

Contentious Issues at the Draft Platform for Action for the Fourth World Conference on Women, Beijing

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The 11 day UN Conference on Women opened on the 4th Sept '95 with the draft Platform for Action (PFA) as central to its agenda. All energies of the state parties and other delegates converged around negotiating to take the 438 "brackets off women's lives". In a world fissured by different (if not competing!) ideologies, perspectives and interests, such an exercise could not have been smooth. Inevitably certain issues became more contentious, and as a result more critical for women as hard battlelines were drawn around them right since March '95 at the Preparatory Meeting (towards Beijing) of the UN Commission on the Status of Women (CSW) held at New York. Infact due to the lack of consensus on much of the bracketed text of the draft PFA at the CSW (the preparatory body for the FWCW), the 39th Session was extended by 3 days in March '95. Here two proposed additions to the then existing draft PFA were adopted: a section on the Girl Child and a Draft Declaration presented by the G77/ China.

This meeting was marked by two other significant initiatives: a call by Australia for a 'Conference of Commitments' and a proposal to create a new post of an Ombudswoman in the office of the UN Secretary General. In terms of negotiating the brackets little progress was made, as a result of which ECOSOC mandated an additional session of informal consultation to be held before Beijing. The 'Informals' held between 31st July to 4th August '95 at New York addressed a few issue "clusters" identified by grouping bracketed texts under: macro economic framework, resources and institutional framework, human rights and diversity. The section relating to 'health' was left for Beijing. As technically the outcome of the 'Informals' would have no impact on the draft PFA unless it was endorsed at Beijing, the delegates at the informal consultation agreed upon the ground rule that agreements made there would be respected at Beijing. Accordingly the document that emerged from the Informals, referred to as L.3, was submitted to the delegates at the FWCW for consideration, with a reminder of their agreement to endorse the same.

Having journeyed through many months of consultations, discussions and negotiations the draft PFA reached its final lap at Beijing with 438 brackets. Tagged along was the draft Declaration with a yet uncertain fate. Since finalising of the draft PFA was central to the Conference, consensus on all bracketed texts was imperative. However the course towards consensus building was a difficult one given the different interest groups operating at the Conference. For the NGO caucuses the task of lobbying was challenging, given the task of ensuring that the real concerns of and commitments to women of the world do not get lost in cross currents of state politics and other political agendas disguised by religion, culture or economic development. Negotiations on the more contentious issues followed a slow and somewhat similar patterns. The initial

hard lines dissolved as the Conference drew to a close in favour of a diluted but 'consensual' position, as in the case of the Beijing Declaration. In instances where feminist victories were achieved, recalcitrant countries settled for using the option of registering 'reservations' to exclude any obligation arising on that issue. The equal inheritance rights for women is a case in point.

Recapitulated here are the negotiations, its course and outcome on some of the contentious human rights concerns at Beijing:

#### GENDER

The use of 'gender' was strongly objected to by some countries led by the Holy See at the 39th Session of the CSW. They proposed substitution of the term with 'sex', thereby limiting the purport of gender discrimination or gender inequality where it so appeared to biological difference only. As the proposed substitution was not acceptable, they proposed defining gender to mean male and female, the two sexes of the human race. Their objection to relating gender with socially constructed roles was that it would include homosexuality. To resolve this stalemate a Contact Group on Gender was constituted to deliberate and report the consensus position to the Main Committee meeting at Beijing. On 5th September the position reported to and accepted by the Main Committee was to retain 'gender' without the definition. Despite disagreement by Guatemala the discussions on 'definition' was closed by the Chair, leaving the countries objecting to 'non-definition' the option of registering reservations against it at the end of the Conference.

#### EQUITY V/S EQUALITY

Throughout the draft PFA 'equity' was raised as a substitute for 'equality' by some Islamic countries, particularly Yemen and Sudan. The underlying argument for this proposition was that different rights for men and women are compatible with their different social roles and therefore equitable. The argument resisting 'equity' was that historical disadvantage operating against women must be recognised and corrected by guaranteeing substantive equality. Eventually equality was retained and equity dropped. Some examples of how the texts were shaped by this change as:

Para 4: "The PFA requires immediate and concerted action by all to create a ..... world based on..... the principle of EQUALITY for all people of all ages and from all walks of life."

