

DUE DILIGENCE AND VIOLENCE AGAINST WOMEN:

Enhancing Accountability to ASEAN Women and Girls

Introduction

This is a submission of the Southeast Asia Women's Caucus on ASEAN (Women's Caucus), Asia Pacific Forum on Women, Law and Development (APWLD) and the International Women's Rights Action Watch-Asia Pacific (IWRAP-AP) to the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC). This submission aims to contribute to the work of the ACWC as it seeks to advance the rights of women and girls in ASEAN states to live free from violence. This paper is framed around the concept of **Due Diligence** and details states' obligations to eliminate violence against women.

Purpose

The purpose of this proposal is to assist the ACWC to scope its future work on violence against women (VAW), which has been 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 deprivations of liberty, whether occurring in public or private life." The Women's Caucus, APWLD and IWRAP hope that through this submission, **the ACWC will consider developing specific terms of reference for more comprehensive and focused inquiries** and other actions on VAW. The Women's Caucus will be ready to then submit further information on any area identified within the paper to assist in the inquiry.

Due Diligence: A Framework for States' Actions

The obligation to act with due diligence to eradicate VAW is an important concept for ASEAN member states to implement commitments made through ratification of the *Convention on the Elimination of all forms of Discrimination against Women* (CEDAW) as well as the *Convention on the Rights of the Child* (CRC) as well as ASEAN specific commitments such as *Declaration on the Elimination of Violence Against Women in the ASEAN Region*. The concept has been particularly developed by consecutive mandate holders of the UN Special Rapporteur on Violence against Women, its causes and consequences (SRVAW).

The concept requires states to implement all possible, reasonable measures in four key areas:

PREVENTION ♀ PROTECTION ♀ PUNISHMENT ♀ REPARATIONS

Obligations in these four areas will be discussed in this submission.

Violence against Women in Southeast Asia

Globally, it has been estimated that at least one out of every three women has experienced VAW in her lifetime usually through individuals known to her. Within ASEAN, statistics on VAW have yet to be properly established, partly because of the absence of a standardised understanding of VAW or shared system to gather data at the national and regional levels. While there have been some progress in addressing certain

forms of VAW, for instance through new laws on VAW, the establishment of women's machineries and gender desks in police precincts, ASEAN still maintains laws and practices which perpetuate even the most obvious forms of VAW such as marital rape¹. As in other parts of the world, VAW continues to be prevalent across Southeast Asia. VAW exists in every culture, class, geographic region, however it is not inevitable.

A core principle of any approach to eradicate VAW should be that it is not inevitable.

In Southeast Asia the same forms of VAW occur as in other regions. However some forms of VAW may be more prevalent in Southeast Asia due to the region's specificities.

Domestic Violence. Domestic violence is prevalent and remains the most common form of VAW in the region. Although this is increasingly acknowledged, due diligence has not been adequately exercised to prevent, protect, punish or provide reparations. In several instances, there remains hesitancy among law enforcers to intervene with the premise that this is a private matter. Similar hesitancy exists among family and relatives who think that reporting domestic violence can damage a family's name and result in imprisonment of family members.

Sexual Harassment. Sexual harassment is another common form of VAW often enabled by hierarchical and feudal systems. Sexual harassment can be experienced by women in all workplaces and spheres of life but may be particularly difficult for young women or women in subordinate positions such as students, apprentices and workers. Too often officials, media and community leaders blame sexual harassment on women and their personal choices than perpetrators. Sexual harassment, like all forms of VAW should be addressed by states as an abuse of power and an attempt to erode the human rights of others.

VAW in Migration. The region has a particularly high rate of migrant workers and active patterns of labour migration, which is increasingly feminised due to poverty and unemployment. In some cases, women's migration may even be triggered by VAW within their own families. The largest form of employment for women migrant workers originating from Southeast Asia is domestic work. Violence against domestic workers has been documented in many countries in the region and warrants particular attention by ASEAN bodies. The privatised nature of domestic work and refusal to recognise domestic work through national labour laws leaves domestic workers exposed to VAW. In most ASEAN states there are inadequate protection measures and pervasive deterrents for migrant domestic workers to address VAW. This is an area that the ACWC may consider a more focused report on given its cross-border nature.

Trafficking. Trafficking of women and children for various purposes, including prostitution/sex-work and labour is prevalent in the region. There have been many occasions when kin and friends are themselves responsible for the exploitation of women and girls, with the expectation that the latter would remit their income from their supposed work or with the perspective that women and girls are not as valuable as men and boys. Trafficking persists due to persistent de-valuing of girls, lack of information provided to people in rural and isolated areas on the danger and modus of the trade, weak law enforcement, limited education and skills, and sheer poverty. Trafficking of women has been identified as a particular concern for

¹ Section 375 of Brunei Darussalam's Penal Code broadly states that sexual intercourse of a man with his wife does not constitute rape.

Southeast Asia. The ACWC has identified this as theme in its work plan and the Women's Caucus endorses that as a stand alone enquiry.

VAW in Situations of Armed Conflict. VAW is acute in militarised environments, particularly where civilian governments are non-existent. Rape and other sexual violence are used as weapons of war and recognised as crimes against humanity. In some cases, they have been used with the intention of curbing the reproduction of particular ethnic groups where soldiers infected by HIV AIDS pass on the disease to women of a targeted community. Militarised environments also increase the level of violence within the community where violence becomes normalised and little or no attention is paid to domestic violence.

