



Negotiating Culture:

Intersections of Culture and
Violence Against Women
in Asia Pacific

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**REPORT OF THE ASIA PACIFIC NGO CONSULTATION WITH
THE UNITED NATIONS SPECIAL RAPPORTEUR ON VIOLENCE
AGAINST WOMEN, YAKIN ERTÜRK**

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Organised by Asia Pacific Forum on Women, Law and Development (APWLD)
in collaboration with the National Centre Against Violence (NCAV) Mongolia

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LIST OF ABBREVIATIONS

APWLD	Asia Pacific Forum on Women, Law and Development
CEDAW	Convention on Elimination of All Forms of Discrimination Against Women
DEVAW	Declaration on the Elimination of Violence Against Women
FGM	Female Genital Mutilation
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBTI	Lesbian, Gay, Bisexual, Transgender, Intersex
MDG	Millenium Development Goals
NCAV	National Centre Against Violence
NGO	Non-Governmental Organisation
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNSR FRFB	United Nations Special Rapporteur on Freedom of Religion.or Belief
UNSRVAW	United Nations Special Rapporteur on Violence Against Women
VAW	Violence Against Women
VAWTF	Violence Against Women Task Force
WHR	Women's Human Rights WHRD Women Human Rights Defenders

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FOREWORD

This was the third Regional Consultation on violence against women APWLD has organised since I took up my mandate in 2003. These Consultations have offered an invaluable opportunity for engaging in a fruitful dialogue with women and women's groups working on violence against women in the Asia Pacific region. Henceforth, I was able to gain insight into the critical and emerging issues in the region and explore, with the participants, effective strategies for enhancing women's human rights and combating all forms of violence. I have shared the APWLD Regional Consultation model with organisations in other regions as a blueprint for organising similar events. Asia Pacific (through APWLD) is the only region that has institutionalised this mechanism of holding consultations with the UNSRVAV and I am grateful to APWLD for that.

The 2006 Consultation responded to the topic of my next thematic report to the Human Rights Council which will address the intersections of culture-based discourses and violence against women.

Across all regions of the world, culture is a primary source of normative systems that provides the rationale for patterns of gender relations and the continuation of everyday practices over time. At the global level, cultural values commonly shared by the international community have been formalised into international human rights law. Until recently, patriarchal cultural values led to the interpretation of human rights law within a public/private dichotomy which served to perceive many of the gender specific violations of rights women experience outside the domain of law and public discourse. By challenging the patriarchal bias in the interpretation of international human rights law women across the world have transformed conventional understandings of human rights and state doctrine. This, however, has not resulted in the universal protection of human rights and dignity of all women.

In many parts of the world specific cultural practices continue to prevail over universal cultural legitimacy of international standards, whereby, women's rights become compromised, if not totally sacrificed. Dominant interpretations of culture are used by some to justify and excuse acts of discrimination and violence against women, thus undermining state compliance with international human rights obligations.

Culture evolves as a response to different and competing individual and collective needs and aspirations, which makes culture diverse and dynamic. However, at any given time, dominant interpretations of culture may be legitimised and imposed on a society or a community. The assertions of dominant interpretations of culture, in seemingly diverse socio-cultural settings, are often similar to the extent that they (i) presuppose a static and homogenous set of values and norms that govern the lives of a collective entity; (ii) reflect and reinforce hegemonic and patriarchal power relations. Such cultural discourses are at odds with universal cultural standards.

In order to successfully uphold universally agreed values, in particular the principle that no custom, tradition or religious consideration can be invoked to justify violence

against women, it is necessary to address, and understand the process of legitimisation in the assertion of these types of discourses. This requires systematic engagement in a “cultural negotiation” whereby the positive cultural elements are emphasised, while the oppressive elements in culture-based discourses are demystified. In this respect, it must also be demonstrated that culture is not an immutable and homogenous entity. The legitimacy of those who claim to speak on behalf of culture must be critically examined and, if necessary, contested.

The challenge that confronts us today is to respect and prize our diverse cultures while developing common strategies to resist oppressive practices in the name of culture and to promote and uphold universal human rights norms while rejecting ethnocentric encroachments. In short, in our efforts to ensure the universal human rights of women in all parts of the world we must stand firm against both occidental and oriental myths and impositions.

At the Regional Consultation this year we were able to explore the complexities of these issues in the Asia Pacific context and share strategies to address these issues at the local, national and international level through engaging with both state and non-state actors. Importantly, the discussions built on an understanding of women as the agents of culture rather than just its subject. In this regard, it articulated the spaces women create to ‘negotiate their identities’ individually and collectively within their cultures, communities and societies while recognising the serious consequences and risks involved in such an endeavour. The elaboration of effective strategies used by women in the region demonstrated the creativity of the women’s resistance and challenges to patriarchy in all its forms and manifestations. Many of the insights from the Consultation will prove useful for the articulation of the issues in my next report to the HR Council as well as the particularities of women’s specific experiences in this region.

