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# CONSTITUTION-MAKING AND PEOPLE'S PARTICIPATION

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**Editor's note ............**

In this issue we publish the Recommendations made to the Commonwealth Governments by the Commonwealth Human Rights Initiative (CHRI) on Participatory Constitution-Making. We feel that it is appropriate at this juncture to publish the proceedings of the consultation held by the CHRI on participatory constitution-making when the PA government and the opposition are having a dialogue on the new constitution for Sri Lanka. While the importance of this exercise is stressed, we also stress the importance of people's participation in this process. After all, the constitution is for the people and their participation in the drafting process is vital. A few lessons can be learnt from South Africa when they drafted their new Constitution. The paper prepared by the CHRI gives a glimpse of the massive effort undertaken by the South African Constitutional Assembly to consult and educate the people about the draft Constitution. Despite low literacy and the multiplicity of languages spoken in South Africa as well as the trauma, scepticism and inherent suspicions, the exercise on the whole was a success.

Given that Sri Lanka has a very high literacy rate, a vibrant civil society and only three languages to cope with, participatory constitution-making should be relatively easy. It is hoped that this issue of the Review will pave the way for making participatory constitution-making a reality.

The month of March commemorated the International Women's Day on the 8th. The Trust held a symposium on Violence Against Women to coincide with this. The proceedings of this symposium will be published in a subsequent issue of the LST Review. In this issue we publish the resolution on the World March of Women in the Year 2000 to mark the International Women's Day.

This issue also carries two case notes on two important cases - one decided by the Supreme Court and the other by the Court of Appeal recently.

# Commonwealth Human Rights Initiative
# CONSULTATION OF PARTICIPATORY CONSTITUTION-MAKING*

## Recommendations to CHOGM '99

1. There are several initiatives from different areas within Africa to promote the exchange of experiences in constitutionalism and constitution making. The CHRI, together with the support of NGOs throughout the Commonwealth, have held various consultative conferences in this endeavour.

2. In 1995 the Heads of Government adopted a Commonwealth Plan of Action at Millbrook, New Zealand, to ensure that the fundamental democratic values enshrined in the Harare Declaration (1991) would be made a reality. The Commonwealth Secretariat was enjoined to "enhance the capacity to provide advance training and other forms of technical assistance to governments, including assistance in constitutional and legal matters, including with selecting models and initiating programmes of democratisation."

3. In keeping with this commitment, Commonwealth States should work with civil society to ensure that their constitutions, the rule of law and human rights are promoted. Governments must proactively seek to deepen democracy, which is largely still inaccessible to many citizens of the Commonwealth. They should, therefore, seek to effectively include and represent the views of all peoples. We also need to dispel the myth that it costs more to keep such processes open than to keep them closed.

4. There is a desire amongst many countries, particularly in Africa, to arrive at truly democratic and legitimate constitutions. The experience of countries that have achieved this objective is that Governments must adopt *credible processes* for constitution making; that is, a process that constructively engages the largest majority of the population. This is necessary to ensure that the end product is seen as legitimate, and owned by all the people. To achieve these objectives, Governments are encouraged to ensure that:

   4.1 The process of constitution making is, and is seen to be, as important as the substantive content of the constitution itself..

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* 16-17 August 1999 Holiday Inn Burgerspark, Pretoria. The Trust wishes to thank the CHRI for granting permission to reproduce this report.

4.12 In the interest of protecting constitutionalism, all actions violating these values are unequivocally rejected.

4.13 Universally accepted rights are entrenched in the constitution along with independent institutions supporting a constitutional democracy, including specifically the Human Rights Commission, Women's Commission, Constitutional Court, Electoral Commission, Public Protector and the Auditor General.

4.14 Constitutions must enshrine the separation of powers.

5. Governments should also consider the following structural and institutional mechanisms:

5.1 An independent commission or body, with the necessary power and legal authority, must be established to facilitate the constitution making process and have sufficient time to do so.

5.2 The state should commit itself to adequate funding for the constitution making process.

5.3 It is also necessary to cost the various structures and institutions proposed for establishment by the constitution and the implications this has for the country.

5.4 At the same time, it is necessary to ensure that governments are committed to the effective financing of institutions that support constitutional democracy.

5.5 Governments should assist and empower civil society groups to effectively participate in the constitution making process and in the promotion of constitutionalism.

5.6 Constitution makers should have sufficient and easy access to international experience, precedents and materials to enable them to take informed decisions.

5.7 The creative use of the media is especially important. Attention must be paid to the use of popular culture such as music, theatre, art, as well as other

# Promoting a Culture of Constitutionalism and Democracy in Commonwealth Africa*

*Hassen Ebrahim, Kayode Fayemi and Stephanie Loomis*

## Introduction

At Harare in 1991, Commonwealth Heads of Government pledged to work for the protection and promotion of the fundamental political values of the association, namely democracy, and democratic processes and institutions. In 1995, the Heads of Government adopted a Commonwealth Plan of Action at Millbrook, New Zealand to fulfil more effectively the commitments contained in the Harare Commonwealth Declaration. This programme had three components:

1. Advancing Commonwealth fundamental political values;
2. Promoting sustainable development; and
3. Facilitating consensus building.

The Heads of Government also identified measures to be taken by the Commonwealth Secretariat to assist in implementing the Harare principles. CHOGM enjoined the Secretariat to "enhance the capacity to provide advice, training and other forms of technical assistance to governments" and give "assistance in constitutional and legal matters, including with selecting models and initiating programmes of democratisation."[1]

Constitutions in Africa have been treated with profound ambivalence, handed down by exiting colonial powers as a holy grail legitimising the supremacy of the state over society. For too long, constitutions have been only identified with legislation. But a constitution by its very nature should be more than a mere set of rules and laws regulating society and government. It is more than a social contract or even the *grundnorm*. It is rather an expression of the general will of a nation. It is a reflection of its history, fears, concerns, aspirations, vision, and indeed, the soul of that nation.

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* 19 October 1999. Background paper to accompany CHRI's Recommendations to CHOGM '99.

[1] Quoted from the Millbrook Programme of Action released after the Commonwealth Heads of Government Meeting in Auckland, New Zealand.

the cold war era that facilitated monopolies on power by coercive rulers, the manipulation, trivialisation, and disregard of the constitution has become the defining characteristic of governance in much of post-colonial Africa.[4]

The collapse of communism exposed this soft underbelly of the African State, and over the last decade the continent has witnessed many positive changes. Even so, the gap between constitutionality and constitutionalism is enormous. Many African countries are democratising in the formal sense, and significant strides have been made in the areas of rule-based governments, whether in the form of governments that emerged out of the various national conferences or ones elected by popular vote. Keeping the examples of perhaps South Africa, Uganda and Eritrea aside, it is still premature to speak of the existence of constitutional governments. The formal end of authoritarian rule has not yet led to an acceptance of the state as representing a broad social consensus, beyond what is made apparent during elections.