Exacerbating factors of VAW

Poverty. Poverty does not cause violence, although it can be a factor that exacerbates violence. Economic dependence impacts on women's capacity to terminate a violent relationship, access legal assistance and provide themselves and in some cases, their children with protection. Therefore state obligations should particularly extend to women living in poverty and difficult circumstances and must address structural marginalisation and causes of feminised poverty.

Cultural and religious interpretations. Religious institutions play a significant role in establishing and replicating community beliefs and practices in many parts of the region. In some cases they also influence government and the legislature. Women's rights are sometimes contested by religious bodies and cultural leaders. States should insist that cultural and religious practices be consistent with human rights standards and take steps to engage religious and cultural leaders in prevention campaigns. Men often dominate religious and cultural hierarchies which result in interpretations of religious teachings largely reflective of the interest of men. In some parts of ASEAN, female circumcision or female genital mutilation is legitimized by governments, despite the harm and lasting health impact this inflicts on women. In 2009, Aceh passed Qanun Jinayat which allows the stoning of women on grounds of adultery.²

Exercising Due Diligence to Eradicate VAW

States are obliged to exercise 'due diligence' to eliminate violence against women. The UN Declaration on VAW provides that states must "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether these acts are perpetrated by the State or by private persons." Similarly the CEDAW Committee in its General Comment 19 says that "Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."³

Moreover, the Special Rapporteurs on Violence against Women Radhika Coomaraswamy and Yakin Erturk elaborated due diligence as a responsibility of both state and non-state actors. In her 1999 report on domestic violence, Coomaraswamy made a list of considerations for states to comply with their obligations on due diligence.

² StopHonorKillings.com (2010). "Aceh: Civil society groups advocate for repeal of Qanun Jinayah (Islamic Criminal Legal Code)." URL: <http://www.stophonourkillings.com/?q=node/4255>

³ United Nations (1992). "General Recommendation 19 of the Committee on the Elimination of Discrimination against Women." URL: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

Ratification of international human rights instruments
Constitutional guarantees of equality for women
Existence of **national legislation** and/or administrative sanctions
providing adequate redress for women victims of violence
Policies or plans of action that deal with the issue of VAW
Gender-sensitivity of the **criminal justice system** and police
Accessibility and availability of **support services**
Existence of measures to raise awareness and **modify**
discriminatory policies in the field of education and the media
Collection of **data and statistics** concerning VAW⁴

Erturk highlighted that due diligence is an obligation of both the state and non-state actors like corporations and international financial institutions but “it is the territorial State as well as any other States exercising jurisdiction or effective control in the territory that remain, in the end, ultimately responsible for ensuring that obligations of due diligence are met.”⁵ In summary due diligence must be exercised by the state in four areas: **prevention, protection, punishment and reparations.**

PREVENTION

The elimination of VAW begins with prevention. Prevention measures need to start with a belief that violence against women is not natural or inevitable and is instead caused by structural inequalities. So an effective prevention strategy needs to address systems that de-value women and undermine substantive equality. Prevention extends to education and awareness-raising, media campaigns on changes in attitudes and gender trainings for law enforcers, judiciary, policy makers and other key personnel. Education and awareness-raising on VAW for boys and girls should also be promoted as a preventive measure. These initiatives must have as an end goal the positive transformation of perspectives and attitudes which have been perpetuating VAW. Institutionalizing these initiatives can challenge the underlying belief that boys and men are born to be fighters while girls and women are too weak to protect themselves.

Law making is an important aspect of prevention as it should act as a deterrent and send a message about the states attitude to VAW as well as act as a punishment. Prevention of VAW must also inform

⁴ As cited in Commission of Human Rights (2006). “Integration of the Human Rights of Women and the Gender Perspective: Violence against Women/ The Due Diligence Standard as a Tool for the Elimination of Violence against Women/ Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. URL:

http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/PDF_UN_Sp_Rapp_report_due_diligence_standard.pdf

⁵ Ibid.

government's allocation and spending of resources. For example, setting streetlights every ten meters especially in rural villages can deter the occurrence of rape and other assault. Making water, drainage systems as well as separate public toilets available provides convenience, develops a sense of privacy and ensures security among women and girls who may otherwise have to walk far from home or seek out dark spaces. However prevention should be focused on transforming discriminatory attitudes that position women as property and objects of male desire.

A Failure to Prevent VAW...

As a human rights perspective of due diligence on VAW looks at the totality of women's lives, gender-based violence can stem from even the otherwise less obvious areas like public health. In 2000, Mayor Lito Atienza, who has been closely advocating the Catholic church line on reproductive health issued Executive Order 003 which states that Manila "promotes responsible parenthood and upholds natural family planning not just as a method but as a way of self-awareness in promoting the culture of life while discouraging the use of artificial methods of contraception like condoms, pills, intrauterine devices, surgical sterilization, and others."⁶ However the chilling effect of the EO led to the closing down of NGO-run clinics and banned pills, injectables, intrauterine devices (IUD), condoms and other services like ligation. The poorer segments depend on public health for 70 per cent of their needs. Abortion is also a crime in the Philippines. Elsewhere in the country where local governments that support the Catholic church, the full range of reproductive services is inadequate, if not denied. As poor women cannot afford to buy contraceptives and reproductive health services in private clinics, many are driven to clandestine abortion. In 2008 alone, there were more than three million unwanted pregnancies and 560,000 induced abortions.⁷⁸ Clandestine abortion has been the major cause of maternal death in the Philippines, with 11 mothers dying every day. A national reproductive health bill which remains pending at the Legislature, despite 16 years of lobbying by women's groups.

