularly in countries where reproductive rights are especially sensitive and controversial.

#### **4.5. Opportunity: NHRI experience in integrating new/sensitive human rights issues**

National human rights institutions have generally had extensive experience in dealing with new or sensitive human rights issues and are often at the vanguard of national discussions of such issues. They have often been forced to work “cleverly and creatively” to overcome the social and cultural barriers to discussion and action. Many respondents identified this experience as a distinct advantage for NHRIs in their efforts to integrate reproductive rights. It was noted, for example, that the human rights angle permits a certain level of detachment from social or cultural sensitivities. NHRIs can point to internationally agreed standards on a particular issue and can direct discussion of even the most controversial issues into familiar rights categories such as non-discrimination, equality and justice.

*“The human rights framework provides a way for initiating difficult conversations, such as those about sexual and reproductive rights. National human rights institutions are used to talking about difficult issues, this is a strength and an opportunity”.*

New Zealand Human Rights Commission, telephone discussion

Experience in working on new or controversial areas of human rights advocacy has given many NHRIs a confidence to tackle reproductive rights – even in the face of formidable obstacles. A number of respondents pointed to their work in disability and sexual rights as providing a useful template for more consistent and effective engagement in this area. The most commonly cited comparative experience related to LGBT rights, explored in more detail in the text box below.

### **CASE STUDY: APF MEMBER INSTITUTION WORK ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER (LGBT) RIGHTS**

In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts outlined a set of international standards relating to sexual orientation and gender identity. The result was the Yogyakarta Principles: a universal guide to human rights, which affirm binding international legal standards with which all States must comply. In May 2009, the APF brought together member institutions to discuss the role of NHRIs in promoting implementation of the Yogyakarta Principles. Participants also discussed the practical ways that NHRIs could use their functions and powers – including investigating complaints, reviewing laws and policies, holding national inquiries and public education – to better protect and promote the rights of gay, lesbian, bisexual and transgender people. APF members concluded the meeting with a strong rejection of “stereotyping, exclusion, stigmatisation, prejudice, intolerance, discrimination and violence” against gay, lesbian, bisexual and transgender people as well as an affirmation that the expression of religious and other beliefs should not violate the rights and freedoms of others.

The Workshop also recommended further action including that:

- The APF Advisory Council of Jurists review national laws in the countries of APF members, determine if they are consistent with international human rights standards relating to sexual orientation and gender identity, and advise what amendments may be required;
- The APF facilitate information exchange among its member institutions on their human rights work in relation to sexual orientation and gender diversity;
- APF member institutions be supported to build their knowledge and awareness of human rights in relation to sexual orientation and gender identity, through training programs and staff exchanges.

These recommendations are now under implementation. The APF Advisory Council of Jurists (ACJ) commenced its review in early 2010 and presented preliminary findings to the 2010 APF Annual Meeting held in Bali, Indonesia. The preliminary report notes that while international human rights law protects and promotes the rights of all persons, gay, lesbian, bisexual and transgender people continue to experience extra-judicial killings, torture, violence and rape, as well as discrimination in employment, education, housing and health services. The ACJ presented a number of recommendations to support APF members take concrete steps to address these issues, outlining a staged approach that recognises the competing priorities that NHRIs need to balance, the different contexts in which they operate and their varying levels of resources available to them. The final report is available at <http://www.asiapacificforum.net/acj/references/sexual-orientation>.

Also in 2010 the APF coordinated a joint funding application to secure financial support to assist five member institutions implement a range of targeted activities that will raise awareness and bolster protection for the rights of lesbian, gay, bisexual and transgender people. These activities include consultations and advice on legal protection against discrimination (Australia); a national training program to support reporting, analysis, investigation and prosecution of human rights violations against LGBT people (Indonesia); legal analysis and awareness-raising (Mongolia); the convening of a major national conference on the issue (New Zealand); and development of a human rights education module for local government or community groups (the Philippines). Further as a result of the 2009 APF Workshop on the Yogyakarta Principles, the Malaysian Human Rights Commission has begun a study on the rights of LGBT persons in Malaysia.





