

**SUMMARY REPORT OF THE ASIA PACIFIC REGIONAL CONSULTATION
WITH
THE UNITED NATIONS SPECIAL RAPPORTEUR ON VIOLENCE AGAINST
WOMEN, ITS CAUSES AND CONSEQUENCES; 'MULTIPLE DIMENSIONS OF
EQUALITY FOR WOMEN'**

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**Asia Pacific Forum on Women, Law and Development
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**APWLD is an independent, non-government,
non-profit organisation committed to enabling
women to use law as an instrument of change
to achieve equality, justice, peace and development.**

Different but not Divided: Women's Perspectives on Intersectionality

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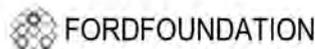
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“ *If you have come to help us, you are wasting your time. But, if you have come because your liberation is bound up with our liberation, let us work together* ”

- Lili Watson, Indigenous activist.

Foreword

This report represents the collective knowledge, experience and analysis of women from sixteen countries in Asia Pacific who turned their collective minds to questions of the multiple forms of discrimination women face – of intersectionality. The report comes from months of dialogue with participants and with our membership. While we came together for 2 days in January 2011, the report is reflective of a much larger conversation; one that has been happening amongst APWLD members for many years. This is the second specific publication APWLD has produced around the theme of intersectionality¹. Conversations on intersectionality started shortly after APWLD was formed 25 years ago and practicing intersectionality will continue to be a constant conversation within our movement in the years to come.

The theory of intersectionality has now been with us for more than 20 years. It was introduced to me in my undergraduate women's studies class as a new analytical tool to overcome the essentialising practices of northern, middle class feminisms. I remember the lightbulb feeling I had when I realised that the struggles of my feminism – of equal pay, of access to abortion and contraception, of political representation and domestic violence – not only did not reflect the concerns of Aboriginal women in Australia but were potentially serving to silence their own very different struggles – of forced labour and stolen wages, of forced sterilisation and stolen children, of denial of citizenship let alone representation and of the deadly consequences of reporting domestic violence to the police.

Post colonial feminist writers deconstructed the language of feminism and human rights to reveal the essentialising effects of singular identities. 'Woman', they suggested, is not a singular, shared identity. Identities are constructed by those with the power to speak and have their representation accepted as authoritative. The identity 'woman' was no exception. Feminists speaking of the collective experience of 'woman', post-colonial feminists revealed, monopolised the experience of sex silencing 'others' and rendering their experiences illegitimate. The experience of the identity 'woman' cannot be separated from experiences of class, ethnicity, nationality, sexuality, corporeality.

The lightbulb moment was both illuminating and disturbing. The deconstruction of 'woman' rocked the foundations of a feminist voice. Was it possible for anyone to speak of collective experiences of oppression or would we all be reduced to speaking only from individual experience and what does this do to solidarity?

But intersectionality theory introduced a way to analyse and to own and recognise the positions from which we spoke. It enabled us to better understand the ways that power, privilege and marginalisation are produced through the intersecting deployment of identities, produced through the lens of sex, race, class, nation, sexuality. Now, 20 years on, intersectionality is broadly employed and recognised in various international covenants as an important perspective.

¹ Asia Pacific Forum on Women, Law and Development, *Collation of Papers on Intersectionality of Women's Human Rights*. 2002.

But have we as a movement really used this tool effectively? What should 'doing intersectionality' practically mean at international, national or local level? What should it mean for policy and what should it mean for our movements?

This report explores some of those quandaries and attempts to find ways to develop an intersectional approach that enhances, not reduces our solidarity. The purpose and theme of this consultation and report were designed to inform and compliment the thematic report of the UN Special Rapporteur on Violence against Women, its causes and consequences (UN SRVAW). But it was also a timely consultation with the CEDAW Committee adopting General Recommendation 28 just a month before this consultation was scheduled. That recommendation compels states to develop legal measures to recognise intersectional discrimination and to develop policies to address it.²

It's imperative that feminists hold governments accountable for this obligation but to do so we need to develop an understanding of what the implementation of the obligation looks like.

This report provides some of those suggestions. It suggests that an intersectional approach should push us to focus on harms and causes, rather than the legitimacy of identity. Similarly anti-discrimination and human rights national laws should be broad enough to address any human rights violation, regardless of whether the identity is named under a particular UN convention. The UDHR recognised this with the inclusion of 'other status' in article 2 which ensures all human beings are rights holders.

It also illustrates the compounding, intersecting forms of discrimination experienced by women in Asia Pacific. It shows that the deconstruction of identities and the adoption of intersectionality has not rendered us voiceless. We retain our space as women in the knowledge that this is an act of 'strategic essentialism'³ and as such we have to strategically deploy the concept and voice of women.

The report contends that our commonalities are in our struggles against structures and systems that marginalise and oppress rather than in identities. Neo-liberal globalisation, fundamentalisms and militarisation were identified as structural practices that intersect and impact on multiple identities. They require collective resistance, across identities, across movements to dismantle.

States too must recognise that their obligation to implement an intersectional approach requires them to look at structures and ideologies of oppression. We will know when a state exercises 'due diligence' to prohibit intersecting forms of discrimination when it analyses and dismantles the political, cultural and economic systems that depend on marginalisation of peoples, whatever their identity.

This intersectional conversation and report was made possible by the enduring commitment of APWLD members to ensure we are interrogating

² General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women CEDAW/C/2010/47/GC.2

³ The term 'strategic essentialism' was developed by Gayathri Spivak to overcome the potential silencing of movements left without a common identity to speak from.

the causes and consequences of oppression. I thank those members who have persisted with the conversation over 25 years, particularly the members of the Organising Committee Mikiko Otani, Heisoo Shin, Virada Somswasdi, Ivy Josiah and Nurgul Djanaeva. Within the Secretariat the conversations involved painstaking reflection and caffeine fuelled analysis. They were lead by Misun Woo who lead everyone to think more deeply about intersectionality not only as a theory but as daily practice in our everyday interactions, in our political choices and across our programmes and our movement. She was thoughtfully assisted by Dana Meads who volunteered to work in the Secretariat with Misun and extended her stay to see where the conversation goes next.

The consultation was itself a conversation, amongst ourselves and with the UN SRVAW, Rashida Manjoo. I thank Rashida for allowing us to be part of her explorations of intersectionality, for giving up her time to be with us and for her on-going, crucial work advancing the rights of women to live free from violence.

Finally I thank the participants who gave so much thought and energy to the dialogue. The women came with different experiences of intersectional discrimination but they all pointed to the importance of collective resistance and solidarity. We hope that, above all, our consultations and our work intersect with the work of women's human rights defenders at national level and fuel their struggles through solidarity.

Kate Lappin
Regional Coordinator
Asia Pacific Forum on Women, Law and Development (APWLD)

INTRODUCTION

The Asia Pacific Forum on Women, Law and Development (APWLD) has been facilitating consultations with the UN Special Rapporteur on violence against women, its causes and consequences (SRVAW) since 1995, a year after the creation of the mandate. More recently, APWLD has engaged with other mandate holders of the Special Procedures whose mandates intersect with the annual theme of our consultations.⁴ This collaboration has resulted in the expansion of gender and women's human rights concerns into other mandates, addressing multiple forms of discrimination and violence against women.

In recognition that women's multiple and shifting identities bring multi-layered, simultaneous and aggravated experiences of discrimination, the theme of the 2010 Asia Pacific Regional Consultation⁵ addressed intersectional and multiple discrimination experienced by women and its consequences on fulfillment of women's equality in this region. Women of Asia Pacific who took part in the Consultation⁶ shared stories and analysis of intersectionality to strengthen the women's movement in the region. Their contributions before, during and after the consultation collectively paint a picture of an intersectional approach that unites, rather than divides, and promotes causal analysis in systems, rather than individuals. Our collective hope is to develop an approach that strives for the full realisation of every person's human rights, one that recognises the systems that impede rights, not one that pits identities against each other.

The intersectional approach taken by participants at the consultation was one that both recognises the multiple and intersecting forms of discrimination and that strengthens our analysis and collective activism. Our focus is on intersectionality as a tool to be used to strengthen advocacy and activism. A politicised intersectional analysis requires us to recognise multiple, shifting and intersecting identities but move beyond looking for causes of violation in the identity of the individual. We need to recognise that a right has been denied, a harm experienced and locate the cause in the structures and systems that exclude. For this reason the Consultation discussion was structured around structural causes, rather than identities. **Militarisation, fundamentalisms and economic policies of globalisation** were identified as systems that

4 In 2004, APWLD held a regional consultation on 'Interlinkages between Violence Against Women and Women's Right to Adequate Housing,' in collaboration with the UN Special Rapporteur on Adequate Housing, Mr. Miloon Kothari. In 2008, with the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. S. James Anaya, on 'Violence against Indigenous Women in Asia Pacific.' In 2009, with the UN Special Rapporteur on the human rights of migrants, Mr. Jorge Bustamante and the UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Ms. Gulnara Shahinian on 'Demanding protection for foreign domestic workers and all women migrants.'