... A Promising Practice to Prevent VAW

In December 2011, Cambodia launched the "Good Men Campaign" which aims to eliminate discrimination and VAW by changing the attitude of boys and men towards girls and women. The campaign targets 3,500,000 men from ages 15 to 49 years. According to the Ministry of Women's Affairs Secretary Sy Define, "Men are part of the problem, they should be part of the solution, so it is vital to change attitudes and behavior of men by encouraging them to transform themselves into the men who can respect women's rights and promote greater gender equality to reduce violence against women."⁹ Part of the Good Men Campaign is a series of TV spots, teasers, radio plugs and print materials. The main messages of the campaign are: Men respect girls and women; Men reject any form of violence against girls and women;

⁶ See Linangan ng Kababaihan Inc (Likhaan), Reproductive Health, Rights and Ethics Center for Studies and Training (ReproCen) and Center for Reproductive Rights (2007). *Imposing Misery: The Impact of Manila's Ban to Contraception*.

⁷ Nina Somera (2009). "Staying Alive: The Reproductive Health Bill in the Philippines." URL: http://www.isiswomen.org/index.php?option=com_content&task=view&id=1209&Itemid=10

⁸ Elena Masilungan (2011). "Dying in silence: How abortion kills Filipino mothers." URL: <http://www.newsbreak.ph/2011/04/01/dying-in-silence-how-abortion-kills-filipino-mothers/>

⁹ Xinhua (2011). "Cambodia Launches Good Men Campaign to end violence against women." URL: <http://cambodianewstoday.blogspot.com/2011/12/cambodia-launches-good-men-campaign-to.html>

Men contribute to children's education; Men share ideas and respect opinions of girls and women; Men share household-chores; and Men talk to resolve problems.¹⁰

PROTECTION

Protection from VAW places wide ranging obligations on states. Protection should be regarded as not only protection from state violence (which is imperative) but also the enforcement of protective laws and the provision of services to survivors of violence to ensure the bodily integrity and security of women. It includes the provision of protection orders and their adequate enforcement during and even after a crisis. Direct support services such as telephone hotlines, feminist counseling, shelters and financial aid can empower survivors of violence. Ancillary services such as child support and supplementary financial aid especially for survivors who have children and other dependents must also be considered. Protection must be extended to all, regardless of sexuality and gender orientation, marital status, citizenship and ethnicity, among others. Specific services must be administered with great sensitivity especially when dealing with marginalized women including marriage migrants and indigenous women, who most likely have other needs. Employers should also be required to support women suffering from violence and provide safe workplaces.

Increasingly it is recognised that protection services can, if not managed well, exacerbate the harm experienced by women. Many women report that their attempts to seek assistance (from police, hospitals, legal systems) multiplied the injury several times over. To alleviate that danger attempts should be made to cut down the number of places women seek assistance and simplify procedures. "One stop" services are regarded as good practice. Specialist, trained personnel – police, counselors, medical staff, prosecutors and judiciary are essential to avoid re-victimisation.

A Failure to Protect Women from VAW...

Joyce is a 36 year old woman, married for 16 years with 4 children. Her husband started abusing her one week after their marriage. She was frequently locked up in her room. When going out, her husband would make her wear ugly clothing so that she would not look attractive. He would also force her to have sex and will get agitated and beat her up if she refused. The beatings were bad but she bore all this for the sake of the family's reputation. One day her uncle who knew about the abuse bought her a hand phone to call anyone in case of an emergency. Unfortunately, her husband caught her talking on the phone so he beat her with a detergent bottle and hit her head. However, he was supposed to go to work and left the room saying he will deal with her again when he got back. At the urging of her eldest daughter who saw these abuses, Joyce left the house and headed to the Balai Police Seberang Perai Tengah, Penang. Although the police made a report, they did not inform Joyce of the Interim Protection Order (IPO). It was only when she went to the non-government organisation, Women's Aid Organisation (WAO) when she learned of the IPO. When she finally talked to the Investigating Officer of her case after three weeks, the IO explained that she had not heard of the IPO before. WAO case worker then asked the IO to check with her superior about the IPO. The IO said she will do so but never got back to the case worker. Joyce then gave up on pursuing the IPO.¹¹

¹⁰ To know more about the Good Men Campaign, visit URL: <http://goodmencampaign.wordpress.com/>

¹¹ Women's Aid Organisation (2009). "Monitoring the Domestic Violence Act 1994 Malaysia," p.16.

Another Failure to Protect Women from VAW...

