

# **Unifem**

## **Human Rights**

**By the Hon Justice Susan Glazebrook  
Court of Appeal**

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Thank you so much for your introduction and for inviting me to speak this evening. I am very pleased to be in New Plymouth and it was wonderful to meet so many of you over dinner. My address this evening is perhaps not a totally suitable topic for an after dinner address, as it can hardly be described as a cheerful topic. However, the last time I was in New Plymouth I think I was giving a seminar on tax so at least you have been spared that.

I intend to speak this evening about some aspects of New Zealand's place in the Asia-Pacific region with regard to human rights. The Asia-Pacific region is the only major region of the world that has not adopted a regional human rights instrument. One of the main reasons for this is the diversity of the region as defined in the United Nations system. The region covers an area that ranges from Syria to the Solomon Islands. It includes all major religions and has diverse social systems, cultures and ethnic groupings. It is likely, therefore, that any regional human rights instrument is some way off.

Despite the difficulty in realising a regional human rights charter, there has been progress in regional human rights networking and co-operation in recent years. Generally the view is that a gradual approach to building regional arrangements offers the best prospects for making progress in the human rights area in the region. A framework has been developed which focuses on national human rights institutions, human rights education, national plans of action and the promotion of economic, social and cultural rights and the right to development.

One of the initiatives taken in the region is one that I have been involved in for the last two years. This is the Advisory Council of Jurists for the Asia-Pacific Forum of National Human Rights Institutions. I have told them that they have to think of a title that is a bit less of a mouthful, although I have also urged them to avoid those successions of acronyms the United Nations so loves but which often mean little to outsiders.

You will no doubt have noticed that this is hardly a role that my background in practice as a tax and finance lawyer prepared me for. When I tell you, however, that my doctoral thesis was on crime and criminal justice in France during the French Revolution you will see that wide swings in topic have been a bit of a hallmark of my career. My present role as a judge suits me very well as it enables me to indulge these tendencies in my everyday role. Whether counsel appreciate it so much when I am blundering around in their areas of specialty is more uncertain.

Anyhow back to the Asia-Pacific Forum itself. This was established in 1996 and receives the bulk of its funding from the United Nations Office of the High Commissioner for Human Rights. The Forum is dedicated to supporting the establishment and development of national human rights institutions that fulfil at the least the minimum standards set out in what are called the Paris Principles. These were endorsed in 1993 by the United Nations General Assembly. The Paris Principles require human rights institutions to be independent from government and autonomous, and to have sufficient resources, adequate powers of investigation and a broad mandate based on universal human rights standards.

The Forum currently has 12 full member institutions from the region that fulfil those criteria and a number of associate member institutions who are working towards fulfilment of the criteria. The New Zealand Human Rights Commission was a founding member of the Forum. The current Forum membership includes independent national human rights institutions from Australia, Fiji, India, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, the Philippines, the Republic of Korea, Sri Lanka and Thailand.

The idea of setting up an Advisory Council of Jurists was first mooted by the Forum in 1997 and it was formally approved in 1998. The Advisory Council's mandate is to provide advice on the interpretation and application of relevant international human rights standards as they apply to member states. The Council can only advise, however, on matters referred to them by the Forum or by a national institution that is a member of the Forum.

The Council first met in 1990 in Rotorua under the capable presidency of our own Dame Silvia Cartwright, before she became Governor-General. It has so far considered four references – two when Dame Silvia was President, one on child pornography and one on the death penalty – and two since I have been a member of the Council. In 2002 the reference was on trafficking (considered at the annual conference in New Delhi) and this year, at the annual conference in

Kathmandu, the Council considered a reference on terrorism and human rights. Next year the meeting heads for Mongolia and perhaps a reference on torture. You will see that I manage to get to some fascinating conference venues. I will confess, however, that, after watching the Intrepid Journeys programme recently on Mongolia, I have some apprehension about the plumbing.

The process for the references to the Council begins by the Forum deciding on the topic to be referred. It then set out specific questions it wants answered. A background paper is then prepared for the consideration of the jurists. The jurists meet for two days in conjunction with the annual meeting of the Forum and produce a report for presentation to the Forum meeting. I can tell you that the timeframe is in itself a challenge, although we do have two months after the meeting to finalise our report.

It is a very rewarding (and humbling) experience, however, to work with eminent jurists from around the region, even within such time constraints. The jurists involved include university professors, politicians, barristers and judges. They therefore come from a wide range of backgrounds. There are also major differences in the conditions they work under. One of the jurists, for example, told us of a godfather type experience he had had. Someone who did not like his views had sent his family a package with a severed dog's head. This was certainly a reminder of the importance ensuring respect for human rights and in particular the right to freedom of speech.

The Council's reports answer the particular questions set out in the reference to us but they also make recommendations as to further action. All of the reports done so far are available on the Forum website at [asiapacificforum.net](http://asiapacificforum.net) and the Forum members report to each meeting on the progress made in their jurisdictions in implementing those recommendations, so there is follow up.