I thank APWLD once again for organising the Consultation and look forward to continuing this fruitful relationship.

Yakin Ertürk,
United Nations Special Rapporteur on Violence Against Women

October 2006

EXECUTIVE SUMMARY

APWLD, in partnership with the National Centre Against Violence (NCAV) based in Mongolia, organised a consultation on 11-12 September, 2006 on 'Culture and Violence Against Women in Asia Pacific' with the UN Special Rapporteur on Violence Against Women, Yakin Ertürk.¹ The consultation brought together 35 women from 22 countries around the region, representing a diverse spectrum of organisations and women's groups.

Aims of the Consultation

The Consultation aimed to understand and articulate how, despite the fluidity and contestability of cultural norms, oppressive elements of culture, which invariably reflect and reinforce patriarchal power relations, gain dominant representation. The Consultation sought to strategise how a women's human rights agenda can be advanced in this context, providing effective strategies for both the women's movement in Asia Pacific and for the UNSRVAV for inclusion in her recommendations to States and other actors.

What was discussed at the Consultation?

The two days saw rich discussions on the interlinkages between culture and violations of women's human rights in Asia Pacific. In many parts of Asia Pacific, culture and cultural practices, including religion, continue to be privileged over universally accepted standards of human rights and women's human rights in particular. Discriminatory practices, including violence against women, avoid national and international scrutiny because they are seen as cultural practices that deserve tolerance and respect. Discriminatory patriarchal values and beliefs are, frequently enshrined, or purportedly enshrined, in the dominant cultural values and practices of a community. International law is clear that States cannot 'invoke custom, tradition, or religious considerations to avoid their obligations with respect to the elimination of discrimination against women' (Article 4, DEVAW), but rather, the State is obliged to change the attitudes and behaviours that perpetuate the violence (CEDAW and ICCPR). Despite this, culture, of which religion is just one aspect, is used by individuals, communities and governments alike to condone violence against women and to justify inaction in bringing perpetrators to justice and ensuring appropriate remedies for the survivors of violence against women.

In this context, the Consultation began by attempting to deconstruct culture. It is important to shape a more nuanced understanding of culture, as a non-homogenous non-singular entity, distinguishing it from religion and understanding it as a system of assigned meanings that are dynamic and fluid. Discussions during the Consultation examined how dominant cultural norms and interpretations get established, and how culture has been used as a forceful tool for "othering," or exclusion. Religion, as a faith and a social system, is distinct from culture. Culture predates religion and one religion can have many cultures and vice versa. But they are similar in that they are being

¹ The Consultation was organised with the intention of it being a joint Consultation with the UN Special Rapporteur on VAW and the UN Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir. Unfortunately Asma Jahangir was unable to attend.

given hegemonic interpretations and are both frequently advanced as a political agenda.

One of the main challenges we face is the articulation of culture as a static, unified, homogenous whole – an articulation which essentialises culture. Monopolistic interpretations of ‘a’ culture need to be challenged at every step. Cultural renegotiation by women is a critical form of resistance to patriarchal interpretations of culture, and one which women have engaged in all contexts and times and continue to engage in. This role of women as the makers and agents of culture is frequently overlooked and therefore de-legitimised in the framing of culture as a monolithic force of which women are the victims. We must therefore continue to rearticulate culture as a necessary step in resisting patriarchal interpretations of it. Some guiding principles for this re-articulation are:

- Recognising that dominance gets established in part by those who hold power and who claim to speak for ‘the’ culture. In reality, there are many cultures within any culture, including the ‘dominant’, the ‘resistant’ and the ‘subaltern’ cultures.
- Expressing and articulating the intra-cultural diversities and contradictions within culture;
- Active recording of women’s contestations and agency within culture to dismantle the victim narrative of women.
- Recognising the fluidity and diversity of culture, rather than essentialising it;
- Recognising that individual rights are necessary in establishing rules and ordering within collectives, rather than dichotomising group and individual rights;
- Differentiating between the right to privacy and state interference, and between state interference and intervention.

Often the articulation of culture, even in UN documents, including general comments to covenants and reports of the Special Rapporteurs, reinforces problematic constructions of culture by failing to recognise its fluidity. Further, often examples used in the UN documents to elaborate how culture interfaces with violence against women are from the global south which further reinforces the stereotypes of ‘south has bad cultural practices’ and ‘north has human rights’ and which sees women from the global south as victims of ‘bad cultures’.

The second half of the Consultation built on the understandings/approaches which emerged from the first day, particularly in regard to three specific concerns. First, since using a more nuanced language that depicts the issues and our concerns more accurately is important, we need to reformulate and reframe the language we use. This is important since most of the current formulations reinforce the north-south divide, project the south as having ‘a’ culture that is necessarily something negative, do not record contradictions or the power relations that are embodied therein and do not depict women’s agency and renegotiations. Second, considering that the binary options that are available to us are so overpowering and so adopted by everyone,

including both state and non-state actors, we need to create a third space for women, outside the ambit of the imperialists and the fundamentalists. Third, recognising that women resisting, challenging and re-negotiating culture within their communities as women human rights defenders face particular vulnerabilities and risks when working within communities on issues like culture, we need to develop support structures for them that are cross-country and cross-cultural. A summary of further discussion on these three critical areas of exploration can be found at Annex 2.

