



Asia Pacific Forum on Women, Law and Development

APWLD

NGO on the Roster in consultative status with the Economic and Social Council of the United Nations

VIOLENCE AGAINST WOMEN: TRENDS AND PATTERNS IN ASIA PACIFIC

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Violence against women, in particular, has inhibited women as a group from enjoying the full benefits of human rights. Women have been vulnerable to acts of violence in the family, in the community and by States. The recorded incidents of such violence have reached such unprecedented proportions that they have shocked the conscience of the world. (UN Special Rapporteur on Violence Against Women - E/CN.4/1995/42)

It has been almost a decade since Ms. Radhika Coomaraswamy made the above statement in her preliminary report on violence against women, its causes and consequences in 1994. But there has been no significant change in this situation. The conscience of the world has not been shocked enough as violence against women in the Asia Pacific is still very much part of our daily lives, and continues to be committed with impunity.

Violence against women is defined as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." (*Declaration on the Elimination of Violence Against Women*)

APWLD subscribes to the fact that violence against women (VAW) is a form of discrimination, as defined in Article 1 of the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, and articulated in the CEDAW Committee's General Recommendation No. 19. On this basis, any form of VAW is a clear violation of women's inherent human rights, including the rights to life, liberty and security of person, equality, equal protection under the law, and freedom from all forms of discrimination.

APWLD, a regional network, working for 18 years with over 1500 women's organisations, also affirms that patriarchy, which manifests in the "historically unequal power relations between men and women" (*the Beijing Platform for Action*), continues to be one of the critical root causes of VAW. Male-dominated systems and structures operating in political, economic and cultural spheres have perpetuated VAW, violations of women's human rights and have prevented women's full advancement.

Examining the causes of violence against women within the framework of patriarchy, as opposed to sex discrimination, provides a lens for analysing the different axes of power between women and men that are determined not only by gender, but by the intersection of gender with class, caste, race, ethnicity, religion, sexual orientation, citizenship status, disability, etc. Thus capturing the impact of multiple factors that play a role in violence being committed against women. In contrast, examining the causes of VAW within the framework of sex discrimination alone limits the analysis of power relations between men and women to the factor of sex alone.

Similarly the redress and relief provided to women who have suffered from VAW must also ensure that the full range of women's civil, political, economic, social and cultural rights are promoted.

However, efforts for redress and relief will only be palliative if the roots of VAW are not directly addressed. The historical inequalities between men and women, which have been established through patriarchal systems and structures, must be corrected.

Phenomena in the Asia Pacific

Economic globalisation and fundamentalisms are two phenomena in the Asia Pacific that have significantly influenced the context in which violence against women takes place and how States have responded to VAW. Of particular concern is how these phenomena have increased the vulnerability of women to VAW, particularly by State perpetrators.



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As a result of economic globalisation, communities are becoming so poor and disenfranchised, that there is a further consequent backlash against women, in terms of men within the family and the community prioritising their interests over women's, using various forms of VAW to enforce their position. In turn, fundamentalist-based groups are using the vulnerabilities of communities, to enforce more extreme interpretations of cultural and religious practices, which are commonly expressed in forms that are violent to women and limit women's rights.

Within the contexts of both economic globalisation and fundamentalisms, there has been a notable backlash against women and women's rights throughout the region. This is reflected by States' assertion and protection of their economic-political interests at the expense of women's rights, to the point where State actors are perpetrating acts of VAW to enforce State interests.

Economic Globalisation

Economic globalisation perpetuates inequalities among nations; between the State and peoples; and among peoples, between men and women.

In her reports Ms. Radhika Coomaraswamy has reaffirmed that "Economically disadvantaged women are more vulnerable to sexual harassment, trafficking and sexual slavery." (E/CN.4/1995/42).

Testimonies from women living in poverty in the Asia Pacific region consistently state that women have become poorer, more disadvantaged and marginalised as direct results of economic globalisation. (*APWLD Rural and Indigenous Women Speak Out on Globalisation workshop, 1998; Workshop on Indigenous Women, 2002*).

The aggressive push for trade liberalisation has led to economic as well as cultural dislocation of rural and indigenous women in the region. Large-scale commercial extractive industries such as mining, logging and power generation by multinational corporations have led to the loss of land, traditional sources of livelihood, and have worsened food insecurity. These have contributed to the increase of cheap female labour, and a staggering increase in the feminisation of migration. In Hong Kong alone, the number of foreign domestic helpers, majority coming from the Philippines, Indonesia and Thailand, all women, there are 237,110 for the year 2002. (*Immigration Department, Hong Kong Special Administrative Region*). There has also been a deplorable increase of women and girls being trafficked. In Southeast Asia, the women and girls are being trafficked for the sex industry as well as for sweatshop labour, forced marriage and street begging (*IOM, Quarterly Bulletin, April 2001*).