5 APWLD organized the Asia Pacific Regional Consultation with the UNSRVAW entitled 'The Multiple Dimensions of Women's Equality' on 11-12 January 2011 in Kuala Lumpur, Malaysia. The Consultation was originally scheduled on 8-9 December 2010, however, was rescheduled to January 2011 due to unforeseen circumstances.

6 49 women human rights defenders from 16 countries (Bangladesh, Burma, Cambodia, Kazakhstan, Kyrgyzstan, India, Indonesia, Malaysia, Mongolia, Pakistan, Papua New Guinea, Philippines, South Korea, Sri Lanka, Thailand and Timor-Leste) across the Asia Pacific region.

themselves intersect and undermine the realisation or enjoyment of rights. These trends fused with patriarchy have cultivated an environment conducive to multiple forms of discrimination towards women in the Asia Pacific region.

An intersectional approach was first developed as a way to better understand multiple experiences of discrimination and human rights violations. While the term 'women's movement' was coined partly to build strength and international solidarity it can also be homogenising and consequently represent the concerns of those with the most power to define the agenda and discourse of the movement – most often middle class women from the global north. Analysis that illustrated the different, multiple and intersecting ways that women experience exclusion, discrimination and human rights violations was required.

The sharing of experiences during the consultation highlighted the fact that we are all women but we are not homogeneous or identical. We all have unique and different experiences and identities that can change over time or in different places. Being a 'woman' is what connects us, but this identity also produces an assumption that women experience the *same* discrimination and violence solely on the ground of their 'sex'. The reality is that the grounds of discrimination that women experience may vary and intersect with each other to reinforce unequal social structures; this will in turn exacerbate the degree of exclusion, marginalisation and stigma that women face, as individuals and as members of a specific groups. The oppression that women suffer because of their sex/gender, religion, class, caste, ethnicity, nationality, (dis)ability, language, health, HIV status, socio-economic status, sexual orientation and other factors that compound their vulnerability to human rights violations and deny their access to justice. Prevailing human rights approaches do not yet adequately address the consequences of intersectional discrimination.

In many cases the specific problems or conditions created by intersectional discrimination are subsumed within one category of discrimination, such as race or gender discrimination. Recognising women's multiple, simultaneous and sometimes contested identities helps us to understand and assess the impact of these converging identities on opportunities and access to rights, and also to see how policies, programs, services and laws that impact on one aspect of our lives are inextricably linked to others.

The discussions point to some key **principles** to guide our approach to intersectionality:

- An intersectional approach requires an analysis of structural causes of inequality
- An intersectional approach should unite us to address inequity whenever it occurs
- An intersectional approach requires a re-think of human rights systems that necessitate singular identity complaints.
- An intersectional approach does not necessitate the abolition of women specific or identity specific spaces.
- An intersectional approach is based on the principles of universality, equality and non-discrimination.

WHY INTERSECTIONALITY?

Human rights and fundamental freedoms are rights that *all* persons are entitled to enjoy without discrimination *of any kind*. It is the underlying principle of the Universal Declaration on Human Rights (UDHR) and subsequent two international human rights Covenants, and now extends to the nine core human rights treaties and more than 40 mandates of the Special Procedures that the international human rights system takes pride in having established. These human rights instruments and mechanisms have made a significant contribution in norm-setting and elaborating the promotion and protection of human rights that are within its mandate. The conventional structure of international human rights systems relates to either a (i) particular issue or (ii) specific groups of persons who may face particular obstacles to the full enjoyment of their rights.

While the UDHR promotes the universality and inter-relatedness of human rights, human rights architecture has, to some extent, been formed in a way that focuses attention on an exclusive list of peoples whose rights may have been violated. Furthermore, an identity based human rights system can result in exclusive protection for those who can fit their violation into an identity based experience.

The recognition that there are multiple identities that produce power relations and experiences has, in some cases, resulted in an attempt to expand the list of identities that we need to include in anti-discrimination and human rights laws. While it is essential to recognise the specificities of individual experiences, the 'list' approach can have an exclusionary and token result. As important as ensuring the inclusion of different identities is the recognition that the list is indicative, not exhaustive.

The UDHR and the International Covenants on Human Rights⁷ originally envisaged an expansive view of protected identities:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (emphasis added)⁸

An expansive view of rights holders was also envisaged by the Refugee Convention where it listed refugees as those who hold a

1A(2) ... well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion ...

The broad inclusion of ‘social group’ has allowed for particular experiences of persecution to be recognised. This inclusion has allowed the jurisprudence of refugee law to be more focused on the experience of persecution than on the legitimacy of identity. Participants in the National Consultation⁹, for example, detailed the case of a transgender woman from Malaysia who successfully sought asylum in Australia on the grounds that her particular social group (transgender women) are likely to face persecution¹⁰. Effectively the inclusion of ‘particular social group’ in the Refugee Convention has been interpreted as a right to be protected from persecution.

However we often see the lists in national texts¹¹ and other international texts as limited only to specific attributes. This then limits non-discrimination rights to groups listed. It also has the perverse effect of demanding stable, authentic identities of rights claimants and proof that the violation was caused because of the identity. This ‘proof’ is particularly difficult when intersectional identities converge.

The fact that sexual orientation, for example, has not made it to the international ‘lists’ of protected attributes has enabled exclusion. At the 16th session of the Human Rights Council on 22 March 2011, a joint a statement was delivered that called on States to end violence, criminal sanctions and related human rights violations based on sexual orientation and gender identity.¹²

7 International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights.

8 Article 2, UDHR.

9 On 13 January 2011, a National Consultation with the UNSRVAW was organized by Women’s Aid Organisation. The Consultation was attended by 31 women/ human rights activists across the country.

10 Refugee Review Tribunal Australia, 0903346 [2010] RRTA 41 (5 February 2010).

11 See attached appendix of anti-discrimination laws in Asia Pacific, most have an exclusive list of attributes. Only Cambodia includes ‘other status’ and Kazakhstan includes discrimination for reasons of ‘any other circumstances’.

12 The statement was delivered on behalf of a broad grouping of 85 States from all regions of the world. This was enabled by the preceding 2008 UN General Assembly Statement, which for the first time inserted sexual orientation and gender identity in the UN interpretation of the Universal declaration of Human Rights, by reaffirming the non-discrimination principle of international law, requiring that human rights apply equally to each human being.

Preceding this however, an exclusionary approach was often taken against LGBT people. This was most evident in the attempt to remove a reference to sexual orientation from the original wording of the General Assembly resolution on extrajudicial, summary and arbitrary executions in 2010. This happened despite the UN Human Rights Committee's decision in 1994 affirming that sexual orientation is a protected ground against discrimination.

Whilst rights groups have been creative in their use of existing human rights frameworks, the systems continue to encourage oppression as distinct rather than interrelated, capturing only one single form of discrimination at one time. This makes the traditional approach to discrimination problematic. Complaints of discrimination in most jurisdictions require the complainant to identify the 'attribute' that caused the discrimination – sex, gender identity, sexual orientation, ethnicity, religious belief, (dis)ability, nationality etc. The test to determine whether discrimination occurred is then to compare to an actual or imagined 'comparator' who does not have this attribute, arguing whose violations experienced is more/less serious. If a woman with a disability from an ethnic minority makes a complaint that she has been denied her right to an education, for instance, she needs to decide whether to make a complaint of sex discrimination, disability discrimination or ethnicity discrimination. In fact it is likely that all three intersected to create the denial of rights.

A fragmented approach to identity and oppression can heighten a sense of 'competing rights'. It leads to a fragmented approach to theory as well as in activism. For instance, women's groups have routinely prioritised the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) among the Treaty Bodies, and the SRVAW among the Special Procedures.¹³ Similar kinds of splits are also evident in national-level mechanisms and civil society programming. Furthermore, there still is a resistance within the movement to embrace experiences that are different from that of the majority, such as the issues of gender identity, sexual orientation, (dis)ability, HIV status, ethnicity, religious minority, to name a few. While it is critical to have specific avenues and spaces to address women's human rights, such single category descriptions or flat narratives of women do not reflect the reality that we all have multiple and shifting identities and therefore may face intersectional discrimination.