## Towards the future

It was originally envisaged that this study would conclude with a detailed strategy for taking forward the integration of reproductive rights into the work of national human rights institutions of the Asia-Pacific region. However, the research undertaken for the study and detailed above has confirmed that such a step would be premature. NHRIs are only now beginning to grapple with issues related to reproductive rights: they need more information and a better insight into each other's work before a concerted strategy can be developed and effectively implemented. In addition, it is evident that any credible strategy on reproductive rights must be the result of close consultation within and between those NHRIs who are expected to participate in its implementation. An external study of this kind can, at best, help to facilitate that process.

This purpose of this section is therefore to explore some areas and issues that must be part of any future development of an integration strategy. Specifically, how can NHRIs best be supported in their efforts to integrate reproductive rights? To what extent do NHRIs see the APF as playing a role in policy development in this area? What steps could be taken, at this early stage, by the APF and its member institutions to advance the integration process? Each of these questions is considered further below.

Of course, the research undertaken for this study has provided some important information that could be used as a starting point for a strategy to guide and support the integration of reproductive rights into the work of NHRIs. For example, the study confirmed a widespread recognition that reproductive rights form part of, and are protected by, international human rights law. Just as importantly, APF member institutions overwhelmingly agree that they have a role to play in promoting and protecting human rights and that these rights potentially cut across all major areas of NHRI work. The Report should therefore be used as a reference point for future work in this area, supplemented of course, by additional insights secured through subsequent activities.

### **5.1. Supporting NHRI efforts to integrate reproductive rights**

While the questionnaire did not specifically address this issue, all NHRIs were asked, during follow-up discussions, about how their efforts to integrate reproductive rights could best be supported by external bodies such as UNFPA and APF. Inevitably, this issue was usually part of a broader discussion about the goals of the individual NHRI in this area and its perceptions of the major challenges and risks to effective integration.



All institutions consulted were of the view that that they would benefit greatly from external support of one form or another. Some institutions had very general expectations of such support while others were much more specific about what was required.

### **Support to improve technical capacity**

As noted at various points in this report, there was widespread agreement that the lack of knowledge and technical capacity in the area of reproductive rights is hampering the effective integration of those rights into the work of NHRIs. The overwhelming majority of NHRIs expressed a wish to receive external support aimed at improving their technical capacity. Relevant points raised during the follow-up discussions include the following:

- Most NHRIs see value in regional or sub-regional training that would involve multiple institutions, for example those linked by common language, political systems or culture, or which face similar challenges in integrating reproductive rights. In addition to supporting the sharing of experiences and insights (see below), it was felt that such training could help to promote common strategies and approaches that would contribute to an overall strengthening of reproductive rights across NHRIs. Regional training sessions may also enable a less constrained discussion of issues and areas that are particularly sensitive or controversial within the NHRI's constituency.
- One NHRI noted however that regional training runs a serious risk of impact dilution. For example, if only one or two representatives from each NHRI participate in a particular activity, it is not always possible to guarantee that those persons who are best able to influence institutional change are selected. From this perspective, regional training was seen much more as a "first step" that would provide a foundation for subsequent, more targeted training initiatives at the national level.
- Some NHRIs expressed a strong preference for national-level training from the outset, noting the country-specific nature of many challenges and risks related to reproductive rights. In this regard, several NHRIs pointed out that the greatest impact could be achieved by ensuring that those involved in policy-making and service delivery are trained alongside NHRI officials. This approach can also help to foster the important national relationships referred to further below.
- Several NHRIs warned of the need to ensure that any national-level training in reproductive rights is carefully tailored to national conditions and realities. It was noted that APF-supported training was often conducted in English, a severe constraint in some countries to ensuring that those who are most able to benefit from such training can actually participate effectively, or indeed at all.
- Several NHRIs identified very specific needs in relation to capacity building. One institution, for example, seeks guidance on developing survey instruments to measure the extent of reproductive rights knowledge and implementation. Another institution wishes to receive technical training on analysis of reproductive laws and policies.