Under such economic systems, where the return of investments for the capitalists has more premium than people's rights; where governments' strategic approach to poverty is to open up lands and labour to multi-national corporations, at the expense of national sovereignty and peoples' rights to food, land and resources; then women become more vulnerable, and the violence against women, in various forms, persists.

Fundamentalisms

APWLD supports the promotion and protection of the freedoms of religion, including the practice of religion, and the right to freely participate in the cultural life of the community. (*Universal Declaration of Human Rights*)

However, in the Asia Pacific, we have also witnessed numerous cultural practices that are discriminatory towards women and perpetuate forms of violence against women. The cultural and religious leaders, who are predominantly men, hold tremendous power and influence in their societies, to interpret cultural and religious traditions in ways that perpetuate discrimination and violence against women.

In Aceh-Indonesia, Dalit communities in India, Muslim communities in Philippines and Malaysia, discriminatory cultural forms have been imposed upon women by local leaders, as a means of maintaining and asserting their economic-political agenda; and further in the face of external threats, the cultural and religious practices are justified as a means for asserting the community's cultural and political identity. Women and women's bodies, are the common terrain upon which cultural interpretations and assertions of power are played out - whether it be over women's clothes, reproductive rights, intimate relationships, social roles or rights to land and other resources.



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In response, women are emerging as religious leaders and believers, and are challenging these religious interpretations and practices. These challenges have often been met with even more violence, curtailment of women's rights, and even deaths.

State Based Violence and Militarisation

In the context of these overarching influences of economic globalisation and fundamentalisms in the Asia Pacific region, the vulnerability of women to VAW has intensified, in particular, there has been a growth in State based violence.

There has been a strong trend in the Asia Pacific for States to adopt militarised responses to counter legitimate demands of the people - in Burma, Mindanao-Philippines, Aceh-Indonesia, Thailand. Within this context, women have become more vulnerable to violence, especially in militarised areas, and as displaced persons and asylum seekers in transit and receiving countries. The increased militarisation has been supported by increased allocations in national budgets for military purposes and subsequent reductions in budgets for expenditure on health and education for women.

Of most concern however in this context, is the State based violence being committed against women. In Burma, Shan women are being raped by the military junta's forces, with impunity. There have been 173 documented incidents of rape and other forms of sexual violence, involving 625 girls and women, committed by Burmese troops in Shan State, mostly from 1996-2001. 83% of the rapes were committed by officers, in most cases in front of their troops. Out of the total 173 documented incidents, in only one case was a perpetrator punished. More commonly, the complainants were fined, detained, tortured or even killed by the military.

The victims and their families are unable to freely or safely testify in investigations conducted within Burma. Prior to the visits of the UN Special Rapporteur for Human Rights in Burma, Professor Pinheiro, (Oct. 2002), International Committee of the Red Cross (ICRC) (Dec. 2002), and Amnesty International (Jan. 2003) to Shan State, local communities were threatened to not testify against the military. Most recently, in early February 2003, local military officers threatened to cut out the tongues and slit the throats of villagers who had dared to speak out during the ICRC's visit. There has been no redress and almost no relief provided to the survivors of these rapes, either in Burma, or by the international community. APWLD is deeply concerned at the increased climate of insecurity for rape survivors and their communities in Shan State, as under the current military regime there is no protection mechanism provided for survivors or witnesses who dare to testify against the military.

It is also concerning when the violence perpetuated by states, has occurred when the State chooses not to intervene in situations of communal violence. In its report on the communal violence in Gujarat, India in 2002, the National Human Rights Commission of India concluded that "there was a comprehensive failure of the state to protect ... the people", which resulted in numerous accounts of violence against Muslim women, including rapes, torchings, and killings.

Specific Recommendations for States:

- ***Stop all aid to Burma through the military regime and stop all investment in Burma until: all sexual violence against ethnic women and girls is ceased; nationwide ceasefire is implemented; military troops are withdrawn from Shan State and other ethnic areas; and meaningful tri-partite dialogues are held on the introduction of genuine democratic reforms;***
- ***Provide access to women refugees and asylum seekers to State asylum; and assist the UN High Commission for Refugees and immigration units to process refugee status and where appropriate settlement for women asylum seekers;***
- ***Provide adequate relief and rehabilitation for survivors and their families;***
- ***Provide fair and safe means of redress for survivors of State based violence against women;***
- ***Prevent situations of armed conflict within countries and between countries, through open dialogue and peaceful mechanisms for conflict resolution.***



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STATE RESPONSES TO VAW

Lack of implementation

To a large extent, the commitments made by States to address VAW and armed conflict under Critical Areas D and E of the Beijing Platform for Action and its Five-year review, have not been fully implemented. Even where States have introduced laws and policies to address VAW at the national level, the laws and policies themselves are not fully implemented. Related to this, insufficient resources have been allocated in national level budgets to fully implement national level policies and programs. For example, there continues to be a dearth of domestic violence shelters, which is a persisting and urgent need in many countries in the region.