During the Consultation women shared that within the movement for the collective rights of minority groups, minority women are often discouraged from sharing their experiences that may differ from the 'dominant perspective'. This is particularly true when it comes to violence within the community. In cases where their conceived culture or tradition is indeed the system reinforcing women's subordination, any protest will most likely be interpreted as betraying the groups' interest. Or simply, women are forced to give priority to their community's identity at the cost of their identity as a woman. Focusing on just one aspect of a minority women's identity fails to acknowledge her as a whole and prohibits the full realisation of her rights. Her

¹³ Another example is when the question is raised of whether state violence is beyond the mandate of the SRVAW, which shows a very narrow interpretation of VAW framework. Reported by Rashida Manjoo, UNSRVAW at the Consultation.

identity and the discrimination she faces, as person who belongs to a minority group and as a woman, must be seen as being inseparably interlinked and approached in a cohesive, rather than fragmented way.

'I started thinking about discrimination against women and while doing so I was becoming uncomfortable about my own position in the community. I began to realise it was because I was a woman.'

Reiko Yamazaki
Buraku Liberation League – Aichi Chapter, Japan

Furthermore, we are reminded that not all women who belong to a minority group experience the same kind or level of discrimination, exclusion, disadvantage or privilege. How religion, sexual identity, education, migration status, socio-economic status, (dis)ability, HIV and other health status, play a role in one's life should be carefully examined to recognise the increased overall burden of inequality. These different forms of discrimination are not merely additional but rather intersect to create a unique sphere of discrimination that's relative to each individual context - sexism is racialised, race is sexualised, we can't simply say they experience both sexism and racism; the two intersect to create specific marginalising practices. Failing to recognise this means that many minority women 'fall through the cracks' and are rendered invisible. Without the application of intersectionality, interventions and policies fail to capture the interactive effects of gender, ethnicity, sexuality, class and many other factors, and consequentially further marginalise those who occupy the most disadvantaged positions in society due to the compounding nature of their multiple identities.

Intersectionality underlines the indivisibility and inter-relatedness of human rights of *all* people and enables us to understand *how* discrimination and oppressions are interlinked rather than seeing forms of discrimination as being exclusive. It is a powerful analytical and advocacy tool that transforms our perspective to recognise all human being as rights holders whose issues can affect *me* or people in *my* circle. The challenge posed to us is then 'how do we translate intersectionality into practice?'

Let's look into some of the facts and issues shared at the Consultation in order to devise what 'utilising an intersectional approach' would mean to us.



CHAPTER 1: FACTS AND ISSUES FROM ASIA PACIFIC

The realities shared at the Consultation reveal that while discrimination against women is universal and pervasive, *some* women experience uniquely compounded discrimination based on their shifting identities. For example Khmer Krom women are indigenous women in Vietnam, migrants in Cambodia and asylum seekers in Thailand. These different identities shape their experiences in ways that are substantially distinct from one another, let alone from that of their male counterparts.

Participants shared that religious fundamentalists in Bangladesh use tactical violence against the Ahmadi community.¹⁴ This violence is then sexualised to further the subordination of Ahmadi women due to both their religion and gender, including acts of sexual harassment, assault and murder. The isolation of living in rural areas is also another exacerbating factor in this particular matrix of identity and discriminatory grounds for Ahmadi women.¹⁵ The testimonies of Buraku women tell a similar story. When comparing the results of the Government's general survey at national and local levels with the survey for Buraku women, no difference was found in the rate of domestic violence between Buraku and non-Buraku women.¹⁶ However feedback given in the survey of Buraku women revealed that domestic violence suffered by Buraku women is frequently related to Buraku discrimination. This was illustrated through the story of one Buraku woman whose husband became increasingly violent when his family highlighted and degraded her ethnicity.¹⁷

1.1. Fundamentalisms and women's (in) equality

APWLD uses the term 'fundamentalisms'¹⁸ to refer to monolithic, rigid narratives adopted by movements in their quest for power, particularly through deployment of cultural, religious, ethnic and nationalist discourse. In the Asia Pacific region, various forms of fundamentalisms, and the concept of 'othering' and exclusion have been increasing as a political power, particularly in last few decades. This approach fuels hatred, exclusion and discrimination against other groups, and places women in a more marginalised position that is compounded by the different identities they hold.

In Papua New Guinea, participants testified, indigenous/tribal women have been killed, severely injured and disabled after being accused of sorcery. Most at risk are women whose multiple identities reduce their 'value' - young, single (not married/ widowed/ divorced) and poor. Extreme forms of violence are

¹⁴ The Ahmadiyya Muslim community is a religious community that has a conflicting identity with the majority of Muslims in Bangladesh and other parts of the world.

¹⁵ Ilora Farouque, Ahmadiyya Muslim Association, Bangladesh in her Submission during the Consultation.

¹⁶ 1,405 Buraku women responded to the 2005 Survey conducted by the Buraku Liberation League and the International Movement Against All Forms of Discrimination and Racism (IMADR). Reiko Yamazaki, Buraku Liberation League-Aichi chapter, Japan in her report, 'Amplifying Buraku Women's Voice at CEDAW' during the Consultation.

¹⁷ Reiko Yamazaki, Buraku Liberation League-Aichi chapter, Japan in her report, 'Amplifying Buraku Women's Voice at CEDAW' during the Consultation.

¹⁸ The term fundamentalisms is consciously used to describe the plurality of forms in which hegemonic trends manifested in the civil, political, economic, social and cultural spheres.

justified in the name of protecting the ‘community’ from fatal diseases such as HIV/AIDS, people’s unexplained death or unfortunate accidents – women, particularly unaligned women, are positioned as pollutants. The accounts included women who are forced out from a community, losing all of their resources and land. This obviously has a devastating impact on the enjoyment of their rights (housing, livelihood, access to water, sanitation or heating, segregation from their own communities, cultural lives and so on).¹⁹

Khmer Krom women share a similar experience of discrimination. Fundamentalism prevents Khmer Krom women from practicing their own culture. This includes the banning of Pali books or Bibles from Khmer Krom pagodas in Southern Vietnam because they are conceived as a way to pass on Khmer Krom language and culture to the next generation. In this vein, schools are also prohibited from teaching Khmer language which has led to 80% of Khmer Krom women reported as illiterate.²⁰

Cultural attitudes and practices cultivate an environment where violence against women persists and is used as a method of control over women and other marginalised groups. ‘Moral’ principles and codified religious norms and practices are used to regulate women’s bodies, sexuality and reproduction. In the Philippines, the Roman Catholic Church is leading a sustained offensive campaign against what they have termed a ‘culture of DEATH’ and enforcing a complete taboo on discussions about divorce, abortion, contraception and homosexuality, amongst other topics.²¹ Similarly, in Indonesia, the enactment of local and national Islamic Sharia-oriented policies that discriminate against LBT people were reported during the Consultation.²²

Lesbian, bisexual and transgendered women (LBT women) and girls²³ experience multiple and intersectional forms of discrimination based on both their gender identity and sexual orientation. Their rights are denied in both public and private life. Extreme forms of violence such as ‘corrective rape’²⁴ is justified when it comes to LBT women as they are regarded as deviant or not normal, or simply not recognised as a rights holder at all.²⁵ There is a

19 Lilly Besoer, Voice for Change, Papua New Guinea in her report, ‘Sorcery-related violence against women in the Highlands of PNG’ during the Consultation.

20 Ang Chanrith, Khmer Krom Woman Activist/Legal Aid of Cambodia, presenting San Sophum’s report, ‘Khmer Krom Women and Access to Land’ during the Consultation.

21 Angie Umbac, Rainbow Rights, The Philippines in her report, ‘Combating Discrimination and achieving Political Participation and Representation of LGBTs in the Philippines’ during the consultation.

22 Local regulation of South Sumatra No. 13 (2002) and of Palembang district No. 2 (2004) criminalises LGBT by categorising being LGBT as an act of prostitution; Law No. 1 (1974) defines a legal marriage as only between a man and a woman (heterosexual); Law No. 44 (2008) defines LGBT as pornography acts under its Provision section. Sri Agustine, Ardhanary Institute, Indonesia in her report, ‘Violence against Lesbian, Bisexual and Transgender (LBT) Women in Indonesia’ during the Consultation.