Although an essential feature of peace-building and conflict management is often the degree to which consensus can be achieved among contending parties, elections have nevertheless become the "legitimate" method of demonstrating democracy abroad while consolidating political exclusion at home. Left with little or no alternatives, disaffected parties have often resorted to violent means of challenging the status quo. The use of military force now prevalent in several parts of the African continent must be seen as the inevitable consequence of the acute nature of internal contradictions and the almost total absence of any credible mechanisms for conflict mediation and transformation within societies.

Since multi-partyism by itself had proved to be an inadequate conflict management tool in newly post-colonial states of Africa, advocates for democratic transition have stressed that elections can at best only be one stop along the road towards bringing about democracy. They argue that elections alone do not necessarily lead to a deepening of democracy nor do they stop anti-democratic trends. This is especially true in countries where the pressing issues of identity, nationality and citizenship raised by constituent communities have been ignored by politicians in their search for electoral legitimacy. Ethnic conflict is a prime inheritance of the colonial period which arbitrarily divided Africa into states.

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[3] H.W.O. Okoth-Ogendo, "Constitutions without Constitutionalism: Reflections on an African Political Paradox," in Douglas Greenberg et-al (eds), *Constitutionalism and Democracy: Transitions in the Contemporary World* (New York: Oxford University Press, 1993), pp 65-82.

[4] Okoth-Ogendo (1993).

at hand is to move away from the old constitutionality which overemphasised law and state power towards a new political and socio-economic *constitutionalism* that will have much more relevance to the needs of African citizens.

## 2. What the Commonwealth must do

In the quest to advance fundamental political values, promote sustainable development and facilitate consensus building, the Commonwealth must work with governments as well as opposition groups, with the state as well as civil society. It must promote the fundamental values in process-led constitutional mandates instead of imposed constitutional frameworks and help promote the shift from juridical *constitutionality* to political *constitutionalism* by emphasising process as well as substance in the quest for constitutional and democratic governance.

A nation's constitution should be its most valued document. Preparing it is a sacred and weighty undertaking that should not be addressed in isolation of the people. Nothing is more important in the political culture and history of a nation than the Constitution by which its citizens are ruled. There is therefore a growing consensus that the new struggle for process-led constitutionalism represents Africa's second liberation, reminiscent of the anti-colonial struggle.

Yet, as with the struggles waged against colonialism, apartheid and dictatorship, the international community will play a significant role in supporting the unequivocal yearnings of the people. The Commonwealth has played such positive roles in its fifty years of existence. Indeed, it has gone ahead to articulate in clear and precise terms, both in the Harare Commonwealth Declaration of 1991 and the subsequent Millbrook Programme of Action in 1995, how it would go about upholding fundamental political values.

Unfortunately, while the essential ingredients of Commonwealth action in the arena of constitutionalism is contained in the Harare Declaration and the Millbrook Programme of Action, a gap between Commonwealth rhetoric and practice remains. Constitutionality is still promoted in narrow, legalistic terms. Short-term experts are sent in the name of good governance to give countries international legitimacy through reform gestures that can at best only scratch the surface of the realities faced by the larger populace. As in election monitoring, governments adept at manipulating international sensibility have used the Commonwealth to legitimise constitutions which have been virtually

The South African elected Constitutional Assembly of 1994 already had a legitimate mandate in terms of which its members were entitled to draft the country's final constitution. The Constitutional Assembly however decided that this was not sufficient. The wisdom of this decision lies in the lessons learnt and experience gained.

One of the stated objectives of the Constitutional Assembly was that the process of constitution making had to be transparent, open and credible. Moreover, the final constitution required an enduring quality and had to enjoy the support of all South Africans irrespective of ideological differences. Having regard to the history of political conflict and mistrust, the credibility of the final constitution was an important goal. This depended on a process of constitution making through which people could claim ownership of the constitution. It was also necessary to placate the fears and concerns of minorities and yet find favour with the majority. In short, the constitutional foundations of democracy had to be placed beyond question.

Legitimacy can also be developed in other quantifiable ways. In Uganda history had caused the population to at first doubt the sincerity of the government to implement constitutional reform. Trust grew when the President followed the guidelines laid down for him by statute in appointing Constitutional Commissioners; namely that they be persons of integrity, expertise, and experience to perform their task.

When interest groups complained about the appointment process, the President responded by appointing representatives from their organisations to be on the Commission. Likewise the independence of the Ugandan Constitutional Assembly was promoted by the fact that it consisted of elected members in addition to ten presidential nominees.

Another factor which made the process seem legitimate to the people was the lack of foreign funding allocated to it. Since making the new constitution was supported financially entirely by the people and the government of Uganda, it was immune to criticism of foreign intervention.

While Eritrea did accept foreign funding, it nevertheless drew upon the ample resources of its Diaspora and domestic commercial enterprises to fund the constitutional consultation process in that country. This not only helped finance

Uganda seemed to recognise this, as one third of the 25,000 submissions received by the Ugandan Commission were made by women. In order to privilege all submissions equally, each and every one was summarised and translated into English from local languages for the Ugandan Commissioner's use.

Uganda in particular also understood the importance of taking whatever time was necessary to truly receive wide citizen input. The first phase of the consultation process stretched over one year, and focussed on determining whether the citizens of Uganda believed a new constitution was required for the country and if so, what the new document should contain.

Attention was also paid, in the various countries that are viewed as having had successful constitution-making experiences, to the participation of all sectors of society in terms of the composition of the constitutional reform leadership. In Eritrea this meant that just short of half of the membership of the Constitutional Commission were women, and all nine ethnic groups were represented.

### *3.3 Empowerment of Civil Society*

Although the need for an inclusive process may be easily recognised, particularly amongst poor and illiterate populations, the ability of citizens to participate in a public consultation process for constitutional reform cannot be taken for granted. Without the necessary assistance to understand the process in which they are involved, people cannot make appropriate recommendations as to its outcome. Consultation would then be hollow and without meaning.

By empowering civil society to participate in the constitution-making process, the respective Constitutional bodies in South Africa, Uganda, and Eritrea were able to add a new dimension to the concept of democracy in their countries. They set a tough precedent for governments to follow and provided insight into what a participatory democracy could be in the future. Empowering civil society to participate also creates a culture of openness and scrutiny that becomes increasingly difficult to suppress over time.

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Africa." Further recommendations include that women and girls must be helped to fully understand their rights, especially in rural areas, including by improving general literacy skills.

communities be reached through information dissemination and constitutional education.