Further, there is a concern that States have placed more focus on service-oriented strategies that address the consequences of VAW, rather than systemic oriented strategies, that focus on the prevention of VAW. For example, preventing situations of armed or communal conflict, rather than only providing relief services for those affected, or implementing strategies that change communities' patriarchal attitudes towards women.

Criminalising VAW

States have made tremendous progress in criminalising forms of VAW such as forced marriage, forced prostitution, rape, domestic violence, violence in the family - at both the national level (e.g. domestic violence legislation) and the international level (e.g. Statute of the International Criminal Court). This has increased the recognition of VAW as a State responsibility and obligation to prevent and redress.

However, there are several limitations related to such a strategy.

The first limitation of the State based response to criminalising forms of VAW to note, is that in spite of the legal criminalising of VAW, in many communities, there is still widespread acceptance of acts of VAW, which are justified as acts under their religious or cultural beliefs and practices. For example, caste based violence against Dalit women, witch hunting, dowry deaths, mathamma (offerings of girls to temples), honour killings, bride price, compensation practices for rape, domestic violence and female circumcision ceremonies.

The second limitation is that the consequent forms of redress made available to women at the national level are actionable only within the criminal legal system, which tends not to employ gendered processes. Consequently women are not able to easily access the criminal system, as they cannot with assurance seek the assistance of the police knowing that their matter will be addressed appropriately, or even that they themselves will not be further violated by the police.

The lack of gendered processes has also meant women who have sought redress through the criminal legal system, have been exposed to further risk, where they are required to give evidence without adequate witness protection, or further trauma, where they are forced to re-experience their violation within the court system, and often unjust outcomes.

Consequently, there continues to be a high level of reluctance among women to seek redress through the criminal system, and correspondingly, a high level of impunity of perpetrators of VAW, particularly State perpetrators.

A system that provides legal standards and remedies for a crime, but that does not 'persecute' the women affected, is imperative. Therefore mechanisms and procedures for redress of VAW need to be improved to ensure they do not aggravate the situation for the women affected.

Impunity for State Based Violence

In situations of State based violence (e.g. armed conflict, lack of intervention in communal violence) the normal criminal sanctions are not applicable to the State per se. Only individual State representatives can be held responsible. Where State representatives have committed acts of VAW, women victims and their families are not able to testify against the State representatives, as they fear for their safety. Therefore the current venues for redress are not adequate for addressing violence by the State or its representatives.



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At the international level the UN also needs to re-examine its methodologies for verifying violations, to ensure that women are not exposed to further risk or trauma. For example, employing witness protection schemes in fact-finding missions, as identified in the Statute for the International Criminal Court. Unless safer methods are employed, large numbers of women will not speak out and the violence will continue unabated.

Specific Recommendations for States:

- ***Increase provision of domestic violence shelters;***
- ***Implement strategies that are both systemic and service oriented to address the root causes and consequences of VAW;***
- ***Improve procedures within criminal legal systems by making them relevant for women, providing measures to ensure the safety of women and other witnesses, and minimalising instances for re-exposing women to their trauma;***
- ***Identify alternative mechanisms of redress for women in situations of armed conflict that ensures the safety of the women.***

Specific Recommendations for the UN:

- ***Identify alternative means of verifying acts of State based VAW and human rights violations, that do not expose women to further risk or trauma;***
- ***Identify forms for redress for women suffering from State based violence, that focuses on providing safety, relief and development of women;***

APWLD's Responses to VAW

APWLD affirms the call of the CEDAW Committee and the UN Special Rapporteur on VAW to recognise that violence against women is a form of discrimination, and must be addressed as a rights violation. Further, the redress of VAW must also ensure that the full range of women's civil, political, economic social and cultural rights are also promoted, to ensure the interdependence of these rights is not undermined. The rights approach to addressing VAW directly targets the discriminatory practices perpetuated by patriarchal systems that continue to be a root cause of VAW.

Within a rights based approach to VAW, there has also been an emerging focus on responding to women who face violence as a result of intersecting forms of discrimination, e.g., indigenous women, Dalit women, ethnic minorities in Burma and Thailand etc. This focus was strengthened through the World Conference Against Racism process where greater focus was given to analysing how different forms of discrimination intersect in their impact on women.

General Recommendations

We urge States to:

- ***Fully implement the BPFA commitments and national State's policies and programmes developed to address VAW;***
- ***Ratify the 1951 Refugee Convention and the 1967 Protocol to the Convention;***
- ***Remove all reservations from CEDAW;***
- ***Establish and ratify the optional protocols to CEDAW and the CESC; and***



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- ***Ensure that the Committee selected to monitor the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has equitable gender representation and the members are equipped to promote women's equality and address gender discrimination, particularly in relation to violence against migrant women workers.***
- ***Ensure that the UN supports and resources the UN Special Rapporteur on VAW to continue the work being done through that mechanism.***

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