23 LBTs refers to lesbians, bisexual and transgender persons and/or sexual minorities as defined in the Yogyakarta Principles on the Application of International Law in Relation to Issues of Sexual Orientation and Gender Identity, March 2007.

24 ‘Corrective rape’ is a criminal process, where LBTs, especially lesbian women are raped by a member of opposite sex, purportedly as a means of ‘curing’ or ‘correcting’ their sexual orientation.

25 Among 40 LBT interviewees, 37 reported rape experiences by their family members.. Sri Agustine, Ardhanary Institute, Indonesia in her report ‘Violence against Lesbian, Bisexual and Transgender (LBT) Women in Indonesia’ during the Consultation.

worldwide campaign to end domestic violence and indeed the enactment of domestic violence legislation will be one of the key indicators to show government's commitment to end violence against women in the family. However, in the case of lesbian women in particular, their gender identity and/or sexual orientation can become a mitigating factor in the punishment of the perpetrator. Furthermore, in many cases, violence against LBT women is socially and culturally justified in the name of protecting families' reputations as well. Transgender people who are not 'accepted' by their own communities are frequently left with no choice but to leave the places in which they have grown up. They often find themselves thrown out of schools due to their gender identity and behaviour, leaving them with very limited options of employment. In the workplace, cases have been reported where LBT women have had their contracts terminated or were forced to resign for the sole reason of their gender identity or sexual orientation. In cases where they migrate to other states/cities, they are often unable to manage due to language barriers and lack of citizenship rights as they have changed their 'sex' identity from that which appears on their ID cards, as has been reported in India, the Philippines and many other countries in the region. Different levels of discrimination faced by male to female transgender and female to male transgender was also reported, the latter experiencing many more layers of disadvantage and discrimination.²⁶

The region is also witnessing gendered impacts of the interaction of fundamentalisms, militarisation and conflict. Militarisation has opened the door to fundamentalist forces to achieve its target of nationalist, cultural and religious assimilation, and in many cases a form of heightened control over women's bodies and sexuality. Pahari women in Chittagong Hill Tracts (CHT) are facing the changing of culture enforced by the army and settlers. They have been forced to dress more conservatively and have had both their freedom of movement and right to physical integrity compromised due to harassment from the Army and settlers.²⁷

'In our culture, we don't wear blouses and when we are not fully covered up the army and the settler's look at us in an odd way and make us feel uncomfortable. Not only that the army and the settlers regularly harass us by deliberately pushing and touching the women's bodies in the bizarre. The women can no longer independently roam about in these places.'

A women's rights activist in CHT, Bangladesh²⁸

In addition to religious and cultural persecution, the lands originally owned by Khmer Krom people are grabbed by local Vietnamese authorities. Growing neoliberal influence in the country has led to Khmer Krom's ancestral lands

²⁶ Reported by Sumathi Murthy, Activist, India during the consultation.

²⁷ Hana Shams Ahmed, Chittagong Hill Tracts Commission, Bangladesh in her report, 'Multiple forms of discrimination experienced by Indigenous women from Chittagong Hill Tracts (CHTC) within the nationalist framework' during the Consultation. Note: the author is the coordinator of the CHTC but the opinions and analysis contained in the report do not necessarily reflect the views of the CHTC.

²⁸ Hana Shams Ahmed, *Ibid.*

being used to build dams, roads or dig canals without any compensation paid or prior consent sought from the Khmer Krom community. As a consequence of their land rights movement Khmer Krom people, including women, face prosecution and attacks from Vietnamese authorities and are forced to flee to neighboring countries, where they become trapped in a cycle of continuous violence and rights violations.²⁹ The situation of Khmer Krom women demonstrates how fundamentalism, hand in hand with globalisation, is used to further a nationalist agenda that reinforces the subordination and exclusion of non-dominant groups of society.

1.2. Globalisation and women’s (in) equality

The domination of neo-liberal economics has forced the Asia Pacific region to facilitate Northern private capital investment, privatise lands, infrastructure and services and push down costs of production. While economic growth may have been achieved through this approach to some degree, unconstrained neo-liberalism has exacerbated the gap between rich and poor, and in many cases, has furthered the feminisation of poverty, migration and gender inequality. The privatization of lands has been particularly devastating for women who farm land but are rarely recognised as claimants to land and resources. Neoliberal programmes assume a credit based market to profit but women are rarely eligible for credit, indigenous and migrant women often have no identity papers for official lines of credit or ownership papers and are instead forced into micro credit with high interest rates and lifetime of debt. Furthermore, neoliberal development policies have led to increased large-scale displacements of local populations where women, particularly from minority communities, are often trapped into exploitation and abuse through trafficking and/or forced labour.



Migrant women are treated as second-class citizens in their countries of destination and face, inter alia, lower salaries, gender-biased labour markets and insecure and unstable labour conditions. Internal migration in Mongolia guides us to understand how women’s multiple and simultaneous identities shape their experiences. In the past twenty years Mongolia has undergone a process of economic reform after opening its doors to neoliberal globalisation, which has led to the industrialisation of rural areas. Subsequently, there has been an increase in job opportunities but this has mostly been in the mining industry where jobs are strictly segregated on the basis of ‘sex’. The creation of employment and training opportunities for the female labour force has substantially lagged behind the provision of such opportunities for men, leaving women with very few options for income generation. The process of industrialisation compounds this situation with the loss of women’s traditional rural ways of livelihood, which fuels the increasing migration of rural women to urban centers. Migrant women then discover that their rural origins, poverty, low skills and education, and the lack of registration documents all converge and intersect to heighten the risk of being subjected to multiple forms of violations, including sexual violence. They are also more highly concentrated in the lower paid jobs as opposed to their male

²⁹ Ang Chanrith, *Ibid.*

counterparts.³⁰ Their ‘unregistered’ status also deprives migrant women of access to adequate health care and other social services such as, water and sanitation, employment and education.³¹ More than half of the migrating population are young girls aged 15-29 who experience at least five grounds of intersecting discrimination, that of gender, poverty, age (young), rural origin and migrant status.

‘It is really complicated to be employed. Some places where longer work hours are needed are reluctant to employ us. It takes 1-2 km to take buses back home in the late evenings. Since the pay is lower, almost nothing is left except for the bus fees.’

(from the interview with an migrant woman, aged 20)

Trans-border migration of women tells the same story. Women labour migrants working as domestic workers, for instance, are chronically underpaid because of patriarchal ideas about men’s work and women’s work. In many cases domestic work is one of the very few job opportunities accessible for migrant women. ‘Domestic work’ is considered the natural work of women and therefore undervalued. Sex discrimination is at the heart of wage gaps and poor working conditions. However, class, race, caste, nationality, ethnicity and language have all played a part in pushing women into labour migration and experiencing multidimensional discrimination. Various forms of colonialism have made women from some countries a much cheaper source of labour. When women migrant workers become disabled due to work-related injuries it is very difficult, as reported in Thailand, to get adequate medical treatment or social services including rehabilitation facilities and/or shelters because of their multiple disadvantaged positions in the society (migrant, disability, class and poverty amongst others).³² If the person is an ‘undocumented’ migrant worker then the problem gets more complicated (multiple identities, plus ‘illegal’ status) meaning that such women are blocked from getting any access to justice. It is also reported that, in many cases such as in Malaysia and in Singapore, ‘pregnancy’ can be a sole reason to terminate their contract and deport women migrant workers to their home countries.³³



In the Asia Pacific region, globalisation has also led to increased conflicts and militarisation in the quest for control over natural resources and markets. For example, development projects in the Papua New Guinea highlands have led to an increase in tribal fighting. Elections and large scale resource development is triggering new economic and power rivalries between clans. Conflict in the highlands is now related to issues such as which tribe will benefit from cash-based royalty payments from large-scale, transnational corporate resource

³⁰ Saruul Dorjsurenkhorloo, National Centre Against Violence, Mongolia in her paper, ‘Internal Migration and Women in Mongolia’ during the Consultation.

³¹ Registration is not required in order to migrate however, it is required to access education, health public utility and employment services. The majority of migrant women cannot afford to secure registration which means they are discriminated from use of basic services even where they are readily available to the broader community. Reported by Saruul Dorjsurenkhorloo, Ibid.

³² Reported by Saowalak Thongkuay, Disabled People International-Asia Pacific, Thailand during the Consultation.

³³ Reported by participants from Indonesia and Malaysia during the Consultation.

developers, and which tribe will benefit by getting its bloc-voted candidate elected into a seat in national parliament where he will be bound to represent tribal groups' interest.³⁴

During such times of conflict and political instability, particularly in the context of internal displacement, there is growing evidence of increased vulnerability of women to violence. Reports have shown that rape and other forms of sexual violence are used as a weapon of war and as an expression of anger, payback and revenge at the family and community level.