Strategies for addressing harmful cultural paradigms through engaging with international, state and non-state actors, were also discussed. Specific experiences from the region were shared in addressing culture and violence against women and these included engaging with law and the legal system, monitoring state commitments, awareness raising within the community, engaging religious leaders, sharpening our advocacy strategies, using media effectively and building a support/solidarity network for women who, while challenging our cultures from within, face serious risks including that of being silenced.

Participants collectively brainstormed on what we need to do within our own organisations and within the women's movement to address the challenges identified. They defined the challenges and recommendations to end patriarchy in all forms and at all levels and to eliminate structures and institutions that reproduce violence against women, such as militarisation and development aggression. Some common recommendations for the women's movement articulated by participants included:

- Creating a space to reconstruct the language which allows for reflection and engagement;
- Strengthening our knowledge-base and activism with documentation that depicts the diversity of cultures as well as women's attempts at renegotiations;
- Reconstruction of her-story, claiming our space in history;
- Building and strengthening linkages between our organisations and movements and deepening our networks.

Concrete recommendations, including specific sub-regional recommendations, were also drawn up for the UN Special Rapporteur's report. They are included in section 5.2.

CHAPTER 1: INTRODUCTION

Engaging meaningfully and effectively with the UN Special Rapporteur Mechanisms of the United Nations has been one of the concrete contributions of APWLD to women's activism in the region. Of these, the engagement with the UN Special Rapporteur on Violence Against Women in particular, has been the most long standing and arguably the most effective. APWLD has been facilitating Consultations with the UN Special Rapporteur on Violence Against Women (UNSRVAW) since the inception of the UNSRVAW mandate in 1995. In fact, APWLD was part of a group of women's organisations that advocated for the creation of the mandate on Violence Against Women

The Special Rapporteur on Violence Against Women defines her main activities under her mandate to be:

- to seek, receive, examine and respond to information on violence against women;
- to make urgent appeals to governments to clarify the situation of individuals whose circumstances give grounds to fear that violence against women is occurring or might occur;
- transmitting to governments information received that violence against women may have occurred or that legal or administrative measures are needed to prevent the occurrence of such acts;
- carrying out country visits with the consent of the government concerned;
- reporting to the Commission on Human Rights and recommending measures, ways and means at national, regional and international levels to eliminate violence against women and its causes, and to remedy its consequences.

Radhika Coomaraswamy, a founding member of APWLD, was the first Special Rapporteur on Violence Against Women (UNSRVAW). During her term, from 1995 until 2002, APWLD organised annual Asia Pacific consultations with her on the elected topic of her annual report to the UN Human Rights Commission. The Consultations provided an opportunity for women's groups from the Asia Pacific region to inform the Special Rapporteur of the violations of women's rights occurring in the region, as well as to inform her articulation of the scope of women's rights, based on the local and national experiences of women in the Asia Pacific.

Apart from feeding into her report, the Consultations have also resulted in advancing and strengthening women's activism in the region by becoming a significant advocacy and lobbying tool. For instance, APWLD facilitated Radhika Coomaraswamy's visit to Indonesia in 1998 informed her report on the use of rape as an instrument of torture and intimidation by certain elements of the Indonesia army in Aceh, Irian Jaya and East Timor. She also noted the lack of adequate legal redress for the victims, as well as for the ethnic Chinese women who were raped in the May 1998 riots. As a result of

the Special Rapporteur's report, the Indonesian government was forced to take note and respond in some way to the allegations. Local women's groups translated and popularised the report, and used it to publicise the human rights violations of the Indonesian government and its military troops nationally and internationally. This led to the establishment of the National Commission Against Violence Against Women (Komnas Perempuan). Likewise, women's groups in Nepal have used Radhika's report on trafficking strategically, to demand for improvements in the proposed legislation on trafficking that was subsequently drafted.

After Radhika Coomaraswamy finished two terms, the mandate of the UNSRVAW was renewed for three more years by the Commission on Human Rights with the appointment of Yakin Ertürk in 2003. APWLD has held two previous consultations with Ertürk since her appointment, first in 2004 in Jakarta focusing on 'Sexuality' and then in 2005 in Bangkok focusing on the Due Diligence standard, both in the context of violence against women.

The Consultation this year focused on 'Culture and Violence Against Women in Asia Pacific' a critically important issue for women and women activists in the region. Since the theme closely relates to the mandate of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, the consultation was organised as a joint one for both Special Rapporteurs. Unfortunately Asma Jahangir was unable to attend the Consultation in person.