### **Support to enable sharing of experiences and insights**

Many NHRIs expressed their enthusiasm for the UNFPA-APF initiative that prompted the present report, noting that a mapping of current responses to reproductive rights as well as challenges and obstacles would contribute enormously to the current state of comparative knowledge in this area.

While the present report is clearly an important first step, there was unanimous agreement among respondents that external support directed to facilitating the sharing of experiences and insights would be an important contribution to the integration of reproductive rights. Regional training and awareness raising workshops were seen as an important vehicle for such sharing. Other suggestions put forward by one or more institutions included the nomination of a reproductive rights focal point; allocation of space on the APF website for posting of activities and experiences; and staff exchanges and visits.

### **Support to promote internal partnerships**

NHRIs are acutely aware that they should not carry sole or even primary responsibility for realization of reproductive rights at the national level. While some NHRIs are engaged in service delivery, this usually occurs in situations where those who should be delivering services are unable or unwilling to do so. All NHRIs consulted viewed the promotion of internal partnership between their institution and relevant agencies (such as health ministries; religious ministries; ministries with responsibilities related to women and children; health providers; religious bodies; and civil society groups) as critical to their effectiveness in this area. While some institutions have made important progress in developing collaborative relationships, many feel the need for external advice and support to ensure that they maximize available opportunities.

## **5.2. An advocacy or policy role for the Asia Pacific Forum?**

During follow-up discussions, NHRIs were asked whether they saw a role for the APF in helping to develop a regional policy on reproductive rights. The obvious comparison in this regard (made by a number of respondents) is with APF's work on LGBT issues, documented in the previous part. It is important to note that these discussions were very general and NHRIs were not presented with a particular plan or approach on which to react or comment. The responses are correspondingly general and impressionistic.

There was widespread agreement, amongst NHRIs, that APF is uniquely and strategically placed to support their work in new areas, particularly when such areas are sensitive or controversial

*“We can go further with APF. We can go home and say that [a particular policy] is a regional position. That can be very helpful when we are trying to introduce new ideas or challenge old ones.”*

NHRI Respondent: telephone discussion

Several NHRIs noted that regional policy development would inevitably be constrained by the limitations of international law and policy. As noted in Part 1 of this report, there is not yet a clear international consensus on the substantive content of reproductive rights. This has contributed to the widespread confusion around reproductive rights reported above. Regional entities such as APF could help to promote a more detailed and coherent articulation of reproductive rights but may not be able to surmount the disagreements and divisions that have plagued this area of human rights.

Overall, NHRIs were supportive of APF taking a more active role in promotion and protection of reproductive rights. The lack of specific proposals for how this could be done is likely a reflection of limitations in current knowledge and understanding as well as the open-ended way in which discussions were conducted.

### **5.3. Proposed next steps: consultative workshop on reproductive rights**

The activity of which this report forms a part envisages the holding of a workshop for representatives of all APF member institutions to discuss the issue of reproductive rights and possibilities for their more effective integration. The elaboration of a detailed concept note for this activity will not take place until APF and its member institutions have been given the opportunity to consider and provide comments on the present report.

The following is a brief outline of possible workshop structure and content. NHRIs should be encouraged to provide input into this outline with a view to ensuring that the concept note is in line with their needs and priorities.

**Participants:** To be drawn from each APF member institution, selected for their ability to influence institutional policy with respect to reproductive rights.

**Outcome:**

- (i) Improved understanding of reproductive rights including their place in the work of NHRIs and obstacles to their effective integration;
- (ii) agreement amongst participating institutions on the key elements of a strategy to support integration of reproductive rights;
- (iii) agreed timetable for implementation of the strategy and identification of roles and responsibilities.

**Possible areas of focus:** It is suggested that the structure of the present report could provide a useful starting point for identifying possible areas of focus, namely.

- Understanding reproductive rights: overview of international law, human rights mechanisms, UN agencies (including the UNFPA's role) and policy; discussion of complexities and controversies;

- 
- NHRI activities in the area of reproductive rights: patterns, gaps, transferability of lessons learned
  - Obstacles and risks to integration of reproductive rights and how they have been or could be addressed
  - Supporting NHRI efforts to integrate reproductive rights: priorities for action
  - Development of an integration strategy with internal (institution-specific) and external (regional/international) elements.