1.3. Militarisation/ conflicts and women's (in) equality

Conflict and militarisation have had a particularly gendered impact. Internal conflicts, in particular involve the oppression of one racial, ethnic or religious minority by another, as is the lived realities of Tamils in Sri Lanka. Being displaced from their own land due to conflict, Tamil women must live in camps in close proximity to the military. In such situations women become easy targets of physical and sexual violence, and more vulnerable to trafficking. In fear of rape and sexual harassment from the military, young girls have little choice but to establish relationships with boys in their camp as a protective measure. This may lead to early-age pregnancy which is a known contributor to higher rates of pregnancy related deaths of girls between 15-19 years of age. In the process of resettlement, girls are sexually assaulted and murdered by military personnel as reported in the Jaffna, Trincomalee and Batticaloa districts.³⁵ In most of these cases absolute impunity is enjoyed by the perpetrators and access to justice is denied for the victims and survivors. This combination of discrimination, gender-based violence, loss of land and livelihood, poor health and poverty, places women at greater risk of becoming entrenched in a cycle of further disadvantages, violence, exclusion and marginalisation.

The story of Pahari³⁶ women who live as quadruple minorities (gender, religious, ethnic minorities living in a patriarchal community) under the present social and political institutions of Bangladesh, illustrates how different forms of fundamentalisms in the context of militarisation can reinforce and deepen discrimination and exclusion based on multiple identities. Despite the Peace Accord, which was signed to end the occupation in the CHT in 1997, the immigration of Bangalese from outside the CHT is still on-going and supported by the military, overpowering indigenous people in the hill tracts.³⁷ Currently, there are more than 300 temporary military camps in the CHT, accelerating militarisation of the area and the continuing politically motivated violence against Pahari women in the once secured environment of their homes. The lack of access to justice and absolute impunity that perpetrators enjoy is pervasive, and in many cases victims end up going through further harassment from the side of the administration and law enforcers, the majority of whom are Bengalese.

³⁴ Lilly Besoer, *Ibid.*

³⁵ Sri Lanka in her report, 'Internal Conflicts/Militarisation and the Tamil Women in Sri Lanka' during the Consultation.

³⁶ Phari means 'people from the hills'. Hana Shams Ahmed, *Ibid.*

³⁷ The land in CHT was administered customarily and has never been government land as such. However, the government has now declared that this land is reserved for the State in an attempt to bring all these areas under its control. As a way of so doing, the Bangali settlers who were brought in during the migration program were given legal papers while indigenous people lost out their traditionally and customarily owned land. Hana Shams Ahmed, *Ibid.*

The violence to which women are specifically subjected to in times of war and in post conflict situations has been heavily documented. Yet, most peace processes and post conflict reconstruction initiatives fail to include women. This has meant that even once peace has been achieved women continue to suffer due to the stigmatisation of the violence (usually sexual) they have suffered, while also being denied the adequate and full reparations to which they are entitled to under international law. In Bangladesh, the CHT 'Peace' Accord failed to safe guard the women of CHT. This is largely due to the fact that women were not allowed to participate in the peace talks, despite women having taken part in the armed struggle during the insurgency in various ways. As such the Accord has kept no provisions for giving compensation in the form of rehabilitation or counseling to the raped and physically abused and tortured women.³⁸

Increased militarisation in the name of national security or as part of counter-terrorism has been increasing in the Asia Pacific region since 2001. Many governments in the region have compromised human rights priorities in favour of national security; using the perception of a way of life or national threat to justify bigger spending on arms and in the process eroding the democratic spaces of debate, dissent, difference and plurality on which democracy and respect for human rights rests. As witnessed in the Philippines, government and state forces promote a pervasive militarist mindset that reduces anyone who demands change or criticises the state as a threat to national security. This has led to multiple forms of discrimination and violations of women's human rights as rural women, as members of ethnic communities, as poor toiling women, and as members of political and community or profession-based organisations that the military has branded wholesale as enemies of state, in other words 'terrorists'. At least 270 women have made reports of harassment and intimidation and at least 31 women were recorded as having been raped or sexually abused by government soldiers.³⁹ Despite the Philippine government having a newly installed President, there are still reports of human rights violations including summary arrest and detention, such as the illegal arrest of 43 health workers, including 26 women in Morong and six cases of extra-judicial killings, including two indigenous women. To date there are 373 political prisoners in jails including 63 women. A culture of impunity still prevails in the name of national security that has led to intensified gender violence and injustice in the Philippines and across the region. Furthermore, the significant gross impact of militarisation and counterinsurgency operations also includes serious damage on women's reproductive health caused by the bombing, firing of weapons and other pollutants introduced into the environment through military activity. This has caused cancers in women, miscarriages, premature birthing and severe birth defects in infants born in militarised areas.⁴⁰

38 Hana Shams Ahmed, *Ibid.*

39 Joan May Salvador, GABRIELA, *The Philippines in her report 'A war without borders: A Philippine perspective on the logic of the US war on terror and its impact on women' during the Consultation.*

40 Joan May Salvador, *Ibid.*

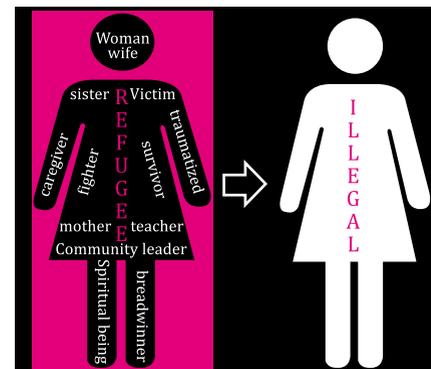
In Sri Lanka and in the Philippines it has been documented that the connection of militarisation and the control of natural resources leads to further conflicts. Newly liberated areas in Sri Lanka are classified as special economic zones and are subsequently given to multi-national corporations.⁴¹ Similarly in the Philippines, the government continues to fund military policy and programs of development, including its plan for the exploration of oil reserves in the South and to attract foreign capital to invest in the virgin forests in the North.⁴² These neo-liberal development policies, together with the growing influence of militarisation and fundamentalism, work together to maintain control over resources and domination of the status quo.

1.4. How do these trends intersect and reinforce patriarchal systems?

The stories of participants demonstrated how fundamentalisms, globalisation and militarisation all interact, rather than exist in isolation, to reinforce the subordination of and discrimination against women. Persistent discrimination and exclusion against Buraku women in Japan is institutionalised in the social structure and affects all aspects of their lives. This is especially true in regard to their education, employment, health status and exposure to violence. The story of Tamil women in Sri Lanka shows that violence against women in the militarised context is compounded by the traditional view of women, which regards women as second-class citizens. This in turn, limits the opportunities for compensation, housing, education, and employment. As a result they confront a dual task in their human rights struggle: one of defending their rights as members of an excluded group within a dominant society of repressive or indifferent state apparatuses, prejudiced public opinion and discriminatory laws and institutions, while at the same time questioning and resisting the static patriarchal perceptions of culture and tradition within their own communities that are used to justify gendered subordination and violence. Restricted access to employment or income sources means women's access to food is also severely limited. This particularly affects the health of pregnant and breastfeeding women, as well as elderly women and children, amongst others.

Militarisation, conflicts and attack by the government against its own people, combined with deep-rooted patriarchal norms led to the movement of approximately two million migrants and/or asylum seekers from Burma into neighbouring countries. The combinations of discrimination, gender-based violence, exclusion and marginalisation are often magnified when a woman is seeking asylum, or as contributions at the Consultation pointed out, when she is given the label of being an 'illegal immigrant'.

The discrimination she faced in her home country comes with her to the next and in the majority of cases intensifies. Stories shared about asylum seekers in Malaysia revealed that women who are forced to flee their homelands find themselves reduced to this single identity of being 'illegal'. This labeling prevents any aspect of her humanity from being seen at all; she is rendered invisible.⁴³ Ironically it is the very multiple identities masked by this label of 'illegality', such as gender, migrant status and being a member of an ethnic minority, that continue to prevent the full enjoyment of her rights.



⁴¹ Reported by Sherine Xsavier, Home for Human Rights, Sri Lanka during the Consultation.

⁴² Joan May Salvador, Ibid.

⁴³ Katrina Jorene Maliamauv, Tenaganita, Malaysia in her report, 'Refugees and Internally Displaced Women' during the Consultation.