The objectives of the Consultation were:

- To enable women's NGOs from the Asia-Pacific region to directly consult with the UNSRVAW on the elected topic of her report and to strengthen the effectiveness of the UNSRVAW's mechanisms to address violence against women, its causes and consequences;
- To provide women's NGO's dealing with the identified issues with the opportunity to share their experiences, strategies and best practices and provide specific recommendations to the UNSRVAW on how to strengthen international, state and community responses to violence against women and 'culture';
- To provide an opportunity for the UNSRVAW to discuss her annual reports and their outcomes with NGOs in the region with the aim of undertaking strategies for implementing the findings of the report and soliciting feedback from the NGOs;
- To enhance capacity of groups working on violence against women in the region to effectively address the issue of culture and violence against women.

Held in collaboration with the National Centre Against Violence (NCAV) in Ulaanbaatar, Mongolia on 11-12 September, the consultation was attended by 35 women from 22 countries around the region, including Afghanistan, Australia, Bangladesh, Burma, China, Cook Islands, Fiji, India, Iran, Indonesia, Japan, Kazakhstan, Kyrgyzstan, Korea, Mongolia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Turkey and Russia.

The consultation was followed by a National Consultation with the UNSRVAW which was attended by over 100 women from across Mongolia. The National Consultation provided an opportunity for women to share critical issues relating to violence against women in their communities and contexts with the UNSRVAW as well as to address the theme of the UNSRVAW's report on 'culture and violence against women' from their experiences in Mongolia. After the Consultation, Yakin Ertürk met with a government minister and a number of government representatives and was able to highlight the role of government in addressing a number of the emerging issues from the Consultation including the lack of implementation of the newly enacted Domestic Violence Legislation.

The issue of 'Culture and violence against women' that the UNSRVAW seeks to address in her report to the Human Rights Council in 2007 resonates with women's groups addressing violence against women in the Asia Pacific region.

Although the use of culture to deny women their human rights is not new, post-September 11 we have seen a further contraction of culture and its presentation as a monolithic and unchanging force. Culture is being used as a tool against imperialism and globalisation, but it is also reformulating what 'woman' is. As other aspects of culture such as economic culture have been ruptured completely, with the advent of transnationals, culture has been reduced to the private realm and is being defined by 'woman'. Interrogating and negotiating culture to make it accountable to women's human rights claims is an important and present challenge for women's groups in the region. However, currently we have been seeing growing cultural identity politics within the international arena based on religious, ethnic and racial identities, a discourse which further removes women from their role as agents and bearers of culture and paints them as the victims of culture. In this context, revisiting and renegotiating culture becomes vital for advancing the WHR agenda without buying into an articulation of culture that denies women their agency. Culture cannot be treated nor articulated as 'a' homogenous, static whole. Dominant culture has always been interpreted from a masculine lens yet women have also always been the agents of culture and the resisters of patriarchal interpretations of culture.

The Consultation sought to strategise how a women's human rights agenda can be advanced in this context. How do we challenge the hegemony of voices that claim to represent culture and give voice and strength to the contention and plurality of culture? Are there common standards by which all cultures can be judged on human dignity or do we submit to cultural relativism? How do we uphold our culture without compromising on WHRs? And how do we uphold WHRs without submitting to an imperialist agenda? What strategies can we use to achieve these goals?

This report, drawn from the Consultation discussions and contributions of participants, seeks to explore some of these issues as experienced by women from Asia Pacific.

CHAPTER 2: DEFINING THE CONCEPTS AND IDENTIFYING THE KEY ISSUES

2.1 - CULTURE, RELIGION AND NATIONALISM²

Culture is a system of assigning meaning to the way we live: how we organise our means of production and reproduction, how people relate to nature and to each other. As a system of meaning, culture gives people a sense of who they are, where they belong in the world and what the world is all about. Culture determines belonging in a collectivity: it assigns status and establishes norms of behaviour by laying out whether a particular action or interaction is approved or disapproved, recommended or prohibited. Culture sets out rules for specific subsets of people, including those that govern the particular gender system of that group.³

Culture and religion are often used interchangeably and though they closely interact and influence each other, they are distinct entities and therefore it is important to underline the difference between them. One religion may have many cultures, as there is no 'one kind' of Hinduism, Islam, Christianity, Buddhism or Judaism. Depending on political, geographic, socio-economic or historical reasons, the same religion has been practised, understood and interpreted differently at different moments in history, under different dynasties, political systems and in different countries. The notion of a singular, pan-religion is a fundamentalist notion – all religions include diverse and often contradictory cultural traits.

Conversely, many religions can share the same culture. For example, the caste system is a defining characteristic of Hinduism; however, in India because Hinduism is the majority religion, the caste system has permeated among Muslims and Christians as well. Thus, culture cuts across different religions. Some practices like female genital mutilation are cultural or tribal practices in the African continent and not religious as is sometimes claimed. Unlike religion (at least the monotheistic religions), cultures do not have 'a' single book or 'a' single interpretation or 'a' single prophet. Culture predates religion. And religion is often more formally codified than culture. Thus, culture and religion are not synonymous and it is important to distinguish between the two.