## List of participating national human rights institutions

### **Afghanistan**

Afghanistan Independent Human Rights Commission

### **Australia**

Australian Human Rights Commission

### **India**

National Human Rights Commission of India

### **Jordan**

Jordan National Centre for Human Rights

### **Malaysia**

Human Rights Commission of Malaysia

### **Republic of the Maldives**

Human Rights Commission of the Maldives (Associate APF Member)

### **Mongolia**

National Human Rights Commission of Mongolia

### **Nepal**

National Human Rights Commission of Nepal

### **New Zealand**

New Zealand Human Rights Commission

### **Philippines**

Philippines Commission on Human Rights

### **Qatar**

National Human Rights Committee of Qatar

### **Republic of Korea**

National Human Rights Commission of Korea

### **Sri Lanka**

Human Rights Commission of Sri Lanka (Associate APF Member)

## List of participating national human rights institutions

### **Thailand**

National Human Rights Commission of Thailand

### **Timor Leste**

Timor Leste Office of the Provedor for Human Rights and Justice

## INTEGRATING REPRODUCTIVE RIGHTS INTO THE WORK OF NATIONAL HUMAN RIGHTS INSTITUTIONS

### QUESTIONNAIRE FOR MEMBER INSTITUTIONS OF THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS.

#### 1. Introduction to this activity

At the 13<sup>th</sup> Annual Meeting of the APF, held in Kuala Lumpur, Malaysia in July 2008, APF Forum Councillors considered and formally approved a proposal to undertake joint activities with the United Nations Population Fund (UNFPA) in the area of reproductive rights. The principal activity agreed between the APF and UNFPA is the development of a publication on integrating reproductive rights into the work of APF member institutions.

The first phase of the APF-UNFPA project will run for six months. The major steps and provisional timelines are as follows:

1. Distribution of a questionnaire to all APF member institutions	First week July 2010
2. Return of questionnaires	5 August 2010
3. Follow up discussions (principally by phone although some personal meetings may be arranged) with all APF member institutions	Aug-Sep 2010
4. Development of a case study document outlining opportunities, challenges and good practices in integrating reproductive rights into the work of APF member institutions and incorporation of main findings into a draft strategy for taking this forward	Sep-Oct 2010
5. Review of the strategy at a dedicated APF workshop	Nov. 2010 (tbc)
6. Finalisation of the strategy	Dec. 2010

It is anticipated that a second phase will involve enhancing the capacity of NHRIs on reproductive rights issues in partnership with UNFPA.

#### 2. The questionnaire

The questionnaire is attached to this note. It is being distributed to all APF member institutions. Responses are due on 5 August 2010. The following points should guide Member Institutions in completing the questionnaire.

- The questionnaire is divided into five parts. Some questions only require you to mark a box that most closely matches your response. Most of the questions require a written answer and most will need more space than has been allocated. Please use the Word version to include your answers and take as much space as you wish to do so. Please feel free to attach any documents you think will assist to expand on your responses.
- Completion of the questionnaire should be a consultative process. You are being asked for the views and insights of your institution, not of one or two staff members. Note that each institution will be asked to participate in a follow-up discussion that will take place either by phone or in person. It will be important that those to be involved in those consultations have also been involved in completing the questionnaire.



### 3. Understanding reproductive rights

While reproductive rights are based upon and cover already existing rights, there is no standard definition of the term “reproductive rights” itself. According to the United Nations Conference on Population and Development (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.*”

The United Nations human rights system has linked reproductive rights to other rights – for example, the right to health. In 2003, the 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”.

The Committee on Economic, Social and Cultural Rights and the Special Rapporteur on the right to health have 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 have access to 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 social or traditional 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, physical and mental disability, is essential to ensure the enjoyment of the right to sexual and reproductive health.