The last few years have seen a spate of incidents where Indonesian domestic workers fell to their deaths in Singapore.¹² Many of these were said to be accidental as they hanged clothes to dry or cleaned the windows of flats in multi-story buildings but they were some which have been caused by despondency and desperation.¹³ Another case involved an Indonesian whose neck and back suffered second degree burns as her employer poured hot water on her.¹⁴ These prompted Indonesia to temporarily ban the deployment of domestics workers bound for Singapore. Despite the negotiations between the two countries, substantive changes have yet to be seen. Foreign domestic workers are not included in the major employment laws of Singapore.¹⁵16 Meanwhile, in Indonesia, discriminatory laws also remain in place such as the prohibition for migrant workers to get pregnant. Section 35 of the Placement and Protection of Indonesian Workers Abroad Law also does not allow pregnant women from leaving the country.¹⁷ Although Indonesia has been aggressive in sending its women to become domestic workers in Singapore and other countries, Indonesia has not yet ratified UN Convention on the Protection of the Rights of All Migrant Workers and their Families.

... A Promising Practice to Protect Women from VAW

The city of Davao in southern Philippines adopted an ordinance that led to the establishment of the Integrated Gender and Development Division (IGDD) under the Mayor's Office in 2003. IGDD acts as the coordinative, regulatory and monitoring body on women and gender issues and concerns in the city. It has evolved into a one-stop center for women who experienced VAW as the IGDD offers a range of services such as legal assistance and psycho-social service. IGDD also has an advocacy arm which includes a monitoring of the status of women in the city, the development of gender safeguards and metrics for certain projects and a campaign against discrimination, including those done through the media.¹⁸

¹² Indonesia has nearly people million working overseas, with 80 per cent of them women domestic workers. Indonesian Forum on Women and ASEAN (2011). "Realising the Protection of Migrant Women's Rights of Women and Children in ASEAN Member States," p.3.

¹³ One of the more recent case happened in December 2011, when an Indonesian domestic worker fell 13 floors below as she brought out some clothes to dry by the window. Elena Chong (2011). "Maid falls 13 floors to death while taking in laundry." URL:

http://www.straitstimes.com/BreakingNews/Singapore/Story/STISStory_745208.html

¹⁴ Jakarta Globe (2011). "Court Jails Singaporean for 10 Months After Indonesian Maid-Scalding Case." URL: <http://www.thejakartaglobe.com/national/court-jails-singaporean-for-10-months-after-indonesian-maid-scalding-case/306798>

¹⁵ Human Rights Watch (2005). Maid to Order: Ending Abuses Against Migrant Workers in Singapore, p 35.

¹⁶ Although the government requires employers monthly bonds which are nearly equivalent to the salaries of foreign domestic workers, nothing in the proceeds go to the protection of migrant workers At the time of the publication of the report, it was estimated that the Singaporean government was collecting between US\$212-213 million dollars from these bonds. Ibid, p.29.

¹⁷ Indonesian Forum on Women and ASEAN (2011). "Realising the Protection of Migrant Women's Rights of Women and Children in ASEAN Member States," p.3.

¹⁸ For more information about the Integrated Gender and Development Division, their website can be found on URL: <http://www.davaocity.gov.ph/igdd/aboutus.aspx?id=whoweare>

PUNISHMENT

Acts of violence against women must be investigated, prosecuted and punished. Laws must be amended to better facilitate the administration of justice to victims and survivors of VAW. The failure to punish can result from poor laws, poor administration, expensive legal systems, inaccessible legal systems, corruption as well as women's fear of reporting. Although incidents of rape and sexual abuse committed by soldiers are known in some communities in southern Thailand, there is a dearth of data, which can be explained by the fact that these forms of VAW, when perpetrated by a uniformed man can only be tried in military courts.

Laws which allow VAW such as those which allow marital rape, stoning and female circumcision should be abolished. Meanwhile good laws should be enhanced by expanding its coverage and including support services. For example, these laws can be amended so that they will extend protection to undocumented migrant workers. New laws may also have to be created to capture the specific contexts where VAW can occur. One emerging area is VAW that takes place online. Regional mechanisms must also be considered for forms of VAW which happen across borders such as those in the context of migration and trafficking.

Too often the failure to punish also results from the entrenched beliefs that VAW is a "domestic" and not a criminal matter. In some regions, communities are encouraged to "sort out" domestic abuse between families. And when cases are indeed filed, women usually have to wait for a long time while perpetrators can be easily bailed out.

A Failure to Punish acts of VAW...

Burma's government troops beat and gang-raped a 17 year old Shan ethnic girl on 8 August 2011. The gang-rape was committed by an army Major and his two soldiers of Light Infantry Battalion No.579 based in Nar Lurn village, near Mong Kok, Mong Sart Township in Shan State, Burma. Nang Seng was staying alone at home when the soldiers came to her house. The girl tried to get help by shouting and screaming when they tried to rape her. The soldiers beat her so hard that she lost consciousness. When Nang Seng's parents came home, they saw their daughter unconscious with no clothes and bruises all over her body. They immediately took her to the hospital. When Nang Seng regained her consciousness, she told them what had happened. Her parents went to the village headman and made a complaint to take action against the soldiers. The village headman made a complaint to the commander of LIB 579, but the commander accused him of defamation of his soldiers. He even threatened the headman and the parents of Nang Seng that he would kill them if they informed anybody.¹⁹ In 2011 alone, the Women's League of Burma documented 81 cases of rape.²⁰

¹⁹ This case was contributed by the Women's League of Burma.