The media campaign launched just before work in the Constitutional Assembly began was aimed at raising public awareness about the constitution-making process to encourage individuals and interest groups to make submissions, and to publicise Constitutional Public Meetings. The primary message was that an important process was unfolding - the outcome of which would affect the lives of all South Africans both now and in the future. Every South African was provided with a unique opportunity to take part in the process. The specific message carried in the various adverts was - ***"You've made Your Mark, Now Have Your Say"*** and the other was ***"Its Your Right to Decide Your Constitutional Rights."***

### *3.5 Accessibility*

It is a key principle that the process must at all times be made accessible to the broadest possible community. It is not sufficient that public calls for submissions are advertised widely. It is important to ensure that ordinary members of the public are able to access the process both physically and intellectually.

Uganda, Eritrea and South Africa all disseminated documents needed for understanding the context of constitutional reform in their countries to the people in both national and vernacular languages in the early stages of the consultation process. In the case of Eritrea this involved translating international covenants into vernacular languages. 400 trainers were mobilised to educate the public, reaching ½ million people. In Uganda the existing constitution was reprinted and disseminated along with booklets entitled "Guidelines on Constitutional Issues," "Guiding Questions on Constitutional Issues" and a booklet explaining how to prepare memoranda to submit to the Constituent Assembly.

In South Africa the public was provided with toll-free telephone numbers, addresses and public opportunities in different localities to take part in the process. The principle of accessibility was also considered and addressed from the perspective of language. Aside from the use of the different languages, it was ensured that all information, including the constitution itself, was published in plain and accessible language.

### 3.8 *The Importance of process*

A profound lesson learnt from experiences from various countries has been that the process of arriving at decisions is often as important as the substance and implementation of those decisions.

In the case of South Africa, a unique national characteristic emerged: the fetish with consultation. South Africans tend to be suspicious of any process they have not been consulted about. Process, therefore, tends to be as important as the substance of all agreements. As a result more time and energy was spent on negotiating the process of arriving at the final consultation than on negotiating the substance of it. The most vigorous opposition, disruptions, and disturbances took place in support of demands relating to the process of drafting the constitution. The levels of political violence during the negotiation also manifested this trend.

Consensus-building is an important societal value in Uganda. This was reflected in the Constituent Assembly statute requirement that (in the absence of a 2/3 majority) contentious issues should be sent back to the citizens for consultation. Nevertheless at times Assembly members walked out of talks when it was felt consensus wasn't going to be possible. In any event the degree of consensus achieved on important topics (such as the federal structure of the government and on land ownership), as well as the amount of issues which remain unresolved upon the promulgation of the Ugandan constitution highlight the importance of process.

While some issues were resolved during the making of the present Ugandan constitution, the exercise in participation and negotiation which the entire constitution-making endeavour represented laid the framework for ongoing negotiation on the contentious issues. One such issue that will be decided by national referendum was whether to allow a multi-party political system in the future. Thus the Ugandan people will be continually allowed to review their constitution in an on-going participatory constitution-making process. At the same time requirements for amending the constitution have been made sufficiently rigorous to safeguard against whimsical tampering by political forces.

### 3.9 *The role of political parties*

In keeping with South Africa's unique history, political parties had an important role to play in the constitution-making process. They became facilitators of the

In South Africa the National Sector Public Hearing Programme emerged out of a need for the various Theme Committees in the Constitutional Assembly to consult and engage those structures of civil society with an interest in particular debates. Examples of this were the consultations on the different rights in the Bill of Rights, the judiciary, security services, and institutions supporting constitutional democracy and public administration. Each issue required consultation with a particular sector of civil society.

The preparation for these hearings was executed by a partnership between the Constitutional Assembly and structures of civil society. This was a deliberate part of the strategy. It avoided the possible accusation of being partisan. It also ensured the greatest possible representation in the hearings and an agenda that was acceptable to all stakeholders.

The majority of hearings took place within a four-week period. Given the limited time that the Constitutional Assembly had to develop and implement this programme, it was to its credit that ***596 organisations*** were consulted. In addition, Theme Committees hosted many seminars and workshops when expert opinion and further debate was required on specific issues. Many of these workshops included international experts.

It was only after the Easter recess of 1996 that the issues of deadlock potential crytalised. To facilitate agreement, parties held various bilateral and multilateral meetings. This did not augur well with both media and civil society alike. Moreover, consultations with affected interest groups were limited to those areas of deadlock only. Also, when these consultations did take place, they were carried out with very little time to plan or prepare. With the benefit of an excellent database, developed in previous rounds of consultations, the organisation of these consultations did not prove too difficult. However, this did not mean that there were no problems.

The Constitutional Assembly had throughout prided itself on an excellent relationship with structures of civil society. This relationship was based on the concept of partnership in the process of drafting the single most important legal document. However, several structures saw themselves as still being outside the process. This was particularly so when political parties found it necessary to hold bilateral or multilateral meetings. The complaint was that even if consultations

determination that the process was not going to be led by academics and experts. It was the elected and mandated representatives who were to play this role.

## 4. Mechanisms used in the Public Participation Process

Several ways in which civil society can be drawn in for consultation on their constitutions have already been identified. The costs involved in carrying out the various activities can vary greatly, but costs should not be seen as prohibitive to the educational and empowering activities which are so necessary to ensure public participation.

For example, training of private citizens in civic and constitutional affairs can be a cost-effective way of reaching many people. Existing potential educational channels such as schools, churches, and popular radio programmes can be mobilised without much added cost. TV and radio programmes, and essay competitions proved to be successful methods of reaching the people in Uganda. In Eritrea artistic and musical methods were quite popular.

South Africa was able to utilise many mechanisms for outreach. It may then be useful to look at the South African experience in more details, as several tools of communication proved extremely successful. These tools included the newsletter, television and radio programmes, all bearing the title, "Constitutional Talk," a telephone talk-line and an Internet home page.

The television programmes were launched on 24 April and continued till 10 October 1995. The 1996 programme was launched on 18 February and continued until 12 May. The format of the programmes allowed representatives from structures of civil society organisations to engage a multiparty panel of Constitutional Assembly members in debate on important issues.

Radio was an even more effective delivery mechanism as it could reach people in both rural and urban areas. In collaboration with the SABC Educational Directorate, a weekly constitutional education radio talk show was launched on 1st October 1995. These were weekly hour-long programmes and were broadcast on eight SABC radio stations in eight languages. Constitutional experts appeared as studio guests. These programmes reached 10-12 million South Africans each week and proved popular.

The Constitutional Assembly's official newsletter, ***Constitutional Talk***, was produced to provide information to members of the public. It sought to present material in a detailed

The production of the Working Draft required a different level of consultation and public participation. A supporting media campaign was launched with the publication of the Working Draft in November 1995. The campaign ran through the period of public debate to 20 February 1996. In this campaign, the public was invited to make further submissions. However, on this occasion the public was asked to comment specifically on the provisions of the Working Draft. The submissions that followed were accordingly much more focused.