Elements of the right to sexual and reproductive health may include the following:

- Reproductive decision-making including voluntary choice in marriage, family formation and determination of the number, timing and spacing of one’s children; 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 and services to adolescent girls and boys
- Freedom from harmful practices such as early marriage, sale in marriage, female cutting/female genital mutilation, 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, choice of female medical practitioners.
- Freedom from sexual violence
- Freedom from forced sterilization, forced abortion, forced contraception

- Freedom from discrimination on any basis, including sex, age, marital status, pregnancy, sexual orientation, ethnicity, language, religion, culture, physical and mental disability, HIV status, 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

**QUESTIONNAIRE ON REPRODUCTIVE RIGHTS IN THE ACTIONS OF  
NATIONAL HUMAN RIGHTS INSTITUTIONS**

<b>MEMBER'S DETAILS</b>	
<b>Member institution</b> This questionnaire has been completed on behalf of:	
_____	INSTITUTION'S NAME
<b>Respondent</b> This questionnaire has been completed by:	
_____	NAME and TITLE
<b>Contact details</b> The respondent/s may be contacted at:	
Phone: _____	
Email: _____	
<b>Approval</b> The responses in this questionnaire have been approved by:	
_____	_____
NAME and TITLE	SIGNATURE

**PART A: REPRODUCTIVE RIGHTS IN YOUR JURISDICTION**

1. What are the major issues in reproductive rights faced by your country?

Please list.

(i)

(ii)

(iii)

Other:

2. Which groups (e.g. ethnic, religious groups, rural women) in your country are particularly vulnerable to weak recognition of reproductive rights? Please specify.

**PART B: REPRODUCTIVE RIGHTS AND YOUR INSTITUTION**

3. Does your institution believe that it has a role to play in relation to reproductive rights? Why?

4. Has your institution done any work to promote and protect reproductive rights? If no, please indicate what may be the reasons and then go to question **5(d)**.

5. If yes, please answer the following questions.

(a) What have been your institution's priorities and/or areas of action in relation to reproductive rights?

(b) What steps has your institution taken in these areas?

(c) What has been the effect of your institution's activities and interventions in the area of reproductive rights? In other words, is anything different because of your institution's work in this area?

(d) Has your institution received complaints dealing with reproductive rights violations? If yes, please give details including what response, if any your institution has provided.

6. What, in the view of your institution, are the major opportunities and challenges to securing the promotion and protection of reproductive rights?

### **PART C: PARTNERS IN REPRODUCTIVE RIGHTS**

7. Are you aware of national, regional or international agencies/NGOs working on reproductive rights in your country? Which are these? Do you have any kind of working relationship with any of these agencies/NGOs?

8. Does your institution engage with the international human rights system for protecting and promoting reproductive rights (for example, the UN Human Rights Council, the UPR, human rights treaty bodies, Special Procedures or other international forums)? If so, which parts of the international system has your institution engaged in and how?

**PART D: ENGAGING WITH REPRODUCTIVE RIGHTS**

**Question 9: Thematic components of reproductive rights**

There is widespread consensus that reproductive rights rest upon and encompass already existing rights such as the right to health, the right to freedom from discrimination, and the right to bodily integrity. However, while broad descriptions of what reproductive rights are meant to achieve are common, the specific content and thematic components of reproductive rights remain to be authoritatively defined.

A detailed and clearly articulated understanding of the content of reproductive rights is vital to their effective promotion. With this in mind, the following section nominates issues (in no particular order) that have been put forward as **examples** of reproductive rights. This is *not* intended to be an authoritative list. Some examples are disputed by members of the international community, and the authors of this questionnaire do not necessarily endorse their status as reproductive rights.

Do you see a role for your institution, either currently or in the future, in promoting and protecting the following examples of reproductive rights? Feel free to add comments in the spaces below each example.