²⁰ Women's League of Burma (2011). Letter to US Secretary of State Hilary Clinton on her visit to Burma 30 November 2011.

These acts have written about extensively, including in the communications to the CEDAW Committee.²¹ Despite the impunity of these incidents, no one from the army has ever been punished.²²

REPARATIONS

A state must own up to any failure to prevent, protect and punish acts of violence against women by both itself and non-state actors. States must provide reparations for those who have been wronged. The area of reparations is probably the least developed among the four areas. It was only in recent years that some governments have stepped forward to acknowledge their culpability in the systematic commission of VAW and promise to rectify such mistake. Women survivors of VAW may seek reparations to make themselves more secure (i.e. by changing housing or locks, provision of security), to compensate for loss of earnings and property, to cover costs of healing – both medical and psychological. But most often women seek public apologies and a recognition of the wrong done to them as a form of reparation.

In 2010, the CEDAW Committee asked the Philippine government to compensate Karen Vertido, a rape survivor who suffered double victimization under Philippine courts and amend its laws on rape, whose definition underscore the use of force or violence, instead of the lack of consent.²³

...A Promising Case on Reparations on from Another Rigional Body

In 2009, the Inter-American Commission found Mexico liable for failing to prevent the killing of three young women cotton field workers in Ciudad Juarez, a town known for the deaths of over 400 women who were also tortured since 1993. The Commission also ordered Mexico to pay the victims' families US\$ 383,000, issue an apology and construct a memorial. In 2011, Mexico issued an apology in a public ceremony.²⁴

Violence Against Women as a Human Rights Violation

The 1993 United Nations Declaration on Violence Against Women defines violence against women 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 deprivations of liberty,

²¹ The 2002 publication *License to Rape* has been one of the most cited reports on this issue. *License to Rape* documents some 173 cases of rape and other forms of sexual abuse perpetrated by the Burmese military in the Shan State. Shan Human Rights Foundation and Shan Women's Action Network (2002). *License to Rape: The Burmese military regime's use of sexual violence in the ongoing war in the Shan State*. URL: http://www.burmacampaign.org.uk/reports/License_to_rape.pdf

²² Committee on the Elimination of Discrimination Against Women (2008). Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Myanmar. URL: <http://www.unhcr.org/refworld/publisher,CEDAW,CONC OBSERVATIONS,MMR,494ba8d00,0.html>

²³ Committee on the Elimination of Discrimination against Women (2010). "Views Communication No. 18/2008 (Karen Tayag Vertido vs. The Philippines). URL: http://www.coe.int/t/dghl/standardsetting/convention-violence/CEDAW%20C%2046%20DR%2018%202008_en%20Vertido%20v%20%20Philippines.pdf

²⁴ Women in the World Foundation (2011). "Violence Against Women: Mexico apologizes for failing to protect women slain in Ciudad Juarez." URL: <http://womenintheworld.org/index.php/stories/entry/mexico-apologizes-for-failing-to-protect-women-slain-in-ciudad-juarez>

whether occurring in public or private life." It covers but is not limited to battering, dowry-related violence, marital rape, female genital mutilation, sexual harassment and intimidation and gender-based violence perpetrated or condoned by the state itself.

Previously, General Recommendation 19 of the CEDAW Committee asked the state parties to include in their periodic reports information about:²⁵

- The legislation in force to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, sexual harassment at the work place etc.);
- Other measures adopted to eradicate this violence;
- The existence of support services for women who are the victims of aggression or abuses;
Statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), read together with the General Recommendation 19 (1992), sets the framework for the elimination of violence against women through its underlying principles of substantive equality, non-discrimination and state obligation. Article 1 of CEDAW establishes that discrimination in all its forms and fields will have to be eliminated in order to ensure equality between women and men. It places an obligation on the State to break stereotypes, challenge entrenched social and cultural values and practices that prevent women from exercising their rights. States are to ensure that equality is achieved in the public and private spheres by addressing not only the individual violations but also the entrenched weaknesses in the system and institutions. To ensure the right of women to live free from violence, CEDAW demands that the State bridges the gap between international standards and norms and the implementation of laws, policies and practice at the national level.

The Committee issues General Comments that allow it to deal with emerging issues and challenges that may not necessarily be adequately addressed by the Convention. It acts to provide clarification and progressive interpretation to address concerns in special circumstances and contexts. Early on in its work the Committee identified the need to include data on gender based violence, in General Comment 12.

Later it crafted its position on VAW in General Recommendation 19. General Recommendation 19 recognises the context in which VAW occurs and the manner in which discrimination is structured and interconnected. It affirms that States are obligated to eliminate all forms of VAW and take effective measures to:

- Review circumstances in which violence occurs
- Adopt appropriate legislation and policy measures to protect women from violence
- Ensure availability and accessibility of remedies to women victims
- Establish substantive equality of women in conformity with the provisions of CEDAW
- Recommends monitoring and other mechanisms to deal with the gaps in current state action on VAW.