While it was necessary to consult with all stakeholders during the first phase in producing the working draft, the second phase required consultations specific to the issues of debate and contention. To assist in the education process material about constitutions, the constitution making process, including posters, copies of the newsletter ***Constitutional Talk,*** and a booklet entitled ***You and Building the New Constitution*** was produced. The Constitutional Assembly also produced a pamphlet entitled, ***Constitutions, Democracy and a Summary of the Working Draft***, in all official languages.

The Constitutional Assembly received 250,000 submissions in the second phase. Again, the vast bulk of these were petitions. The petitions dealt with much the same kind of issues as in the first phase - the death penalty, sexual orientation and animal rights drew much attention. There was however much scepticism about the seriousness of the Constitutional Assembly's invitation to the public for written submissions in the media. This scepticism was also expressed in some of the submissions received. Although the Constitutional Assembly was praised for having involved the public, some of those who made submissions, still wondered whether the politicians would treat them seriously.

Once the areas of contention were identified, negotiations were able to begin. After including the views contained in the submissions, a further edition of the working draft was produced. This edition recorded where the submissions came from and the formulations that were accordingly affected. There were also reports by the experts who processed the submissions. A copy of this draft was sent to each person or party that made a submission.

When the text was to be finalised, a seven-week multi-media campaign was designed with a focus on various socio-economic and political issues. The advertising messages for 1996 were "***Securing your freedom. Securing your rights. The new Constitution***" and "***One law for one nation. The new Constitution.***" These issues were used to highlight the importance and meaning of the new constitution to the South African people.

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In keeping with the principle of accessibility the final project carried out by the Constitutional Assembly was the distribution of seven million copies of the constitution in all eleven languages. The distribution took place in the week of 17 - 21 March 1997. It was dubbed the "National Constitution Week." While intended as a mechanism to distribute the Constitution, National Constitution Week also aimed to create the impetus that would ensure that the constitution becomes a reference point for all South Africans as the foundation of our democracy. It also had to create a sense of ownership and engender respect for the new Constitution.

A distribution strategy was designed to ensure that the new constitution was accessible to all South Africans, particularly the historically disadvantaged sectors of society. Four million were distributed to secondary schools in the appropriate language of instruction. Two million copies were available at post offices countrywide enabling members of the public to pick up a copy in any of the official languages. In addition, 500,000 copies were distributed to all members of the police and defence forces as well as all members of the Department of Correctional Services and prisoners in the language preference. A further 500,000 were distributed through structures of civil society.

Each copy of the constitution was distributed with an illustrated guide in the same language. This guide highlights key aspects of the constitution and made many of the legal concepts contained in the constitution more accessible. Other publications produced included one million copies of a human rights comic. This was distributed to all schools and adult literacy organisations. A teacher's aid to introduce the constitution to students was also provided to all secondary schools. In addition, tape aids of the constitution and Guide as well as Braille was available for the visually impaired members of the community.

To ensure that the distribution of the constitution made a lasting impact, a campaign was planned to draw on all sectors of society. This took place in National Constitution Week, which began in the week of 17 March 1997 and culminated on 21 March 1997 - Human Rights Day. The idea was to ensure that elected representatives at the national, provincial and local levels were seen by their constituents to be "delivering" the new Constitution.

## 5. Conclusion

For constitutions to be legitimate democratic documents which govern the interaction between the state and society, it goes without saying that certain principles must be

reflected in their content, such as the separation of powers, independence of the judiciary, ultimate subjection of the military to the executive branch, inclusion of a bill of rights, and other requirements which are widely understood. This paper looks beyond conventional wisdom to present African experience from the recent past in terms of *how peoples' constitutions are made and maintained.* It is hoped that this knowledge may inform other African societies who are likewise hoping to reform not only their constitutions, but also the very essence of democracy in their countries.

Sceptics tend to require proof that a new technique actually works before they dare attempt to use it themselves. An important measure of the success of participatory constitution making is the degree of excitement it generates among the people. This excitement is clearly discernible in countries such as Uganda, Eritrea, and South Africa. Section 59 of the South African Constitution in fact obliges the Legislature to ensure effective public participation in ongoing legislative processes. Another sign is that in the two years since the promulgation of the final constitution, there have been a large number of important challenges brought before the Constitutional Court. There has equally been hardly a day when the print media does not publish an article referring to the constitution.

While it is still too early to pass judgment on the vibrancy of the constitution, there is little doubt that it has become part of the daily diet of public debate and discussion in South Africa. What is perhaps more telling is the fact that despite the vigorous debates conducted, there has been little argument - if any - related to the legitimacy of the constitution itself.

Such successes however provide little cause for complacency in any country. The public, and particularly civil society, in the countries mentioned here, and it could be argued, in many other countries in Commonwealth Africa, are coming to understand the essence and value of a participatory democracy and are beginning to demand just that. Democracy is young on the continent, and the process of transformation it has embarked upon is both arduous and difficult, thus poses exciting challenges for both government and civil society. Whilst there is much ground that needs to be covered to ensure greater interaction between departments of government and the public, civil society too is required to perform a much more exacting function in the transformation of our society.

For government, it is a question of how it prioritises its resources to realise a true and lasting participatory democracy. At the same time, civil society too needs to ensure that it actively mobilises the public around those matters that would defend the gains made and nurture democracy. In the final analysis, it is the ordinary citizen's respect for democracy and the country's constitution that provides the best defence we can possibly have.

# Case Notes

*Rukshana Nanayakkara*[*]

## *Newton Jayatilake v. Acting Commissioner of Elections and others*[**]

## Background[1]

The petitioner being a member of civil society challenged the appointment of the Acting Elections Commissioner made by the President. The Election Commissioner who was the 3rd respondent in this cases, had according to the averments of the petitioner obtained leave on medical grounds sometime in August 1999.

By notice published in the gazette extraordinary dated 28.9.1999, the President had appointed the 4th respondent, who was the Deputy Commissioner of Elections to act as the Commissioner of Elections. By a proclamation dated 21.10.1999 the President declared her intention of seeking a fresh mandate for another term of office. The 4th respondent the then Acting Commissioner of Elections had taken necessary steps for holding the election on 21.12.1999.

The next event was the appointment of the 2nd respondent as the Acting Commissioner of Elections by the President by an order published in the Gazette dated 11.11.1999. It is somewhat of a strange quirk of the fate that the 4th respondent who called for nominations was not there to receive the same which were, in fact, received by the 2nd respondent.

### The Contention of the Parties

The solitary point that was raised in the petition was whether or not the President had the power under law to appoint the 2nd respondent as the Acting Commissioner of Elections. The position of the petitioner was that the President is denuded of such power once the Commissioner or the Acting Commissioner has made a publication fixing the date of nomination and the Presidential Election.

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*Researcher, Law & Society Trust.