*Please circle one*

	Strongly Agree	Agree	Disagree	Strongly Disagree
<p>(a) <b>Reproductive decision-making</b>, including voluntary choice in marriage, family formation and determination of the number, timing and spacing of one's children; access to the information and the means needed to exercise voluntary choice</p> <p>Optional comment:</p>	Strongly Agree	Agree	Disagree	Strongly Disagree
<p>(b) <b>Universal access to reproductive health services</b>, including family planning</p> <p>Optional comment:</p>	Strongly Agree	Agree	Disagree	Strongly Disagree

	Strongly Agree	Strongly Agree	Strongly Agree	Strongly Agree	Strongly Agree
	Agree	Agree	Agree	Agree	Agree
	Disagree	Disagree	Disagree	Disagree	Disagree
	Strongly Disagree	Strongly Disagree	Strongly Disagree	Strongly Disagree	Strongly Disagree
<p><b>(c) Appropriate reproductive/sexuality education, information and services to children and adolescent girls and boys</b> Optional comment:</p>					
<p><b>(d) Freedom from harmful practices</b> such as early marriage, sale in marriage, female cutting/female genital mutilation, sex-selective birth practices (both pre- and post-natal) Optional comment:</p>					
<p><b>(e) Access to and respect for non-harmful cultural reproductive practices</b>, for example the right to choose safe home birth, choice of medical practitioners of the same sex. Optional comment:</p>					
<p><b>(f) Freedom from sexual violence</b> Optional comment:</p>					
<p><b>(g) Freedom from forced sterilization, forced abortion, forced contraception</b> Optional comment:</p>					
<p><b>(h) Freedom from discrimination</b> on any basis, including sex, age, marital status, pregnancy, sexual orientation, ethnicity, language, religion, culture, physical and mental disability, HIV status, to ensure the enjoyment of reproductive rights Optional comment:</p>					

	Strongly Agree	Strongly Agree	Strongly Agree
	Agree	Agree	Agree
	Disagree	Disagree	Disagree
	Strongly Disagree	Strongly Disagree	Strongly Disagree
	<p>(i) <b>Maternal health</b>, 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 Optional comment:</p>		
	<p>(j) <b>Right to confidentiality</b> with respect to reproductive health information and services Optional comment:</p>		
	<p>(k) <b>Reproductive rights associated with the right to work and to participate in the community</b> Optional comment:</p>		

Please use this space to provide any additional information on or examples of the above.



### Question 10: Obstacles to reproductive rights

To what extent do you see the following factors (which are in no particular order) as an obstacle to protecting and promoting reproductive rights for your institution?

	<i>Please tick one</i>			
	Strongly Disagree	Disagree	Agree	Strongly Agree
(a) Cultural legitimacy/sensitivities				
(b) Religious sensitivities				
(c) Gender inequality				
(d) Lack of education				
(e) Poverty/Economic inequalities				
(f) Government/Political commitment				
(g) Insufficient representation of relevant interest groups /stakeholders				
(h) Lack of expertise within your country				
(i) Insufficient human resources within your country				
(j) Insufficient resources or competing priorities within the NHRI				
(k) Insufficient understanding/knowledge within NHRI on reproductive rights				

Please give details on the above and/or examples of other obstacles.

**Question 11: Contentious issues**

The following questions relate to issues that are still contested by the international community. (They are *not* intended to represent the institutional opinion of the APF or UNFPA). Please indicate whether your institution agrees or disagrees with the statements set out below. Feel free to explain why and to comment on the situation that exists in your country.

*Please circle one*

	Strongly Agree	Strongly Agree	Strongly Agree	Strongly Agree
	Agree	Agree	Agree	Agree
	No Institutional Opinion	No Institutional Opinion	No Institutional Opinion	No Institutional Opinion
	Disagree	Disagree	Disagree	Disagree
	Strongly Disagree	Strongly Disagree	Strongly Disagree	Strongly Disagree
(a) Adolescent sexuality education should be predominantly focused on abstinence and fidelity. Optional comment:				
(b) Reproductive rights include access to abortion under at least some conditions. Optional comment:				
(c) Rape in marriage should be criminalized. Optional comment:				
(d) Contraception should be freely available, (e.g. regardless of marital status), to both individuals and couples. Optional comment:				

**OTHER**

11. Is there any additional information that you would like to provide that is not covered in the above questions that may help us understand and map the **issues**, **challenges** or **successes** of promoting and protecting reproductive rights in your country?