²⁵ United Nations (1989). "General Recommendation 12 of the Committee on the Elimination of Discrimination against Women." URL: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

In its Concluding Observations of reporting State parties the Committee notes the prevalence of VAW and issues recommendations to address and eliminate all forms of VAW. They act to interpret and reinforce the standards set by the Convention to eliminate all forms of VAW. In the case of Southeast Asia the Concluding Observations issued to Indonesia in 2007 (37th Session) interprets the standards of non discrimination and equality in the context of trafficking of women.

The CEDAW Optional Protocol (OP-CEDAW) is also another to hold states accountable. In the deliberation of its cases, the Committee has insisted that State Parties provide not just an appropriate legal framework which combines criminal, civil and protective sanctions, but that this formal protection in law be translated into real protection in practice once individual women have been identified as being at risk. So far the Committee has deliberated on several cases of VAW: two were domestic violence cases, a case on rape, one was a forced sterilisation case and the another a case of systemic violence and multiple rape and murders of women. The Committee used the standard of due diligence to elaborate on state obligation for protecting women from VAW.

It has interpreted and elaborated state obligation in relation to VAW by private actors to include:

- Protection – must be immediate, timely and effective. Protection which comes late and therefore fails to ensure the safety of a woman from VAW does not meet state obligation (A.T. vs. Hungary)
- Prevention – noted in one of the Austrian domestic violence case that ‘preventative detention’ of perpetrator was needed in order to meet due diligence obligation. The Committee is of the view, that the perpetrator’s rights cannot supersede women’s human rights to life and to physical and mental integrity (Yildirim vs. Austria)
- Prosecute/Punish – Committee held that the perpetrators in the Austrian DV cases should be prosecuted and held accountable. However prosecution in itself is not considered by the Committee to be enough – the State must ensure prevention, protection and compensation too.
- Reparation – in remedies the Committee recommends compensation/reparation to the victim (A.T.vs. Hungary).

In 2004, ASEAN approved its *Declaration on the Elimination of Violence Against Women in the ASEAN Region* which reaffirmed the UN Declaration and the Beijing Platform for Action.²⁶ The Declaration asserts that “violence against women both violates and impairs their human rights and fundamental freedoms, limits their access to and control of resources and activities, and impedes the full development of their potential.” The document encourages ASEAN member states to pursue regional and bilateral cooperation, promote an integrated and holistic approach, encourage gender mainstreaming and enact necessary legislation towards eliminating VAW.

Among the building principles of CEDAW is State Obligation, along with equality and non-discrimination.²⁷ State obligation means that governments must address gender-based inequality and discrimination by providing and implementing compensatory or corrective measures which will facilitate women’s access to opportunities, benefits and resources. Human rights, especially the way they have evolved as Universal

²⁶ ASEAN (2004). Declaration on the Elimination of Violation Against Women in the ASEAN Region.” URL: <http://www.asean.org/16189.htm>

²⁷ UNIFEM and Partners for Law in Development (2004). *CEDAW: Restoring Rights to Women*. New Delhi: India Prints, p.16

Declaration of Human Rights (UDHR), International Convention on Civil and Political Rights (ICCPR) and International Convention on Economic Social and Cultural Rights (ICESCR) have been directed to State parties as duty-bearers. This means that human rights are an obligation of State parties. It is for this reason that human rights can also be categorized according to the ways State parties enable one's exercise of human rights. It is said that there are at least three ways a State must facilitate an individual's human rights: protect, respect and promote.²⁸ But there are also instances when human rights can only be fulfilled if the State provides and invests adequate resources.

The General Assembly Resolution (61/143) on the Intensification of efforts to Eliminate All Forms of Violence Against Women²⁹ calls on all States to end impunity for violence against women by prosecuting and punishing all perpetrators, by ensuring that women have equal protection of the law and equal access to justice and by holding up to public scrutiny and eliminating those attitudes that foster, justify or tolerate violence.

ACTIONS FOR CONSIDERATION

As VAW is informed by all aspects of our lived experience, a holistic approach is needed to address its root causes in political, economic, social and cultural spheres. A holistic approach also necessitates the coordination in governance, instead of purely relegating the issue of VAW to the agencies such as those on women and social work. Response to VAW must not be limited to criminal justice system and social work, instead this must be extended to all agencies such as labor, health, education and even public transportation and infrastructure.

ASEAN's Declaration on VAW provides some good steps which can help ASEAN member states' to act with due diligence to eliminate VAW. These include the systematic collection of data on VAW and monitoring of VAW-related programs, repeal of laws that perpetuate VAW, regional capacity building and technical exchange programs and support for women's organizations and other civil society organizations that are working to eliminate VAW. Moreover there are existing good practices, which have to be improved and possibly replicated.

National Plan of Action to Eliminate VAW. The Beijing Platform for Action requires states to develop National Plans of Action at all levels of government to eliminate VAW. Having a national action plan on VAW helps coordinate the efforts different government agencies and monitoring policies, programs and projects³⁰. Moreover, it makes visible a government's condemnation of and will to eliminate VAW. A National Plan of Action should be framed around the Due Diligence principles, detailing prevention, protection, punishment and reparations initiatives and should be properly resourced, supported by all levels

²⁸ Enforced Disappearances Information Exchange Center (nd). "State Obligations." URL: <http://www.ediec.org/areas/state-obligations/protect-respect-and-promote-hrs/>

²⁹ Resolution adopted by the General Assembly [on the report of the Third Committee (A/61/438)] 61/143. Intensification of Efforts to Eliminate All Forms of Violence against Women, at the 61st Session (Agenda Item 61), 30 January 2007.