In my view, the Forum and the Advisory Council fulfil an important function. They have their roots in the region and can concentrate on the issues of particular relevance to the States in that region. I think it is important that the work of the Forum and the Council becomes more widely known and that is one of the reasons for choosing to talk about them today.

Given the cause for tonight, I would like now to move on to say a bit more about the reference on trafficking. This was the reference at the first meeting I attended in November 2002 in New Delhi. Now, before joining the Council, I only had a very vague idea of what trafficking is and you may still be in a similar position. Up until December 2000 we would have had a lot in common with the international community in general as the term “trafficking” had never been precisely defined in international law before then. In particular, the factors distinguishing trafficking from people smuggling had been difficult to identify.

This changed with the finalisation of the Trafficking Protocol to the United Nations Convention Against Transnational Organized Crime. The Protocol came into force on Christmas Day last year. The definition of trafficking in that Protocol talks of the threat or use of force, deception or fraud or the abuse of power in relation to a person for the purpose of exploiting that person. It also talks of payments made to those having control over others, which is particularly relevant to children with respect to payments made to parents or guardians. In the case of children, exploitation alone is sufficient to be deemed trafficking.

The main victims of traffickers are women and children and, arguably, the main destination is the sex trade, although trafficking takes place also to provide domestic or sweatshop workers or other forced labour (including criminal activity) and in some cases for trade in human organs. The problem is rife in many of the Forum countries, both internally and between countries, with some countries serving as countries of origin, transit and destination for trafficked people.

We have not been immune in New Zealand. There have been instances of Thai women, for example, trafficked to New Zealand and forced to work in the sex trade. There have also been instances of sweatshops staffed by trafficked workers. Often such women will be working to pay off so-called travel and accommodation debts that just end up getting bigger and bigger.

In 1999 the New Zealand Human Rights Commission set up a ‘safe house’ programme to assist Thai women to escape prostitution in New Zealand and they even managed to help one woman to get money returned to her through the Disputes Tribunal. She had paid around \$6000 to traffickers believing that they would find her work in a New Zealand restaurant but instead discovered, on arrival, that she was expected to work as a prostitute. She had escaped from where she was being held and had the courage to go to the police.

Earlier this year New Zealand also appeared on an influential United States list of international child trafficking hotspots. The US State Department's annual Trafficking in Persons report included New Zealand as a destination country for men and women trafficked from the People's Republic of China and elsewhere, as well as facing a large problem of children internally trafficked for the purposes of sexual exploitation. The New Zealand Government naturally expressed its displeasure at New Zealand's inclusion, stating that there was no evidence of children being trafficked into New Zealand. The Foreign Affairs Minister, Phil Goff, complained that US State Department researchers had taken a local report out of context and had failed to appreciate the extent of actions taken in New Zealand against trafficking and child exploitation, including criminalising the use in prostitution of children and the imposition of severe penalties of up to 20 years imprisonment and fines of up to \$500,000 for traffickers.

Just to put some more flesh on the bones, I would like to recount a couple of stories of trafficked women and children. The first story I have chosen is from a Human Rights Watch report on Thai women trafficked into debt bondage in Japan. The study was completed in 2000. This is not to single out Thailand or Japan in particular. As I said earlier, the problem is rife throughout the region.

The story I have chosen from that report is that of M and it is a composite profile of women who were interviewed in a women's shelter in Tokyo in 1999. Before arriving at the shelter, M had spent more than two months working as a hostess in what was quaintly termed a dating snack bar. Her tasks included serving drinks at the bar but also accompanying clients to nearby hotels to provide sexual services. She had been recruited from Thailand with the promise of a generous monthly salary for factory work. When she arrived she was told, not only that she was to be working at the snack bar, but that she would be working without pay until she had paid off a debt of approximately \$70,000 for travel and job placement expenses.

Her manager confiscated her passport and warned her that, if she tried to escape, she would be followed and caught by Japanese gang members or the police. She was housed under constant surveillance in an apartment next door to the snack bar, where a motion sensitive light outside the door meant that she could not go outside unnoticed. After working for about two months, M's debt had almost doubled. This was because of the cost of board, HIV tests and what were called protection fees, as well as a hefty fine for giving the snack bar's telephone number to

her parents. This sum naturally far exceeded the amount she had been able to earn, particularly as the accounting systems left a great deal to be desired.

The next story is from a book given to me while I was at the Forum conference in New Delhi by an organisation that helps trafficked children. The book is a simple publication describing the work of the organisation but it mainly lets the children speak for themselves by providing a selection of stories. I am a strong believer in the power of stories. It turns the abstract into the personal.