**There were 16 respondents in the case. The Attorney General, Acting Commissioner of Elections, Commissioner of Elections, Deputy commissioner of Elections and all the candidates contested for the presidential elections other than the President.

[1]C.A.(writ)Application No. 115/99.

The legal position of the petitioner was that the President had no authority to appoint the Acting Commissioner of Elections under section 19 of the Presidential Elections Act. Further he contended that the President had no power or authority to appoint an Acting Commissioner in terms of Article 103(4) of the Constitution in view of section 19 of the said Presidential Elections Act.

Article 103(4) is in the following terms: "Whenever the Commissioner of Elections is unable to discharge the functions of his office the President may appoint a person to act in place of the Commissioner of Elections."

It is germane to observe that the Constitution was promulgated in the year 1978 - it is anterior in point of time to the Presidential Elections Act No. 15 of 1981.

Section 19 of the Presidential Election Act No. 15 of 1981 is as follows: "If the Commissioner is by reason of sickness or any other cause prevented or disabled from performing any of his duties under this part, he may appoint by name or office any person to act for him."

The arguments of the counsel for the petitioner seem to suggest indirectly that there is an inconsistency between Article 103(4) of the Constitution and section 19 of the Presidential Elections Act and that the former article of the constitution has been repealed implicitly to the extent of the inconsistency by the latter section. The petitioner relied on the maxim: *leges posteiores contratrias abrogant,* which means that the latter laws repeal earlier laws inconsistent therewith.

## The Decision of the Court

Considering this matter the Court observed that it is a common ground that there was no express repeal. To constitute an express repeal there must not only be a reference to the prior Act, but also the use of words apt to effect its repeal. In the cases of express repeal it is usual to employ conventional phrases such as "all provisions inconsistent with the later Act are repealed." Express repeal of a statute is usually made by stating that the earlier statute or a particular provision therein is thereby repealed. The Court stated that it would be absurd even to remotely suggest that the Presidential Elections Act intended as such that there is an express repeal of the Constitution.

The court then considered whether section 19 of the Presidential Elections Act repealed by implication, in whole or in part Article 103(4) of the Constitution. If, in fact, there is an irreconcilable repugnance between Article103(4) and the section 19 of the Presidential Elections Act, it has to be held that the Article 103 (4), being the earlier law, is repealed, at least, to the extent of the inconsistency. Having observed the substance of Article103 (4) and section 19 of the Presidential Elections Act the court held that no repugnance between them can ever possibly arise even from the practical standpoint.

Article 103(4) confers the power, if not enjoins the President, if one may say so, or makes it her duty to appoint a person to act in the place of the Commissioner of Elections whenever the latter is unable to discharge the duties of his office. Thus, it will be readily seen that the moment the President makes an acting appointment under Article 103(4), the Commissioner is, so to speak, supplanted by the Acting Commissioner who is appointed in the place of the Commissioner. The acting appointment made by the President is not limited to any period or stage and will continue till the Commissioner is able to perform the functions of his office and return to his office.

This means that his duties, that is the duties of the person so appointed by the President to act in the place of the Commissioner include the performance of all the duties imposed by law on the Commissioner which is in contrast with the position of the person or office appointed by the Commissioner of Elections under section 19 of the Presidential Elections Act to act for him when he is prevented from performing any of his duties under the said act.

The person so appointed by the Commissioner under section 19 of the Presidential Elections Act can perform only any of the duties set out in part II of the Act and nothing more. Thus it will be seen that Article 103(4) of the Constitution and section 19 do not cover the same field or deal with the same subject matter. It is to be observed that it is difficult to say that there is a repeal of the earlier provision or Act by implication unless the entire subject matter of the first was taken by the second.

The court observed that the Commissioner can appoint another person to act for him only when he is disabled from performing "any of his duties" and "not" when he is disabled from performing all of his duties under part II of the Presidential Elections Act. Further it was stated that the expression "any of his duties" connotes only some of the duties. So the expression “any of the duties” in section 19 of the Presidential Elections Act has to be interpreted to mean <u>some</u> of the duties and not <u>all</u> the duties.

Whether or not Article 103(4) in its entirety or part is repealed by implication by section 19 of the Presidential Elections Act depends upon the intention of the legislature. Since the repeal must, if not expressed, flow from necessary implication, it must be free from any reasonable doubt. The problem is largely one determining legislative intent, which is to be expected from the language used.

If section 19 of the Presidential Elections Act repealed by implication Article 103(4) of the Constitution, then it would denude the President of the power of making an acting appointment even if the Commissioner of Elections is so seriously ill or unconscious that the Commissioner cannot appoint someone for him to perform the functions under part II of the Act.

The interpretation given in the Presidential Elections Act for the term "Commissioner of Elections" is in following terms: "Commissioner of Elections means the Commissioner of Elections appointed under Article 103 of the Constitution." Under Article 103 of the Constitution, the President appoints the Commissioner of Elections. And Article 103(4) empowers the President to appoint a person to act in the place of the Commissioner whenever the latter is unable to discharge the functions of his office. What is to be noted is that the interpretation section, as explained above, does not include the person appointed by the Commissioner under section 19 of the Presidential Elections Act. So the person appointed by the Commissioner of Election is neither a Commissioner nor an Acting Commissioner within the meaning of either the Presidential Elections Act or the Constitution.

The Court further stated that a repeal of any Article or provision of the Constitution by implication is in fact, virtually prohibited by Article 82(6) of the Constitution which states thus. "No provision in any law shall, or shall be deemed to amend, repeal or replace the Constitution or any provision thereof, or so be interpreted or construed, unless enacted in accordance with the requirements of the proceeding provisions of this article."

In terms of Article 82(5) of the Constitution, which immediately precedes Article 82(6) reproduced above, a bill for the amendment of any provision of the Constitution or for repeal and replacement of the Constitution shall become law only if the number of votes cast in favour thereof amounts to not less than two thirds of the whole number of members (including those not present),in addition to complying with several other legal requirements.

Counsel for the petitioner also submitted, as an alternative argument, that Section 19 of the Presidential Elections Act must be treated as an exception to Article 103 of the

Constitution. An exception is something that exempts a matter or a case, which would otherwise fall within the general word of the statute or the legal provision in question. The power of delegation of "any of the duties" by the Commissioner under section 19 of the Presidential Elections Act could not come within the power of the President to make an appointment of the Commissioner or an acting Commissioner under Article 103 of the Constitution, because the power or the duty to delegate "any of his duties" under part II of the Presidential Elections Act is a duty cast on the Commissioner by the Act, like any other duty imposed by the relevant Act on the Commissioner under part II. Under part II there are certain duties vested in the Commissioner including the power of delegation. None of those duties assign to the Commissioner under part II of the Act could have been embraced within the President's power to appoint the Commissioner or an Acting Commissioner under Article 103 of the Constitution. The Court of Appeal further observed that the duty or the power of the Commissioner to delegate some of the functions under part II of the Act to another person would have not been caught up by the President's power under Article 103 of the Constitution under which the President has the power to appoint the Commissioner or an Acting Commissioner but not the power to perform the duties of the Commissioner.