Having noted the distinction, it must further be understood that amongst a society's rules are those dictated or justified by reference to religion. Though religion is not in and of itself culture, the assigning of meaning is linked to beliefs, and in many societies religious beliefs underlie the rules and norms. Religion itself operates at three distinct levels: religion as faith, religion as a social system and the use of religion to articulate a political agenda. The first is the least problematic; the second as a

²Drawn from the presentation of Manish Gupte, India, with contributions where noted from Farida Shaheed, Pakistan.

³ Drawn from the presentation of Farida Shaheed, Pakistan.

cultural manifestation is more problematic; the third is the most problematic for those seeking to advance women's rights.⁴

The term 'culture' is actually a colonial construct. The word 'western', according to Uma Narayan, was used for the first time in the 1600s, at the time when Europe was embarking on its colonising spree. It is not accidental that the line in Greenwich which distinguishes the orient from the occident lies in Britain, the country that colonised half the world. Therefore, what is east and what is west or what is oriental and what is occidental are all constructs from the lens of the colonisers. Terms like "orient/occident" in themselves are colonial constructs. They promoted the idea that oriental cultures were effeminate and therefore their colonisation was to be justified. The notion of "us" as the more civilised west and "them" as barbaric natives was created during this period.

The response of the colonised nations reinforced this othering, when they fell into the trap of showing how they were different from the colonising foreigners. Reaffirming that "we are different from you and therefore superior/inferior from you" or that "our culture/civilisation is older than yours", only led to cultures being juxtaposed against each other. Social reformers either exaggerated the spiritual superiority of their cultures or tried to emulate the superiority of the colonisers' cultures. Many polytheistic or animistic cultures moved towards monotheism and denigrated pagan worship – of course with some help from the missionaries that the colonisers brought along with them.

As feelings of nationalism evolved in the colonised nations, the notion of "one culture" again became very important to unify against a coloniser. Most anti-imperialist movements tended to construct their nationalism in gender-binaries; the 'valour' of the new nation state as masculine and their 'honour' as feminine. Thus, most liberation or secessionist movements, even in present times, succumb to the temptation of placing cultural markers on women's bodies as an indicator of their nascent identity. They try to erase the earlier markers and deliberately create new easily identifiable ones, such as making the veil compulsory or not being allowed to dress like the 'enemy'. The diaspora of any country and the migrants also make desperate attempts to preserve their culture in a foreign land by imposing strict and unrealistic restrictions on their women and children. They stick to nostalgic (often make-believe) notions of what their culture is, even though the country they left behind no longer lives in those times. They indulge in forced marriages, foetal sex-determination and other forms of discriminatory and violent practices against women in order to protect their culture from the overwhelming presence of the dominant culture (or lack of culture) of their host countries. They covet the upward mobility and financial status that places them a notch above their relatives and neighbours back home, but tend to practice cultural untouchability and resist any kind of assimilation. This further reinforces their 'othering' within their new country of residence.

When fundamentalist tendencies gather force, more and more restrictive social norms are imposed on women. When faced with a real, potential or even perceived external threat to culture, communities tend to showcase their culture in terms of regressive social norms for women. When faced with an internal 'threat' such as the women's

⁴ Ibid.

movement or reform campaigns, culture becomes the vehicle of backlash and promotes reactionary politics. The glorification by right-wing groups of the upper-caste practice of sati (wherein a woman 'voluntarily' immolates herself on the funeral pyre of her dead husband) as Indian culture is one such example. In the same way, if certain African cultures feel threatened, they may put forth female genital mutilation as the sacred, untouchable 'showcase' of their culture. Culture often gets defined by how restrictive it is with respect to women and therefore in any cultural crisis, the human rights of women are the first to be sacrificed for the common good (this presumes that the 'common good' does not include half of its population). Since women bear the markers of their culture, they become easily identified during riots, conflict and war. Further, since the notion of caste, community or national honour is vested in women, sexual assaults and mass rapes become one way in which opposing groups of men use women's bodies as the battlefield to subjugate and humiliate each other.

It is also very important to differentiate between cultural sensitivity and cultural essentialism. While sensitivity is positive, essentialising is problematic as it leads us down the slippery slope towards fundamentalism. If we agree that human rights are universal and inalienable then we have to challenge cultural essentialism or relativism. By imposing a positive obligation on state parties to modify cultural practices and customs that discriminate against women, the CEDAW has questioned this cultural essentialism.