Para 118: "Acts of violence, whether occurring within the home or in the community.....are obstacles to the achievement of EQUALITY and for development and peace."

## UNIVERSAL & UNIVERSALITY

The gains made for women's human rights at Vienna seemed to be threatened when some countries insisted on prefixing 'universal' to human rights in a way which suggested that all human rights of women were not universal. The motive to use 'universal' as a modifier to limit the universality of human rights was to perhaps exclude from its scope areas of women's lives that are regulated by religion and custom. Supporters of the universality principle also felt that repeated use of 'universal' would undermine other essential features of human rights such as their inalienability and indivisibility. Eventually bracketed reference to universal was deleted from paras 2, 4, 8, 9, 11, 12, 14, 33, 46, 113, 132, 223, 274(f) & 326.

The other battle was to retain use of Vienna language so as to deviate from the position on universality. This was seen particularly with reference to retaining "women's rights are human rights" in the Beijing Declaration and in incorporating the language of para 5 of the Vienna Declaration in place of para 9 of the draft PFA.

The affirmation of universality and indivisibility of human rights in a world of religious, ethnic and other differences as formulated in para 5 of the Vienna Declaration is:

"All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."

Although the above formulation did get incorporated in the PFA, the universality principle was made conditional to "sovereign right of each country", the consistency of human rights with "national laws and development priorities", as well as "the religious and ethical values and backgrounds of its people." This was done indirectly by retaining a completely contradictory text as a Footnote to the Health section 'C.1'.

## CEDAW:

References to CEDAW were mostly in the section on Human Rights of Women. To strengthen the commitment of state parties to CEDAW, it was strongly suggested that the PFA must specifically state 'ratification' as one of the necessary actions to be taken.

Although the weaker option of 'consider ratification' was dropped, Sudan made a reservation against it.

On implementation of CEDAW in para 230(h), the stronger formulation of "revising all non conforming laws....to meet international obligations set forth in the Convention" was dropped in favour of a weaker and ineffective formulation that read: "reviewing all laws, policies....to determine whether they meet the obligations set forth in the Convention." A new reference to CEDAW was read into para 107(d) in the Health section.

Although the Optional Protocol to CEDAW was slated for debate at Beijing, it was instead deferred by the delegates to the next session of the CSW to be held in 1996 at New York.

#### INHERITANCE RIGHTS:

The guarantee of "equal succession and inheritance rights of children, regardless of sex" in para 274(d) of the section on the Girl Child was another bone of contention. Consensus was reached on the last day after prolonged negotiation, and predictable the victory was clouded by 'reservations' made by Libya, Iran and Iraq. The difficulty as expressed by Egypt on behalf of some Islamic countries was that 'equal' inheritance was inconsistent with their system and therefore should be substituted by 'equitable'. Countries following other legal systems found this proposition unacceptable and so 'equal' was retained.

#### CUSTOMARY LAWS:

To ensure implementation of international human rights instruments, the draft PFA at para 232(d) called for reviewing of all "national laws including customary laws." This para further goes on to ask for "revoking" of discriminatory laws and removal of gender bias in the administration of justice. The retention of 'customary laws' was an outcome of protracted and difficult negotiations, as was the deletion of the word "consider" before 'reviewing and revoking discriminatory laws', to make it a stronger guarantee of women's rights.

#### SEXUAL ORIENTATION:

The PFA prohibits discrimination on any ground, but refrains from specifically mentioning 'sexual orientation' as a barrier to equality. What remains of significance is that for the first time at a UN Conference 'sexual orientation' was discussed and debated upon with considerable support from some countries such as Canada,

New Zealand, Latvia, Isreal, Jamaica, South Africa, Norway, the Cook Islands, Slovenia, U.S, and the E.U. Although the term was deleted from para 48 of the Statagic Objectives of PFA, the term "other status" was used instead to connote barriers to equality arising out of such status. The above countries issued interpretive statements on para 48 in which they specifically read 'sexual orientation' into the term "other status", as one of the barriers to equality. A historic first for lesbian rights was that a South African lesbian addressed the Plenary at the Conference urging the delegates to remove the brackets off sexual orientation.