I have chosen the story of a girl identified by her initial, K. This, in fact, is one of the less harrowing stories in the book. K came from a small West Bengali village. Her family consisted of two young brothers and her father who was a village priest. The father became ill and was diagnosed with cancer and this obviously put a major financial strain on the family. A family friend offered to get K work as a maid in Calcutta with a good family so that she would be able to support her father and brothers. K went with the friend and was taken to Calcutta where she was put into the care of an elderly woman. She was given something to eat and she remembers nothing more until she woke to find herself in Mumbai. There she was put to work as a prostitute expected to service over 20 customers a day. This came to an end eventually after a raid on the brothel by the police. She had been hidden behind a false wall but took the risk of banging on the wall during the raid. Rescue came too late for K, however, as she was already HIV positive. The heartbreaking part for me was the narrator recording that K is sure that the drugs she had been given since her rescue will cure her and that she will have a brighter future. She was then only 16 years old.

There were numerous other stories in the book, often telling graphic tales of rape, violence, intimidation and lack of attention to basic needs, including medical care.

The situation is not necessarily better for the trafficked women and girls after rescue. Often they will find themselves detained for long periods before being summarily deported or they will find themselves the subject of prosecution for prostitution while their traffickers go free. This is sometimes because of the corruption of officials. Indeed trafficked women and children often tell stories of money changing hands with police and immigration officials. There are also, however, difficulties of prosecution, including the difficulty of cross border prosecutions and that of persuading the trafficking victims to testify. Someone once said that the trouble with

prosecuting traffickers and people smugglers was that the evidence had legs and frequently used them.

There is also the problem of reintegration of trafficked women and children back into society. Many of the girls whose stories were in the book said that, even in cases where their families were willing to take them back, they felt more comfortable staying with others who had had the same type of experiences they had.

Where adult victims are concerned, many in fact had made a positive decision to escape their previous lives. This is where matters become more complicated. Many of the women trafficked across borders are like M. They are seeking a better life. In some cases the situation is worse than that – they are searching for survival. They are escaping a situation of extreme poverty, often coupled with gender discrimination and violence at the hands of their men. It is no solution for them to be forced back to the very life they wanted to escape. Some of them do not necessarily even wish to be rescued from prostitution but they do want their situation to be improved by ensuring, for example, proper payment and medical care.

The Special UN Rapporteur on Violence against Women tells the story of a group of women she met in Bombay in November 2000. They explained to her that they belonged to a caste that traditionally gives their younger daughters into temple prostitution. They had left the temple for Bombay in search of a better life. In Bombay they earned enough to send money home to their parents who were caring for their children. Their main concerns were health protection and earning enough to give their children a good life, including good schooling. They worked at night, played cards during the day and said they were reasonably happy. They certainly became extremely offended when it was suggested that a rehabilitation centre be set up and that they be trained for another occupation. They did not want to change occupation and they did not want the State or the police in their lives. They were, however, considering forming a trade union like the sex workers in Calcutta to ensure better conditions.

The Advisory Council in its report noted that the root causes of trafficking lie in poverty and social injustice and, in particular, gross gender discrimination. It also recognised, however, that the new international laws targeted specifically at trafficking provide important tools for combating trafficking. To give substance to this we urged all member States to ratify the Protocol on Trafficking and I note that New Zealand was one of the first States to do so.

We also urged States to implement the Protocol even before ratification and to ensure the proper enforcement of existing laws to combat trafficking. This has to be coupled with measures to ensure that the victims of trafficking will come forward to testify. Finally, we exhorted States to ensure that the human rights of victims of trafficking were secured, including their right to self-determination. It is worth repeating in this regard the words of the UN Special Rapporteur in a speech she gave here at the end of 2002. She said:

In our attempts to fight trafficking, we must not forget our first concern – the woman victim. All these measures are made meaningful only because they allow women to live a life of respect and dignity. In promoting these measures we must keep this in mind. We must validate the lives of these women and give them the respect they deserve. The women involved may be victims but they are also human beings with aspirations and experiences. Any measure to be successful must learn to understand their needs and desires. In their suffering they have insights and ideas from which we can benefit. Too often they become pawns in someone else's game. Their voices and interests are compromised as States uphold sovereignty and stem the tide of migration. Whatever measures are taken should give centre place to the rights of the woman victim. Immigration laws, refugee procedures, and asylum practices must surely ensure and protect their right to live in dignity.

I do recognise that telling stories and writing reports only takes us so far. This is not to diminish the importance of bringing a problem into the open. A problem that is not known about is a problem that can be ignored. It is, however, action that is needed now. I know that the Forum members are determined to facilitate that action to the extent they can and that the report, coming as it does from a group of jurists from the region, will help them in that task.

I end with some thoughts on why it is important for New Zealand to be involved in groups like the Forum. The first of course is just good world citizenship. New Zealand has cause to be proud of its involvement over the years in international affairs and in particular with human rights initiatives. There are also, however, more selfish reasons. The promotion of human rights in the Asia-Pacific region, and particularly economic and social rights, can only be of benefit to the region and therefore to New Zealand. It is easy too for New Zealanders to become complacent and to forget why the protection of human rights is important. Looking outwards to countries in the world where human rights are less secure can guard against that tendency and renew the determination that is required to bring about a common understanding and universal respect for the human rights of all people.