Post 9-11, we have witnessed the effects of 'othering' like never before. Neo-liberal politics and the imperialist economics of globalisation have created a binary world. The war on terror and the clash of civilisations deepen the schism between western and eastern cultures. As President Bush has put it bluntly, "you are either with us or against us". On the other hand, the only organised voice against the US government's foreign policy today is the voice of organised religious fundamentalists. Fundamentalism is but the flip side of this economic assault on poor nations and the global climate of warmongering. Why should we accept these two as the only choices? As women, we have never had a third choice: living either in our mother's or husband's homes, but never in our own homes. All of us fighting for structural change should refuse to be put in binaries, whether of gender, or of identity politics.

We are challenged by various issues today. We need to appreciate the universality of human rights at one end and also explore the redeemable aspects of culture. How do we factor in diversity, without compromising on women's human rights? Can we renegotiate with culture? Can we enhance the pluralism that it sometimes offers? Can we stretch existing notions and norms within culture? Can we challenge the extremely dehumanising crime-punishment legal model that creates a more hardened criminal at the end of the punishment and which leaves no room for remorse? Can we find more healing methods to deal with violence against women, where justice (both legal and social) is non-negotiable, where women find themselves more empowered at the end of the trial, where cultures denounce violence against women and where men are raised to be non-violent?

There are no easy answers to these and other equally disturbing questions, but we begin to resolve some of our dilemmas by making women's voices visible in our debates and our strategies. We need to begin by defining who a woman is – is she only the heterosexual married woman? Homeless women, sex workers, women with

disabilities, those incarcerated in state-run homes, in prisons and asylums need to become part of our understanding of 'women'. We also need to confront all forms of violence, including structural ones in our campaigns, if we want to create cultures and societies based on equality and freedom. We have to remember that cultures are dynamic, absorbing bits and pieces from the outside, based on the socio-political and economic needs of its people or to consolidate the vested interests of its dominant groups. Cultures have never been static, except where arguments against women's rights are concerned. Cultures can change and we should become the agents of that change.

2.2 - THE INTERPLAY OF CULTURE, POWER AND IDENTITY POLITICS⁵

Culture is also a manifestation of power structures with the dominant culture projecting the ideas of those who have the power to impose the rules even while claiming to represent all voices and people within the group. Culture is therefore a site for contestations of power in which a critical issue becomes who is entitled to speak for the community. As mentioned before, no society has 'a' single culture but each has multiple cultures—the dominant culture, the subaltern cultures and the emerging cultures of challenge. Women's rights activists fall into this third category. All dominant cultures encourage violence against women because, so far, all societies remain predominantly patriarchal, and patriarchy itself condones and sometimes celebrates – as in the case of war or so-called 'honour' crimes for instance – acts of violence.

While discrimination and violence against women are inherent in patriarchal cultures, at different periods, patriarchal norms have been modified to greater or lesser extents in different parts of the world. In ex-colonial states, existing gender systems underwent significant change during the anti-imperial/nationalist movements, as a part of social movements and as a result of the processes of modernisation. In today's globalising/globalised world, the decreasing ability of communities to live in isolated systems of meaning, coupled with the decreasing control of individual states over decisions affecting citizens' lives, poses a problem. Additionally, thanks to the rapid transformation of communication and information technology, there is an increasing visibility of injustices and growing income and asset disparities. The response can either be ideological challenges or identity politics. Unfortunately the latter is more common. And, with people reverting to more proximate markers of identity in an increasingly bewildering world, the essential question of who speaks for which community becomes all the more important. Political Islamists, who fall into the latter category of responses, are attempting to construct new closed constituencies that seek sovereignty over women and their bodies as part of their aim to achieve state and international power. Belonging and culture are essential pillars of these movements. Globally too, the politics of belonging seem to be replacing ideological engagements. There is a reinforcement of binary meanings and a privileging of religious identities as evidenced in President Bush's "either you're with us or against us" rhetoric.

⁵ Drawn from the presentation of Farida Shaheed, Pakistan.

For South Asian feminists the net result is to simultaneously confront both traditional culture supported by patriarchal structures and new, equally problematic, formulations of culture aggressively being forwarded by emerging identity-based political agendas on the other. Prior to gaining independence from colonial powers, in several countries of the region, existing structures of governance/power (panchayats, jirgas etc.) of 'elders' were presumed to speak for 'the community'. The colonial powers did not de-legitimise these traditional social powers, but rather used them to their advantage so they continued to speak for the community as the 'authentic' voice of the culture and community. These structures failed to be fully dismantled at independence so that even today they play an important role in mediating state-citizen relations. Additionally, traditional elites have often appropriated modern state apparatuses (through elections e.g.) that enable them to exercise power both through the traditional structures and through becoming state representatives.

2.3 - THE ROLE OF STATE AND MEDIA⁶

It needs to be said that where culture is about assigning meanings, both the state and mass media are key players. The state plays a key role in deciding who speaks for the community—it legitimises or de-legitimises non-state actors and it greatly influences the current discourse and its parameters. States also enjoy a pivotal position in ascribing a collective identity and defining the desirable culture through constitutional provisions, the articulation of laws and policy formulation. Cultural underpinnings are equally evident in the legally permissible discrimination allowed for in the text of both laws and policies and their implementation.