'In Malaysia, if you are found without a passport or work visa, you are subjected to detention. I know a woman who was one month pregnant when she was detained and was detained throughout her entire pregnancy and then gave birth while she was there. Su Su tells us she was given no special treatment during her pregnancy. When her body became very swollen, she asked to see the doctor but she was refused. When she doubled up in pain she went into labour and only when the other detainees screamed continuously was she taken to hospital. When I asked the guards if she had access to medical attention, they said 'no, we have seen her walking around. She is fine.'⁴⁴

The situation of women human rights defenders who act to end all forms of discrimination and violations against women is particularly precarious where the three forces of militarisation, fundamentalism and neo-liberal globalisation interact to silence them. For example, militarisation in Fiji is taking place hand-in-hand with religious and cultural fundamentalism creating the ascendancy of a particular form of Indigenous Fijian nationalism, or 'Fijian identity' that is extremely patriarchal. Indigenous Fijian women human rights defenders, though being part of the majority, face discrimination based on their gender, ethnicity, and age and for taking a political stance that is seen to be contrary to what is suitable for women belonging to their ethnic group. Furthermore, the military has expanded the definition of sedition in the Crimes Decree to say that any human rights defender who expresses an opinion contrary to the regime could be charged and face seven years imprisonment.⁴⁵

The sharing of participants demonstrated how growing fundamentalisms, militarisation and neo-liberal globalisation increase the difficulty and challenges for women's pursuit of equality and justice.



⁴⁴ Ibid.

⁴⁵ Naeemah Khan, Fiji Women's Rights Movement, Fiji in her paper, 'Who defends the defenders? The multiple discrimination of women human rights defenders in Fiji'. Note: Naeemah Khan was unable to attend due to the postponement of the Consultation.



CHAPTER 2. WOMEN RESISTING INEQUALITY AND CLAIMING JUSTICE

2.1. Accessing justice

Most often, our multiple identities not only compounds levels of disadvantages, exclusion and violence, but it also becomes an obstacle to our struggles to find justice. For example, domestic violence occurs in families regardless of ethnicity, religion, class, nationality, ability etc. But women from poor socio-economic backgrounds may have less access to legal remedies and less able to leave a relationship if financially dependent. Sex workers are examples of marginalised women that may find it impossible to get police action. Women with disabilities in institutions or at home may have little protections from carers. Some women may be prevented by their religions from leaving violent relationships or risk losing custody of their children. So some groups of women may end up experiencing domestic violence more frequently, for longer periods and unable to leave violent relationships.

'What has happened has happened...but there must be justice, he must be put away. What if it happens to another child? Why have they (the police) not responded? There is no one I can trust anymore...'

The mother of a young refugee girl who was sexually abused⁴⁶

This happens not only to women who are asylum seekers but in many other instances as well. For example, a young woman who is single, pregnant and Muslim is most likely to end up in jail rather than being able to address and rectify the discrimination she faces.⁴⁷ Similarly, a young woman who has an 'immoral' profession, is unlikely to get any kind of justice and instead faces all sorts of condoned violence against her. Women migrant workers are deported to their countries of origin if they fall pregnant.⁴⁸ In these situations access to justice is dependent on the individual documentation status, even in cases of pregnancy as a result of rape. As soon as the employer cancels a woman's work permit, she is considered illegal and therefore has no access to the legal system or is left with no option but to take on the whole legal burden, including payment of legal costs. Freedom of association and expression of LBT activists are also seriously undermined with police or law enforcers often choosing to remain silent and failing to take any action in response to the threats and attacks faced by LBT groups. Sorcery-related killings and violence tells us another story of absolute impunity. Cultural/ traditional norms that condemn particular women as 'witches' prevent any access to justice for the women who are the most marginalised and excluded from society.

⁴⁶ Katrina Jorene Maliamauv, Ibid.

⁴⁷ Reported by Ivy Josiah, Women's Aid Organisation, Malaysia at the Consultation.

⁴⁸ Katrina Jorene Maliamauv, Ibid.

'I have to put away my uniform and I have to beat somebody up because she was accused of practicing sorcery on my dead father.'

a quote from a senior policeman in the highlands PNG⁴⁹

Now the question is *how* do we address all these complicatedly interlinked multidimensional discrimination that all women face differently and realise justice for women?

In recent years, efforts and demands have increased to address the intersection of the different forms of discrimination and provide a more comprehensive and holistic analysis of the dynamics of such discrimination against women. For instance, in seeking to rectify the absence of gender discrimination in the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD, 1969), the ICERD Committee expounded a General Recommendation No. 25 on Gender-Related Dimensions of Racial Discrimination.⁵⁰ The Convention on the Rights of Person's with Disabilities (CRPD) recognises, in Article 6, that 'women and girls with disabilities are subject to multiple forms of discrimination'. These recognitions are important because they address the fact that the two forms of discrimination intersect to create a unique experience that is not adequately captured by focusing on just one aspect of discrimination in isolation of the other. The Committee on the Elimination of Discrimination against Women (CEDAW)'s General Recommendation No. 28⁵¹ states that intersectionality is a basic principle for understanding the scope of the general obligations of states party to the Convention. It clearly acknowledges intersectional discrimination and declares the obligation of state's party to eliminate such discriminations through their laws and public policy. The Yogyakarta Principles on the application of International Human Rights Law in relation to sexual Orientation and Gender Identity (Yogyakarta Principles, 2007) also advise states to take into account the manner in which discrimination on the basis of sexual orientation or gender identity may intersect with other forms of discrimination.⁵²

Intersectionality is also addressed by some of the mandate holders of the Special Procedures. For example, the Special Rapportuer on the right to adequate housing wrote a separate report on the right to adequate housing and women. The SRVAW has consistently adopted an intersectional framework to demonstrate how multiple systems of discrimination and hegemony result in a continuous chain of violence for marginalised women.⁵³ Intersectionality is also demonstrated in growing number of joint communications, statements, and reports by different mandate holders. This was noted at the Consultation as being an important application of intersectionality that should be further expanded. It was also

49 Lilly Besoer, Ibid.

50 It states 'Racial discrimination does not always affect women and men equally or in the same way (Para.1)'.

51 'Intersectionality is a basic concept for understanding the scope of the general obligations of states party to the Convention. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways than men. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures...' CEDAW General Recommendation No.28, s 18

52 Yogyakarta Principles on the application of International Human Rights Law in relation to sexual Orientation and Gender Identity, principle 2(E).

53 15 years of the United Nations Special Rapporteur on violence against women, its causes and consequences (1994-2009): a Critical Review, p.42 (2009).

suggested that joint country missions by the mandate holders be increased. However, in doing so care must be taken so as not to lose the specificities in women's experiences, particularly when integrating a gender analysis.⁵⁴

Despite these developments in addressing intersectional discrimination, human rights instruments and mechanisms are still fragmented and require serious efforts to be read and implemented in a more holistic and cohesive way.

Whilst it is important that international instruments integrate an intersectional approach, it is also fundamental that States follow suit. Participants at the Consultation clearly identified the gap between the international legal framework and implementation at the national level as being a primary problem in addressing intersecting forms of discrimination. Participants from Papua New Guinea raised the issue of national governments not taking the recommendations of the CEDAW Committee seriously.⁵⁵ Compliance with international human rights mechanisms cannot be enforced without the political will of the State. This means that even where a State actively promotes human rights they may also support other ideologies that subvert and undermine the realisation of a non-discriminatory reality. Indonesia, for example, has publically acknowledged the human rights of its citizens by both signing and ratifying some of the core international human rights treaties and has further implemented them into its national legislation and policies.⁵⁶ Despite this, participants noted that the State has been unable to assure and provide protection of human rights for its citizens. For example, LBT women are subject to a wide range of violence committed by family members, the community, schools, religious institutions, work place and even by the State itself. This is largely due to State support of religious fundamentalism, which produces oppressive and discriminatory laws, policies and cultural practices.

2.3. Sharing Good News Realising the Principle of Universality and Non-Discrimination

The women's movement has been successful at highlighting the ways in which there is a simultaneous interaction of discrimination that arises from the multiple identities that distinguish all human beings. For example, it was primarily women activists who pushed for the inclusion of the concept of intersectionality at the Durban World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR, 2001). This resulted in the WCAR's Declaration and Programme of Action requesting Government's to apply a gender perspective that recognises the multiple forms of discrimination that women face.



⁵⁴ Reported by Rashida Manjoo, UN Special Rapporteur on Violence Against Women its causes and consequences at the Consultation.