The argument of the counsel for the petitioner was that although the President undoubtedly had the power to appoint an Acting Commissioner under Article 103 of the Constitution, yet that power is over-ridden by the power conferred on the Commissioner under section 19 of the Act once a proclamation is made calling for nominations for Presidential Elections, as had, in fact, been done in this instance. What the counsel for the Petitioner was seeking to impress upon the court was that once such a proclamation was made calling nominations, the prospect of bias materialising into a reality is enhanced, if the President were to make an appointment of an Acting Commissioner, more so since the President herself was seeking re-election and is a candidate. The counsel for the petitioner seemed to insinuate that the President would be actuated by bias in making the appointment or that the person appointed to act for the Commissioner would be biased in favour of the President. The court, however, stated that it simply cannot be helped even if such a bias were to be a real likelihood or danger for no one other than the President has the constitutional power to or the right to make an acting appointment. No substitute is possible since no one other than the President is empowered by law to appoint the Commissioner either on a permanent basis or on an acting basis.

Therefore, the Court concluded that the person appointed by the Commissioner under section 19 of the Act not being a Commissioner of Elections within the meaning of either the Constitution or the Presidential Elections Act, the President's power under Article 103

of the Constitution to appoint a Commissioner and an Acting Commissioner remains intact and unaffected.

Further the Court considered the argument put forward by the counsel for the 5th defendant, Mr. Ranil Wickramasinghe, that the President's act appointing the 2nd respondent is not amenable to judicial review in view of Article 35 of the Constitution.

The Article 35 of the Constitution reads as follows:

> "While any person holds office as President, no proceeding shall be instituted or continued against him in any court or tribunal in respect of anything done or omitted to be done by him either in his official or private capacity"

However, there are three exceptions laid down in Article 35(3) to the above Article.

Counsel for the 5th respondent pointed out that the President's action in appointing the 2nd respondent as Acting Commissioner cannot be challenged as there is an insuperable legal bar to the President being made a party. It was further argued that if the President's action was challenged without the President being made a party that would offend the basic rule of natural justice.

The Court of Appeal, with this case, laid down some important issues regarding the immunity of the President. The Court observed that in cases or situations where the law has conferred on the President immunity from legal proceedings, the President has no right to ask that he be heard in defence of his actions or omissions, while he still holds office, for that would be a surrender of immunity by the President. On the other hand, the President has no right to surrender immunity conferred upon him by law because the immunity is conferred in the public interest and not in his own personal interest. It would have been an intolerable situation, from the standpoint of the President, if legal proceedings can be instituted against the President, although the President is not permitted to defend himself for if the President submits to the jurisdiction of the court in order to be able to defend himself that would be tantamount to a waiver of immunity which the President is prohibited from doing in the public interest. The immunity of the president is not a right of the President alone - it is the right of the pubic also. Therefore, the law prohibits a waiver of immunity because the objective of the law in conferring the immunity on the President is to protect and promote the general welfare of the

community. The Court cited a judgment of former Chief Justice Sharvananda given in **Mallikaratchi v. Shiva Pasupathy** [8]

> *"If such immunity is not conferred, not only the prestige, dignity and the status of the high office will be adversely affected but the smooth and efficient working of the government of which he is the head will be impeded. That is the rational of the immunity cover afforded for the President's actions." So that the President's action of appointing the 2nd respondent as the acting commissioner cannot be challenged in any court of law. The court stated that the President's action of appointing the Commissioner is perfectly constitutional and lawful even tested with reference to law.*

In considering the remedies sought by the petitioners the court stated the relief could have been granted only if the Commissioner of Election had the power to appoint an Acting Commissioner within the meaning of the Presidential Elections Act and under the Constitution. In conclusion the Court further observed that the application of the petitioner was made to the Court on 25.11.1999. By that date all the function that the Acting Commissioner had to perform under part 2 had been performed and accomplished. Only the elections had to be held. But the elections had to be held under part 3 of the Presidential Elections Act. Therefore, it is clear that holding of an election is not a duty of the person appointed by the Commissioner under section 19 of the Act. The elections under the law must necessarily be held or conducted by the Commissioner himself or the Acting Commissioner appointed by the President.

[8] 1985-1 SLR 78

## *Sarath Amunugama* v. *The United National Party*[*]

### Background

In this case the petitioners[1] who were Members of Parliament challenged their expulsion from their political party, the United National Party (UNP), a recognised political party in Sri Lanka. At the time of becoming members of parliament their names appeared on the nomination papers of the UNP.

On 21st October 1999 the President of Sri Lanka issued a Proclamation under Article 31(3A) (a)(i) of the Constitution declaring her intention of appealing to the people for a mandate to hold office for a further term. The UNP decided to oppose the mandate so sought, by nominating a candidate to contest at the said election with a view to securing the election as president of Sri Lanka a member of the UNP. On 5th November 1999 the petitioners without prior authority or sanction of the party attended a meeting at Temple Trees at which the President and several of her Party[2] colleagues were present. At this meeting the petitioners signified their intention and willingness to support the President at the forthcoming election. They also participated in a discussion of policy issues such as formation of a national government.

As the petitioners participated in the above meeting without prior authority or sanction of the UNP the Working Committee of the party expelled the petitioners from their party on the ground that they have violated the party constitution.

On the 6th & 7th of December 1999 the petitioners filed applications in the Supreme Court under the provisions of Article 99(13)(a) of the Constitution which reads as follows:

> "Where a Member of Parliament ceases by resignation, expulsion or otherwise to be a member of a recognised political party or independent group on whose nomination paper his name appeared at the time of his becoming such member of

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[*] S.C.Spl. (E) No. 04/99
S.C.Spl. (E) No.05/99
S.C.Spl. (E) No. 06/99
S.C.Spl. (E) No.07/99
S.C.Spl .(E) 08/99

[1] There were six petitioners in the case: Sarath Amunugama,Nanda Mathew, Wijayapala Mendis, Susil Moonesinghe, R.M.R.Chula Bandara.

[2] People's Alliance Party.

parliament, his seat shall become vacant upon the expiration of a period of one month from the date of his ceasing to be such member."

It is provided that in the case of the expulsion of a member of parliament his seat shall not become vacant if prior to the expiration of the said period of one month he applies to the Supreme Court by petition in writing and the Supreme Court determines that such expulsion is invalid.[3]

**Contentions of the parties**

The petitioners submitted that it was a recognised condition of the membership of the party that disciplinary action would be taken in accordance with the procedures prescribed by the party's "guidelines."