An example of how the state and state-controlled media can modulate and change culture can be seen in Pakistan. Under the dictatorship of General Zia-ul-Haq (1977-1988), the state-controlled electronic media promoted the most bigoted fanatical elements while claiming the mantle of Islam. President Zia introduced some horrendous laws which resulted in hugely damaging discrimination against women. He also established corporal punishment that, by promoting brutal violence as legitimate, also had the impact of legitimising violence against women by non-state actors.

General Zia, it should be remembered, received the full support of the USA because the latter wanted to use Pakistan in its proxy war with the USSR in Afghanistan. Ignoring the impact of the dictatorship in Pakistan, the global mainstream media promoted the idea of 'Islamic freedom fighters', thereby excusing the numerous excesses of the Zia regime in Pakistan.

Unless we understand the appeal of those who promote cultures of discrimination and violence, we will not be able to mount a meaningful response. A news channel put on air the extracts of a statement by Osama bin Laden where he said, "As long as our families and children live in an insecure environment, we shall ensure that your lives are also insecure." Such statements will have enormous resonance with many people who live lives that are insecure.

⁶ Drawn from the presentation of Farida Shaheed, Pakistan.

As feminists, framing an alternative ideology that would spell out how we propose the world should look and how it should function, locally, regionally and internationally, therefore, becomes very critical. It is important to articulate the alternate feminist vision in a strong and clear fashion to provide an alternative and inspiring system of meaning.

“Women have actively challenged the system at the cost of their lives. Moreover, such challenges are not something western or alien to Asian societies: women in every culture have always resisted and challenged the system from within. And in this it is important to remember, as Fatima Mernissi reminds us, if people are calling upon women to veil, to return to their homes, to not work, it means that there are women unveiling, leaving their homes, working for wages. In other words defying the constraints of the gender system in which they find themselves.” Farida Shaheed

CHAPTER 3: CULTURE WITHIN THE HUMAN RIGHTS DISCOURSE AND ITS CHALLENGES TO WOMEN'S RIGHTS ACTIVISM⁷

Culture has emerged in the last decade as one of the most intractable areas of human rights engagement for several reasons: the widespread use of culture to restrict state obligations in relation to women's human rights on the one hand, and the growing cultural identity politics, Islamophobia and terrorism discourse that conflate to stigmatise communities based on racial, ethnic and religious identities globally, on the other. As women's rights activists working within and outside of the UN system negotiating the fine balance of equal respect for cultures and women's equality, it is urgent to take stock of the construction of culture within human rights and the challenges it poses to our advocacy and engagement.

"Human rights standards are not in contradiction with culture. They are in contradiction with patriarchal and misogynist interpretations of culture".
Yakin Ertürk, UN Special Rapporteur on Violence Against Women

This chapter arises from the concern that our formulation of the problem often reinforces rather than dismantles the unified constructions of culture, essentialising and exoticising traditional third world cultures as a result. It concerns itself not with our objectives which seek to deepen interrogation and negotiation of the cultural arena to make it accountable to women's equality claims. Rather, the concern is with our formulation and framing of issues that unwittingly re-construct traditional cultures in static homogenous terms, essentialising them in the cultures in terms of the harmful practices and projecting women from 'traditional cultures' as helpless victims lacking in agency and negotiation. This approach lends itself to relying primarily upon the state to 'erase' these bad practices so as to rescue the women, rather than, for instance, surfacing contradictions, competing interests and power relations within culturally-defined communities.

This chapter argues for a shift in the approach whereby human rights law is deployed to cleanse bad cultural practices in traditional cultures by using human rights to address inequalities, domination and representation issues within such cultural groupings to assert democratic/women's inclusion in decision making with cultures. In assuming that cultural practices continue ahistorically, it fails to draw attention to selectivity that retains some practices as central, to the changing meanings of such practices, the status quo it preserves, and the state's electoral interests in aligning with such interests.

⁷ The author of this chapter is Madhu Mehra, India. Madhu Mehra is from Partners in Law and Development, a resource group on women's rights in India, and a member of APWLD's Women Human Rights Working Group. This paper was presented at the APWLD consultation with UNSRVAV at Ulaanbaatar, Mongolia and draws upon research supported by the Dr. D. C. Pavate Foundation at the University of Cambridge in 2005.

It attempts to raise for discussion the challenges in the articulation of the above concerns, in the articulation of the conflict of rights, some of which are shared by the UNSRVAW. In tabling some of these challenges, it suggests advancing the discourse while sidestepping the pitfalls of essentialising third world cultures and women. The overview of the intersections between culture and women's rights below is not exhaustive, but nonetheless seeks to draw attention to the way the discourse has developed and areas that reflect the concerns mentioned above.