⁵⁵ Reported by Teresa Jaintong, National Council of Women, Papua New Guinea, at the Consultation.

⁵⁶ E.g. Indonesia has ratified CEDAW and passed Law 23 of 2004, concerning the Elimination of Domestic Violence to address domestic violence issues against women. Sri Augustine, Ibid.

Almost ten years later and with many discussions in the intervening years, the participants at the Consultation uncovered the intersections of women's multiple identities and structural causes of discrimination and violence against women, including the changing global political and economic landscape. The discussion included shared specific experiences and some important advances made in the fight against multiple barriers to achieving women's equality:

- Policy reform in Japan to remove a 'social origin' column from the Driver's License card;
- The drafting of the 3rd Basic Plan for Gender Equality in Japan that addresses multiple forms of discrimination against women in response to a proposal from minority women's groups
- Land mark court decisions in the Philippines recognising the right of sexual minorities to representation and public participation

Participants also shared strategies for applying intersectionality with the goal of accomplishing all women's human rights and fundamental freedoms as a reality, regardless of their multiple identities. These include:

- Creative and active use of multiple international mechanisms to amplify women's voices at the international level
- Monitor implementation of international bodies' recommendations at national/ local level and hold governments accountable to their human rights commitments
- Finding allies and building alliances with other social and human rights movements rather than working against one another
- Multi-level lobbying and thinking beyond legal measures to achieve change, including active engagement with culture

Minority women in Japan have been actively using international mechanisms, particularly the CEDAW mechanism, in holding government accountable to their international human rights commitments. The Buraku Liberation League-Aichi Chapter participated in the CEDAW sessions in 2003 where the periodic reports of Japan were examined. The multiple forms of discrimination experienced by minority women in Japan was recognised as a critical issue and the Committee requested that the Japanese Government provide them with comprehensive data regarding the situation of minority women in Japan. When the Government failed to do so,⁵⁷ local civil society groups joined together and conducted a survey to find out the real situation of minority women themselves. A group of minority women engaged in a series of dialogues with the relevant ministries and agencies with the proposal based on their survey findings. As a direct result of these discussions the practice of showing information on place of registry on drivers' licenses was abolished in order to address the discrimination in employment practices based on 'descent' against minority women. The Government of Japan is currently drafting the 3rd Basic Plan for Gender Equality which mentions the multiple difficulties that some women face because of being a woman, foreign worker and being a part of the Ainu or Buraku community. However, the draft does



⁵⁷ The CEDAW Committee at the 44th session considered the 6th periodic report of the Japanese Government and expressed concerns over the failure of the government to provide information on the real situation of minority women to the CEDAW Committee. Reiko Yamazaki, Ibid.

not include concrete measures to address those multiple difficulties; this reflects gaps in the understanding of the CEDAW Committee and the Japanese Government. Despite these gaps, the draft stipulates that international norms and standards should be considered and promoted throughout the drafting process. Although there is still work to be done, this is a positive example of how local civil society groups can amplify their voices by engaging with international mechanisms whilst also lobbying government to take action on recommendations.⁵⁸

A powerful testimony from the LGBT movement in the Philippines shows how important the intersectional approach and the focus on the enjoyment of rights is in achieving all people's human rights. Their journey of legal battles, challenging laws, policies and cultures demonstrate the role that religious fundamental forces can play in drawing a line as to who deserves to enjoy human rights and who doesn't. When the LadLad LGBT Party List⁵⁹ first ran for congress as the first party for LGBT people, they faced immense resistance and pressure from religious groups who labeled them as 'immoral' and therefore not entitled to political participation. However, the pursuant and consistent battle fought by the Ladlad, with support from civil society organisations, resulted in a momentous decision of the Supreme Court which recognised the right of sexual minorities to representation and public participation. Although the Ladlad was not successful in winning a seat in Congress, the party received nation wide support. While not all who lent their support believed in LGBT rights, they all believed in the fundamental principle that everyone has human rights, including the right to political participation. In addition, while lobbying for the passage of specific anti-discrimination and LGBT-friendly laws, a strategy to lobby for the incorporation of sexual orientation and gender identity issues in generic or mainstream legislation, like the Magna Carta of Women, was suggested as a strategic advocacy point.⁶⁰ It is also noteworthy that international human rights laws and standards are actively used for their advocacy including a very specific concluding observation of Treaty Bodies applicable for the groups concerned. Participants were encouraged to use this tactic to campaign for the rights of everyone, find allies and work together to ensure the principles of universality, equality and non-discrimination become living principles that contribute towards realising human rights for all, without any distinction.



The importance of finding allies and building networks between different movements was also reiterated as a strategy for women in the Asia Pacific. In Japan, women belonging to different minority groups, namely Ainu (indigenous), Buraku (social origin/ caste) and Zainichi Korean (ethnic) women, are advocating for the common issues of collective minority women as well as the specific issues of individual minority groups. They are also networking with women's rights groups to ensure integration of minority women in their agenda as well as with the minority group to ensure women's rights is not sidelined, equal participation and representation of women in

⁵⁸ Reiko Yamazaki, *Ibid.*

⁵⁹ LGBT refers to Lesbian, Gay, Bisexual and Transgender persons, as used by Angie Umbrac, Rainbow Rights, Philippines in her report, 'Combating Discrimination and Achieving Political Participation and Representation of LGBTs in the Philippines' during the Consultation.

⁶⁰ Angie Umbrac, *Ibid.*

all decision making processes. In Kyrgyzstan, following the ethnic conflicts between Kyrgyz and Uzbek, women from both ethnic communities came together and started discussion to stop further escalation of violence and restore peace in the region. Rather than blaming each other for the harm endured, women from both ethnic communities were determined to take the lead to restore peace and implement the UN Security Council Resolution 1325. The measures taken include: creation of a women's security group, documentation of data on violence against women during the conflict to bring justice to diverse groups of women, and the setting up of several rehabilitation camps and crisis centers to attend to the immediate needs of people affected by conflicts. In the Philippines, the LGBT movement is working with the Catholic Church despite their history of traditional opposition to the LGBT movement. The movement has deliberately found people within the church who may not support them outright but do support their right to live free from violence. This is a good example of building as many different alliances as possible, especially within groups that are usually deemed oppositional. The strategy is to build a foundation of points of agreement that can be seen as stepping-stones in bridging the gaps of understanding between different groups of people.

The fact that the law can be used as both a weapon and a tool was discussed by participants. Participants acknowledged the limitations of law in adequately addressing discriminatory practices especially in the context of addressing fundamentalism and the need to find ways of working around the law, without breaking it. A participant from the Philippines shared that lobbying for legislative measures is not the only, or always the best, way to achieve change. For instance, if lobbying for labour rights of LGBT people at the national level for legislative or policy action fails, then the suggestion was to take it to the local level. If this is ineffective, then try approaching corporations, offices and other places that have their own workplace policies. Experiences shared by the Philippines showed that if you can't get national law to change, a piecemeal approach can be just as effective.⁶¹ The importance of engaging the culture as opposed to condemning it or taking a simple approach to pass laws and policies was also recognised. Issues of discrimination need to be made visible to civil society so that the harm experienced is understood and a political will for change is created. The society itself needs to recognise the discriminatory nature of certain cultural and traditional practices as well as ensure women's participation, access and contribution to cultural life.

Continued challenges to applying an intersectional approach were also reported at the Consultation, including the need of awareness raising to enhance the understanding of different issues. These include the problem of a fragmented approach that results in a 'competing rights' argument, and insufficient laws and normative frameworks that take an intersectional approach. For example, the LGBT movement expressed concern that women's groups involved in anti-trafficking are sometimes unaware of how their work impacts on LBT people who have children through surrogacy or adoption. This is sometimes viewed as trafficking by women's groups because it involves payment, whereas it is viewed as providing a loving family to a child



⁶¹ Angie Umbac, *Ibid.*

who is without one by the LGBT community. This example demonstrates the need for an intersectional approach that looks at the unique situation of each individual scenario. It is important that the women's movement provides an inclusive space for all women if it is to adopt a fully intersectional approach.





CHAPTER 3. EMBRACING WOMEN'S DIVERSITY AND APPLYING INTERSECTIONALITY

Gender Mainstreaming: is it enough?