³⁰ Indonesia was one of the first countries in the world to develop a National Plan of Action on VAW. It is also unique in having a specialised independent statutory authority, Komnas Perempuan, with a mandate focused on the elimination of VAW.

of government, address all forms of VAW, particularly those effecting diverse communities and the most marginalised and be developed in collaboration with civil society.

Coordinated Government Approach. All government agencies have a stake in eliminating VAW. There must be coordination among ministries and departments such as finance, justice, attorney general, social and community services, police, education, women's ministry and foreign affairs among others.

Collection of Statistics on all forms of VAW. Data on VAW must be collected systematically. Governments must also embark on more focused studies on VAW, ensure specific indicators are developed to track progress on eliminating VAW and providing support to survivors. This process should be developed collaboratively with civil society and evaluated collaboratively.

Allocate resources to VAW. Actions towards eliminating VAW must be backed by a sustainable pool of resources. The Philippines mandates that at least five per cent of a local government budget must be spent for gender and development (GAD).³¹

Collaboration with women's groups and civil society. Women's groups and other civil society organizations can equally sharp analyses on VAW and contribute good practices, with their experience in dealing with women's issues and concerns. A relationship with them must be fostered.

Towards an ASEAN Convention on VAW

Although ASEAN consists of different contexts, VAW is a reality for most women, making it a regional concern. One form of VAW that has encouraged a regional response has been trafficking, that in 2004, six governments, including China established the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT). COMMIT's Memorandum of Understanding tasks governments to develop national plans of action on trafficking, ensure that survivors of trafficking are not detained and develop cross-border collaboration, among others.³² The MOU also aspires for a regional plan of action and coordination of national laws. Although COMMIT is still at its early stage, it can be seen as a model in developing actual regional mechanisms to address VAW.

Outside the region, the Organization of American States' Inter-American Commission on Human Rights has its own convention on violence against women. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, otherwise known as the Convention of Belem do Para was adopted in 1994 and ratified by 14 countries. It follows the language of the UN Declaration on

³¹ While a promising initiative, concerns remain about the GAD budgeting. A Philippine Senate report found that in the 15 years of its implementation, the GAD allocation never reached one percent of the total budget of the national government. Senate Economic Planning Office (2010). "Engendering a gender responsive budget: A look at the GAD Budget policy." URL: <http://senate.gov.ph/publications/PB%202010-03%20-%20Engendering%20a%20gender%E2%80%90responsive%20budget.pdf>, as cited in Women's Legal and Human Rights Bureau (2010). "Unveiling Justice: Women's Access to Justice in the Philippines," p. 5.

³² COMMIT (2004). Memorandum of Understanding. URL: http://www.no-trafficking.org/reports_docs/commit/commit_eng_mou.pdf

VAW and further elaborates the duties of the state. Under the Convention, state parties are required to report their actions in addressing VAW and may request the assistance of the Commission in interpreting the convention. Any individual and any legal recognized entity from a member state of OAS can file a complaint before the Commission.

In 2010, the Commission also found Mexico liable when two indigenous women, Inez Fernandez Ortega and Valentina Rosendo Cantu were raped by soldiers in 2002 in Guerrero. The Commission asserted that rape cases must be investigated by civilian and not military courts. Subsequently the Military Prosecutors Office transferred the cases to civilian courts. The Mexican Supreme Court also limited the cases which can be tried in a military court.³³

A similar convention can be considered by ASEAN as it pursues a human rights regime. This project will necessitate not only the support of ACWC but coordination of all ASEAN bodies and cooperation with regional and international human rights mechanisms.

Conclusion

The **Due Diligence framework** has been developed over time by VAW experts within human rights bodies and with civil society. It **should guide the work of the ACWC** in its efforts to support the implementation of ASEAN states' human rights obligations. The ACWC may consider using the framework **to assess the compliance of states** and identify areas lacking across the region. It would be useful to conduct **targeted enquiries into specific forms of VAW** that are pervasive and to date late sufficient attention. Particular areas of attention may involve **cross border issues like violence against migrant women workers**. Further the ACWC **could engage other ASEAN bodies to promote a coordinated approach** addressing VAW in all pillars, including security, education and economic bodies.

The Women's Caucus, APWLD and IWRAW-AP remain committed to contributing to such work to strengthen the mandate.

³³ Latin American Herald Tribune (2011) "Mexican Army Hands Over Rights Cases to Civilian Prosecutors." URL: <http://www.laht.com/article.asp?ArticleId=417362&CategoryId=14091>

ABOUT US

South East Asia Women’s Caucus on ASEAN

The Southeast Asia Women’s Caucus on ASEAN (Women’s Caucus) is a network of more than 60 organisations and networks from 11 countries, including Timor Leste, that engages the Association of South East Asian Nations (ASEAN) on women’s human rights. Established in 2008, the Women’s Caucus identified common issues and concerns among women and girls in Southeast Asia, in particular: violence against women, VAW in the context of migration, discriminatory laws and practices, political participation and economic participation. The Women’s Caucus members aim to engage constructively with ASEAN representatives at national and regional level to advance women’s rights in all ASEAN pillars. By bringing women from the diverse Southeast Asia region together it aims to strengthen the capacity and strength of women’s movements with sharp feminist analyses on regionalism. It particularly aims to foster the activism of younger women and women new to the movement.