The petitioners stated that they were expelled in contravention of the party guidelines. Therefore, the expulsion was unreasonable and/or arbitrary and in contravention of their "legitimate expectations."

The constitution of the UNP empowers the National Executive Committee to enforce the constitution, standing orders, and rules and the code of conduct of the party and to take any action it deems necessary for such purpose, whether by way of disciplinary action including expulsion or suspension against any individual member, office bearer or otherwise. The guidelines provided that where a complaint is received against a party member:

1. The General Secretary of the party should write to the member concerned informing him that a complaint had been received and notifying him of the names of the Panel of Party Members appointed by the working committee to inquire into and report through the disciplinary committee on the complaint.

2. The panel should examine the complaint made, and the chairman of the Panel should write to the member concerned requesting his explanation in the first instance. A copy of the complaint should be forwarded to the member. A period of seven/ten days could be allowed for the submission of the member's explanation.

[3] See the Proviso to the Article 99(13) (a) of the Constitution.

3. If the explanation submitted is unsatisfactory or unacceptable and the panel is of the view that a further inquiry is necessary a charge sheet should then be prepared by the Panel and forwarded to the member.

4. The panel should notify the complainant also to be present at the inquiry.

Further, the petitioners alleged that their expulsions were invalid because the respondent had failed to comply with the principles of natural justice. The respondents did not deny the importance of this rule. Their case was that, in the circumstances of the case before the court, the petitioners were not entitled to a hearing. Two reasons were given by the respondents: uselessness and urgency.

The respondent maintained that a fair hearing would have been futile and that would have made no difference to the result. Counsel for the respondents submitted that there was sufficient and clear evidence that the petitioners supported the President although the UNP of which the petitioners were members had nominated its leader, Mr. Ranil Wickramasinghe, as its Presidential candidate. It was pointed out that the petitioners were expelled for violating Article 3.3 of the UNP constitution, which states that:

*In accepting a membership a person agrees*

*(a) To accept the principles, policy and the code of conduct of the party.*
*(b) To conform to the constitution, rules and standing orders of the party.*
*(c) To give all possible support to the candidates nominated by the party and in no way support any other person standing against such candidate.*
*(d) Not to take part in any political or other activities which conflict with the above undertakings and not bring the party into disrepute.*

In the circumstances, even if the petitioners had formally charged, notice to appear issued and the petitioners heard, there could have been no defence to the charge and there was nothing that could have altered the decision arrived at by the working committee. The principles of natural justice would have been of no avail; hearing would have been useless.

**The Decision of the Court**

The petitioners averments that no explanations were called for, no charge sheets were served, no notice of the date or time and place of the inquiry were given and that the

petitioners were not called upon to attend the inquiry were not disputed by the Supreme Court. In fact, the petitioners had no opportunity for contradicting, correcting or explaining anything prejudicial to their views. They were expelled summarily. On the face of the evidence on record the Court held that the averment that the party guidelines in respect of disciplinary inquiries were not observed had been established. The Court held that in deciding to expel the petitioners there was a failure on the part of the respondents to follow the usual, salutary procedural steps laid down by the political party to which the petitioners belonged. The guidelines of the party prescribed a process for disciplinary action to ensure fairness, and as a condition of membership it was to be expected that the usual process should be followed.

However, the Court observed that the petitioners were expelled from the party on two grounds, namely that -

(1) at a meeting with the President and several of her People's Alliance party colleagues the petitioners have signified their intention and willingness to support the President who was a rival candidate of the UNP leader

(2) that the petitioners had participated in a discussion of policy issues such as the formation of a national government without prior discussion or mandate of the party.

The UNP is a major political party. The Secretary General of the party was quoted as stating that it was a "disciplined party." In handling these matters the Court observed that it would not have been a useless exercise to adhere to the principles of natural justice for the sake of preserving public confidence. Flawed decisions may not have been necessarily the same had the petitioners been heard. The court stated that the decision taken by the party should be set aside.

The respondents submitted that the rules of natural justice were in the circumstances of the case excluded by practical considerations. The election process was on and it was imperative that the cohesiveness of the party was safeguarded. The petitioners were not only expressing their open support to the rival candidate; they were also attempting to persuade others at the grassroot level to vote against the party. Immediate action was called for.

Urgency has in certain circumstances been regarded as permitting a departure from the need to give a hearing before action is taken. The Court cited some examples of such instances: the right to a fair hearing may have to yield to overriding consideration of

national security; a public authority may need to seize and destroy bad meat exposed for sale or to order the removal of a person with an infectious disease without a hearing etc. However, having regard to the decision in which the urgency has been held to be a defence, the court was of the view that the respondents have failed to establish that the expulsion is within the category of extraordinary, urgent circumstances recognised by courts of law. The petitioners were Members of Parliament and expulsion could have resulted in their losing their seats in Parliament. The gravity of the matter required that at least a limited hearing was given to the petitioners before a decision was taken against them.

The Court held that there was no justification for the failure of the respondents to observe principles of natural justice and grant the petitioners a hearing before they were expelled. Therefore, the Court determined that the expulsion of the petitioners was void and had no force or effect in law and, therefore, for the purpose of Article 99(13)(a) of the Constitution, was invalid.

# World March of Women in the Year 2000

**July 1999**

## WORLD DEMANDS

### Demands to eliminate poverty

**P-1 That all States adopt a legal framework and strategies aimed at eliminating poverty.**

States must implement national anti-poverty policies, programmes, action plans and projects including specific measures to eliminate women's poverty and to ensure their economic and social independence through the exercise of their right to:

- education;
- employment, with statutory protection for work in the home and in the informal sectors of the economy;
- pay equity and equality at the national and international levels;
- association and unionisation;
- property and control of safe water;
- decent housing;
- health care and social protection;
- culture;
- life-long income security;
- natural and economic resources (credit, property, vocational training, technologies);
- full citizenship, including in particular recognition of civil identity and access to relevant documents (identity card);
- minimum social wage.

States must guarantee, as a fundamental right, the production and distribution of food to ensure food security for their populations.

States must develop incentives to promote the sharing of family responsibilities (education and care of children and domestic tasks) and must provide concrete support to families such as day-care adapted to parents' work schedules, community kitchens, programmes to assist children with their schoolwork, and so on.

States must promote women's access to decision-making positions.

States must ratify and observe the labour standards of the International Labour Organisation (ILO). They must enforce compliance with national labour standards in free trade zones.

States and international organizations must take measures to fight and prevent corruption.

All acts, legislation, regulations and positions taken by governments will be assessed in the light of indicators such as the human poverty index (HPI), introduced in the Human Development Report 1997; the human development index (HDI), put forth by the United Nations Development Programme; the gender-related development index (including an indicator on the representation of women in positions of power) discussed in the Human Development Report 1995, and Convention 169 of the International Labour Organization particularly as it concerns Indigenous and tribal peoples' rights.