In recent years, significant efforts have been made, particularly at the international level, to integrate 'gender' in the work of human rights bodies and mechanisms to implement and advance gender equality. Historical and structural inequality and subordination of women naturally shifts our focus to the experiences of women. 'Gender mainstreaming' can be a powerful and transformative tool as it seeks to alter the balance of power, for instance by promoting women as decision makers at all levels. However, gender mainstreaming has not yet made meaningful changes as in many cases it has meant having an isolated approach to women (e.g. having a separate chapter on 'women'), not necessarily viewing women's oppression from a fundamentally women-centered perspective. For instance, the implementation of a gender quota is one of the popular special measures to increase women's participation in political life.⁶² However, just focusing on quantifiable change or having flat narratives of 'women' will not be sufficient if it fails to recognise and sufficiently account for the diversity amongst women.



'Out of the 345 seats in the national parliament, 45 are reserved for women to increase representation of women in the political process. However, none are reserved for any specific women's group in Bangladesh. After the signing of the CHT Accord in 1997, no Pahari woman has been nominated as a Member of Parliament (MP) in the reserved seats for women. Prior to the Accord, there had been two Pahari women MPs.'⁶³

Hana Shams Ahmed
The International Chittagong Hill Tract Commission, Bangladesh

In cases where ethnicity, gender, sexual identity, class and other factors work together to limit or deny our human rights and fundamental freedoms, it is essential that social justice interventions be grounded in an understanding of how these factors operate together. It is clear that women's experience of multiple forms of discrimination cannot be explained as the product of one axis of exclusion (e.g. 'gender'), meaning that interventions and programmes should be designed to address group interests rather than framed in exclusionary terms. An intersectional approach/ analysis can provide that grounding and may help overcome some of the weaknesses of mainstreaming by taking into account the specificity of women's experience without losing the universal human rights of all women and people.

Now then how do we 'do' intersectionality? In other words, how do we translate this analytical approach into practice?

Applying Intersectionality

Intersectionality aims to centralise those who are usually marginalised, as well as render certain exclusions more visible. Sometimes it's argued that an intersectional approach results in the fragmentation of people's movement

⁶² Special measures/affirmative action is defined by CEDAW as a temporary special measure that's put in place by the state to help correct the effects of past discrimination.

⁶³ See attached appendix of anti-discrimination laws. Other countries are taking the same approach where the focus is on discrimination of gender only, such as India's reservation of seats for women in local governance bodies. This fails to address other intersecting causes of discrimination such as race, ethnicity, class, socio-economic status and disability, amongst others.

along smaller and smaller nodes of identity. This misunderstanding limits the scope of anti-discrimination law to adequately address the unique type of discrimination experienced by women who fall into multiple categories of identity. For example, Indian courts have set the precedent that a class of people already recognised by the Constitution cannot be further sub-classified by the State.⁶⁴ The logic is that to do so would give more preference to some members of a particular class over other members of the same class. This understanding presents a distinct barrier to an intersectional approach and ignores the reality of multiple causes of discrimination that many women face. Conversely, the intersectional approach advocated by the participants can enable us to collectively analyse the structural causes of exclusion.

In the Philippines, the structures of militarisation, patriarchy and economic globalisation intersect in policies developed under the banner of the ‘war on terror’.

‘Filipino women are entangled in a vicious cycle of injustice and inequality, and an atmosphere of pervasive threat, due to the multiple and intertwined dimensions of our existence as economically marginalised women in an underdeveloped neo-colonial state, as Asian women eroticised... and as women who in specific instances dare to defy politically the sexist/militarist/hegemonic logic of subjugation.’

Joan May Salvador
GABRIELA, The Philippines



When we scrutinise the socio-political structures that undermine rights we are effectively *doing* intersectionality. We are challenging the practices that make intersectional harms possible.

Brooke Ackerly calls this approach ‘analytic intersectionality’⁶⁵. ‘Analytic intersectionality is the practice of the theory that rights-holders rights enjoyment is interrelated, that no person’s rights are enjoyed and secure if perceptions and norms create the conditions under which some persons are not perceived as rights-holders.’⁶⁶ She argues that while ‘inclusive intersectionality’ is important – that is including groups from identified target groups in our work – analytic intersectionality is essential to develop a rights based approach. Simply trying to include every target group without analysing and challenging the practices of exclusion does not advance rights enjoyment, it can instead become exclusionary.

A ‘harm based’ approach to human rights violations has been suggested by some feminists working to reform rape laws, for example. Where consent or ‘witness’ is contested in rape cases the survivor often becomes the object of interrogation. It has been suggested that a focus on the harm that was experienced could instead shift the focus to the impact of the violation. Similarly an intersectional approach that focuses on the harm of inequality and discrimination could shift the focus from identity to structural causes of violations.

⁶⁴ See attached appendix of anti-discrimination laws, *Ev Chinniah v State of Andhra Pradesh & Ors* [2004] 4 LRI 705.

⁶⁵ Brook Ackerly, “Human rights enjoyment in theory and activism”. 2010: forthcoming in *Human Rights Review*.

⁶⁶ *Ibid* p. 12.

Some women are undoubtedly more marginalised, isolated, discriminated against and violated. Analytic intersectionality requires us to shift our gaze from those women as victims to the systems that oppress and marginalise – to the ways that fundamentalisms, militarisation and economic policies intersect with patriarchy to deny rights. It also enables us to see that our rights are all interlinked - my rights can be realised only when others' rights are also promoted, protected and realised. Intersectionality can lead us to identify connecting points of people with different backgrounds and subsequently promote greater collaboration between and across women's and people's movement.

A decision to apply intersectionality means seeking complexity, dynamic processes, and points of intersections rather than simple explanations to injustice. Applying intersectionality makes it possible to not only to examine the root causes or sources of multi-layered, compounded and systematic discrimination but also capture the consequences of the interaction between multiple forms of subordination. It is an analytical and advocacy tool to see the universality of discrimination and violence that women experience without losing sight of the particularities in women's experiences.

An intersectional analysis also challenges us as women human rights defenders to understand our own 'rootedness' in identities, and to understand how we ourselves are complicit in privileging one identity over another in given circumstances. This understanding of the complexity of identity and intersectionality can help us to develop human rights strategies that can address the violations we face while allowing us to be in solidarity with others who may face other kinds of discrimination and oppression.



The following points may help us start applying intersectionality in our activism:

- Are there issues of concerns equally affecting all persons in the society at large?
- Are there specific groups of women disproportionately affected by the problem? If yes, what are the causal factors of the different level of and forms of discrimination, disadvantages and exclusion?
- How does the uniquely compounded discrimination of different/particular groups of women relevant to my daily struggle? How is it affecting the enjoyment of human rights and fundamental freedoms of the women and other persons in the society at large?
- What are the possible areas that different movements can work together to bring about interventions and policies capturing the intersections of different forms of oppression?

During the Consultation participants acknowledged a few issues that we can collectively campaign for, and came up with some suggestions:

- To create a holistic approach at the regional level on marriage migrant issues. A holistic approach should include looking at the conditions that make women vulnerable to marriage migration such as poverty, stigma from divorced and belonging to a marginalised ethnic minority amongst other things. It was also suggested to lobby ASEAN and its human rights mechanisms to discuss the human rights of migrants, especially marriage migrants, under ASEAN Plus 3.
- To increase the representation and participation of women with disabilities and LBT within the global women's movement.

'It is still very difficult to talk about lesbian rights in the women's movement. We are still invisible and our issues are still in the closet. So as a strategy, we promote 'gender equality' when engaging with the women's movement, so that we can actually be part of the movement. When women's movement talks about trafficking, for example, we also talk about the issue. When women's movement is focused on women in politics, we also talk about LBT women in politics. We also build the organisation with feminist perspectives so we become part of women's movement, and now we are working together.'

Sri Agustine
Indonesia

Analytical intersectionality unites rights campaigners. Where we are challenging the causes of harm, we are not simply advocating for the rights of a particular group or groups. We are challenging structures that undermine rights. As one of the participants rightly noted, fulfilling human rights is not a fight of just one group but it matters to everyone. This is a unifying approach to rights work and invites inclusivity.

The Consultation was successful in creating a space for women/human rights defenders across the region to speak about their experiences and provide input on the solutions necessary to advance human rights of all women. It was particularly meaningful as it started a serious and genuine discussion process on intersectionality towards making an impact on our daily struggles. As the Special Rapporteur rightly pointed out, our work requires creativity, strength, passion and also a sense of fortitude and tolerance.⁶⁷



⁶⁷ Reported by Rashida Manjoo, United Nations Special Rapporteur on Violence Against Women its causes and consequences, during the Consultation.

**Asia Pacific Regional Consultation with the
UN Special Rapporteur on Violence Against Women, Its Causes and
Consequences**

‘The Multiple Dimensions of Women’s Equality’
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