Asia Pacific Forum on Women, Law and Development

The Asia Pacific Forum on Women, Law and Development (APWLD) is a membership based network of 180 women’s rights organisations and women human rights defenders in 25 countries across the Asia Pacific Region. Violence against women has been one of the key issues addressed by APWLD’s programs on feminist law and practice, rural and indigenous women’s rights, labor and migration and international human rights mechanisms, among others. APWLD lobbied for the violence against women mandate within the UN Human Rights Commission (now Council) Special Procedures. Since the first Special Rapporteur on violence against women was appointed, one of APWLD’s founding members, we have held annual consultations with the mandate holder to ensure women’s voices from Asia Pacific inform the mandate. APWLD’s work has been acknowledged by subsequent mandate holders as an integral information and agenda setting process for the mandate. APWLD provides secretariat support to the Women’s Human Rights Defenders International Coalition and the Southeast Asia Women’s Caucus on ASEAN (Women’s Caucus). It holds special consultative status with the United Nations Economic and Social Council.

International Women’s Rights Action Watch - Asia Pacific

International Women’s Rights Action Watch (IWRAP) Asia Pacific is an international organisation based in the South, working nationally, regionally and internationally towards the advancement of women’s human rights. It was established in 1993 and has **19 years of experience** in facilitating women’s groups working on a range of human rights issues at the local and national level to understand and engage with international human rights standards and system, with a particular focus on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) toward implementation of international treaty norms at the national level. Together with APWLD, IWRAP Asia established and co-coordinates the Southeast Asia Women’s Caucus on ASEAN.

IWRAP Asia Pacific initiated the Facilitating the Fulfillment of State Obligation to Women’s Rights Project in Southeast Asia in 1997 with the aim to monitor improvements in women’s access to justice and equality as a result of their governments fulfilling their international commitments towards this end. As part of this process, partner organizations developed baseline reports on the status of women in specific areas, with a particular focus on violence against women. Subsequently, a Regional Thematic Meeting on VAW was held in 2005 which focused on creating clarity on the dynamics of and developments related to VAW, including on due diligence and concept of universal jurisdiction.

Subsequently, participants at IRAW Asia Pacific's *Southeast Asia Women's Human Rights Implementation Strategies Meeting* in Jakarta in September 2007 identified violence against women as a key area requiring attention and action. To this end, IRAW Asia Pacific convened the *Southeast Asia Meeting on the Application of CEDAW to Address Impunity in the Context of Violence Against Women (VAW Meeting)*, on 15 – 18 October 2008, focusing on the use of human rights frameworks, and in particular, CEDAW, to address impunity in the context of violence against women in Southeast Asia. The VAW Meeting brought together 30 activists, experts and academics from 10 Southeast Asia countries who work on violence against women and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The VAW Meeting provided the space to consider the pervasive nature of impunity confronted by women who are victims and survivors of violence and the often long-term and sustained consequences of such impunity on the woman, her family and her community. Impunity in VAW reflects a clear failure of states to meet their obligations to investigate violations, to take appropriate measures on justice, to provide remedies and reparations for victims and to prevent recurrence of the violations. It is the impossibility of bringing perpetrators of violence to account for reasons of legal, political or cultural reasons and caused by the lack of political will, breakdown in systems, and ultimately it is caused by culture³⁴. The VAW Meeting further aimed at enhancing the potential links and discussed various ways and means on how the impunity framework³⁵ and human rights standards, in particular the principle and the standards of CEDAW will be of use in designing strategies and interventions that are holistic and comprehensive in order to ensure the elimination of violence against women.

IRAW Asia Pacific continues to build and sharpen our use of the impunity concept in our work on violence against women, including in the context of conflict with the aim to enhance our capabilities to provide increased access to justice and redress for women victims and survivors of violence.

We also provide trainings and facilitate the participation of women's groups working on the issue of VAW at the CEDAW review session when their respective states are reviewed. Currently, IRAW Asia Pacific is supporting several national groups on using the "CEDAW Application Framework³⁶" as a tool to guide and support strategizing on law and policy compliance with CEDAW, applied to specific to issues and contexts in some countries in Southeast Asia and South Asia beginning with Indonesia, Timor Leste, Vietnam and Bangladesh.

³⁴ ***Southeast Asia Meeting on the Application of CEDAW Framework to Address Impunity in the Context of Violence against Women*** Report, 15 – 18 October 2008, organised by IRAW Asia Pacific

³⁵ The amended Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, submitted to the United Nations Commission on Human Rights on 8 February 2005, defines impunity as:

"the impossibility, de jure or de facto, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims."

The First Principle of that same document states that:

"Impunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations."

³⁶ The CEDAW Application Framework was developed during an Updating of Concepts Meeting that was held in October 2007 with IRAW Asia Pacific's resource persons. This meeting was organised in response to feedback from IRAW Asia Pacific partners that they understood CEDAW conceptually, but needed more concrete guidance on how to apply CEDAW in laws, policies and programmes.