States must put an end to the process of homogenization of culture and the commodification of women in media to suit the needs of the market.

States must make provisions to ensure women's equal participation in political decision-making bodies.

States must take all possible steps to end patriarchal values and sensitize society towards democratization of the family structure.[1]

**P-2 The urgent implementation of measures such as:**

P-2 a) the Tobin Tax; revenue from the tax would be paid into a special fund:

- earmarked for social development;
- managed democratically by the international community as a whole;
- according to criteria respecting fundamental human rights and democracy;
- with equal representation of women and men;
- to which women (who represent 70% of the 1.3 billion people living in extreme poverty) would have preferred access.

[1] At the International Preparatory meeting, the delegates adopted the three above-mentioned demands without integrating them into the two themes. The Special Newsletter listed them as "A", "B", and "C"; this Guide incorporates them into the whole.

P-2 b) investment of 0.7% of the rich countries' gross national product (GNP) in aid for developing countries;

P-2 c) adequate financing and democratization of United Nations programs that are essential to defend women's and children's fundamental rights, UNIFEM (UN Women's Programme), UNDP (United Nations Development Programme) and UNICEF (UN Children's Fund);

P-2 d) an end to structural adjustment programs;

P-2 e) an end to cutbacks in social budgets and public services;

P-2 f) rejection of the proposed Multilateral Agreement on Investment (MAI).

**P-3 Cancellation of the debt of all Third World countries, taking into account the principles of responsibility, transparency of information and accountability.**

We demand the immediate cancellation of the debt of the 53 poorest countries on the planet, in support of the objectives of the Jubilee 2000 campaign.

In the longer term, we demand the cancellation of the debt of all Third World countries and the setting up of a mechanism to monitor the debt write-off, ensuring that this money is employed to eliminate poverty and to further the well-being of people most affected by structural adjustment programs, the majority of whom are women and girls.

**P- 4 The implementation of the 20/20 formula between donor countries and the recipients of international aid.**

In this scheme, 20% of the sum contributed by the donor country must be allocated to social development and 20% of the receiving government's spending must be used for social programs.

**P-5 A non-monolithic world political organization, with authority over the economy and egalitarian and democratic representation of all countries on earth (ensuring parity between poor countries and rich countries) and equal representation of women and men.**

This organization must have real decision-making power and authority to act in order to implement a world economic system that is fair, participatory and where solidarity plays a key role. The following measures must be instituted immediately:

A World Council for Economic and Financial Security, which would be in charge of redefining the rules for a new international financial system based on the fair and equitable distribution of the planet's wealth. Rooted in social justice, it would also focus on increasing the well-being of the world population, particularly women, who make up over half that population. Gender parity should be observed in the composition of the Council's membership. Membership must also be comprised of representatives of the civil society, for example NGOs, unions, etc.) and must ensure parity of representation between countries from the North and South.

- Any ratification of trade conventions and agreements must be subordinated to individualand collective fundamental human rights. Trade must be subordinated to human rights, not the other way around.
- The elimination of tax havens.
- The end of banking secrecy.
- The redistribution of wealth held by the seven richest countries.
- A protocol to ensure application of the International Covenant on Economic, Social and Cultural Rights.

**P-6 That the embargoes and blockades-principally affecting women and children-imposed by the major powers on many countries, be lifted.**

We reaffirm our commitment to peace and to the protection of the democratic and autonomous operation of nation-states.[2]

## Demands to eliminate violence against women

**V-1** That governments claiming to be defenders of human rights condemn any authority political, religious, economic or cultural that controls women and girls, and denounce any regime that violates their fundamental rights.

**V-2** That States recognize, in their statutes and actions, that all forms of violence against women are violations of fundamental human rights and cannot be justified by any custom, religion, cultural practice or political power. Therefore, all states must recognize a

[2] This demand was integrated to the whole after the Special International Preparatory meeting. It was labelled "D" in the Special Newsletter.

woman's right to determine her own destiny, and to exercise control over her body and reproductive function.

**V-3** That States implement action plans, effective policies and programmes equipped with adequate financial and other means to end all forms of violence against women.

These action plans must include the following elements in particular: prevention; public education; prosecution; "treatment" for attackers; research and statistics on all forms of violence against women; assistance and protection for victims; campaigns against pornography, procuring, and sexual assault, including child rape; non-sexist education; easier access to the criminal justice system; and training programs for judges and police.

**V-4** That the United Nations bring extraordinary pressure to bear on member States to ratify without reservation and implement the conventions and covenants relating to the rights of women and children, in particular, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Protection of the Rights of All Migrant Workers and their Families.

That States harmonize their national laws with these international human rights instruments as well as with the Universal Declaration of Human Rights, the Declaration on the Elimination of Violence Against Women, the Cairo and Vienna Declarations, and the Beijing Declaration and Platform for Action.

**V-5** That, as soon as possible, protocols be adopted (and implementation mechanisms be established) for:

- the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW);
- the Convention on the Rights of the Child.

These protocols will enable individuals and groups to bring complaints against a State. These protocols are a means to exercise international pressure on governments to implement the rights set out in these covenants and conventions. Provisions must be made for effective sanctions against non-compliant States.

**V-6** That mechanisms be established to implement the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, taking into account recent relevant documents such as the two resolutions of the United Nations General Assembly (1996) concerning trafficking in women and girls and violence against migrant women.

**V-7** That States recognize the jurisdiction of the International Criminal Court and conform in particular to the provisions, especially those that define rape and sexual abuse as war crimes and crimes against humanity.

**V-8** That all States adopt and implement disarmament policies with respect to conventional, nuclear and biological weapons.

That all countries ratify the Convention Against Land Mines.

That the United Nations end all forms of intervention, aggression and military occupation, assure the right of refugees to return to their homeland, and bring pressure to bear on governments to enforce the observance of human rights and to resolve conflicts.[3]

**V-9** That the right to asylum for women victims of sexist discrimination and persecution and sexual violence be adopted as soon possible.

The next two demands were supported by the majority of women present at the International Preparatory meeting on the condition of a country-by-country adoption process. Some delegates were not in a position to be able to commit to publicly defending these demands in their respective countries. They remain an integral part of the World March of Women in the Year 2000. Over the next few months, the names of adopting countries will be added.

**V- 10** That, based on the principle of equality of all persons, the United Nations and States of the international community recognize formally that a person's sexual orientation shall not bar them from the full exercise of the rights set out in the following international instruments: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women.

[3] These demands were integrated into the whole after the International Preparatory meeting. They were labelled "E", "F" and "G" in the Special Newsletter.

**V-11** That the right to asylum for victims of discrimination and persecution based on sexual orientation be adopted as soon as possible.


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