An Overview of 'Women and Culture'

For the most part, international human rights law has viewed women's equality as a separate and distinct right from freedom of religion/protection of minority cultures. The various bills of rights – the Universal Declaration for Human Rights (UDHR), the International Covenant for Civil and Political Rights (ICCPR) and the International Covenant for Economic, Social and Cultural Rights (ICESCR), all assure a general commitment to equality and non-discrimination on the basis of sex on the one hand and non-discrimination/freedom of religion/culture on the other. In relation to special protections, women are covered by CEDAW and later, the UNSRVAW. Similarly, religious freedom and minority rights framed by Articles 18, 27, GC 22, 28 of the ICCPR provision and the Declaration on the Elimination of All forms of Intolerance and of Discrimination based on Religion or Belief (1981) have primarily framed the mandate of the Special Rapporteur on the Freedom of Religion or Belief.

The special mechanism and declaration on freedom of religion have focused on securing space for the exercise of freedom of faith and religion and respect for cultural expression of minorities in a world where cultural hegemony, if not outright persecution of minorities, remains rampant. It has for the most part remained gender-blind, awakening to gender discrimination after the unfolding of events following September 11, 2001. Attention to the conflict between women's equality and culture has been central to Article 5, GR 21 of CEDAW and later, incorporated as an area of concern by the UNSRVAW.

ICCPR

General injunction against sex discrimination to GC 28 (2000) on 'equality between men and women', that cautions against the use of minority rights and religious freedom to undermine women's rights. It places positive obligations upon the state to address gender discrimination that stems from tradition, history, and religious attitudes.

CEDAW

Concern is framed as a general injunction to states to modify negative social and cultural attitudes that subordinate women (Art 5); and in specific terms to societies where traditions, fundamentalist and old values persist, contrasting these to modern societies that do not differentiate between men and women's participation in economic growth. Examples of practices it targets in traditional cultures are "forced marriages or remarriages . . . allow[ing] a woman's marriage to be arranged for payment or preferment and . . . women's poverty forces them to marry foreign nationals for financial security" (GR 21). In relation to violence against women, GR19 condemns

traditional practices involving violence or coercion, attributing them to traditional attitudes that subordinate and stereotype women.

UNSRVAW

2001 – 2003:

Identity politics is mentioned again in the UNSRVAW's report on Race, Gender and Violence Against Women⁸ as well as in the communications to governments⁹ that express concern about the consequences of viewing women as custodians of community honour and identity. In its analyses, the report connects notions on sexual 'purity' of women as contributing to control of female sexuality on the one hand and rape of women from the rival community in inter-community conflicts, on the other.

2002:

Cultural practices within the family that are violent towards women is the most explicit articulation on the subject.¹⁰

While observing that "all cultures have certain practices that deny women their rights and dignity" (summary), it goes on to record honour killings, witch hunting, non-consensual marriages such as child, forced and rape marriages, discriminatory laws on marriage and divorce, mobility restrictions, dress code, from the developing world/generic South. The single exception is that of stereotype notions of beauty and eating disorders resulting from it, reported predominantly in developed countries and modern societies. The recommendations distinguish state obligations in relation to violent cultural practices from those that are merely discriminatory – distinguished on account of the extreme pain and violence resulting from them. The state obligations recommended correspond to the categories of 'torture like' or discriminatory, ranging from severe penal sanctions to attention to fulfilling socio-economic rights, such as education, optional civil family law, working with and listening to women to facilitate active engagement within culture, and transformation beyond cultural identity.

It is notable in its recognition of identity politics in silencing women from minority communities – as a result of the dual and competing discrimination women from minority communities face as women within their own community and as members of a minority community from the dominant community. Explaining the impact of identity politics on women, the report notes that, "Cultural markers and cultural identity that allow a group to stand united against the oppression and discrimination of a more powerful ethnic or political majority often entail restrictions on the rights of women."¹¹ In this regard, it recommends sensitivity in critiquing cultures in light of the "First World gaze on Third world customary practices" but rejects cultural relativism or acceptance of reservations to CEDAW made on the basis of culture.

⁸ A/ CONF.189/ PV.3/ 5

⁹ E/ CN.4/ 2003/ 75/ Add.2

¹⁰ E/ CN.4/ 2002/ 83

¹¹ Para 5 of the Introduction, page 7, *ibid*

2004:

As part of the stock taking of the work of the UNSRVAV,¹² this report lists a range of interventions, frames the concept of violence against women and notably, lists gaps and challenges that need attention. In this context, the report forcefully draws attention to the polarisation of cultures, and the sharp contestations between freedom of religion and belief versus women's rights that result from such polarisation. It challenges such conflict of rights through questioning the centrality of women to cultures and cultural defense and the prerogative of men defining such cultural defense.

2006:

The report on the mission to Iran advances the discourse considerably, in integrating elements of cultural identity in the formulation of the problem.¹³ A narrative of practices (in traditional cultures) is replaced by state support to "gender biased, hard line interpretations of religious principles". The women also notably appear not merely being subjected to practices but as resisting through actively 'reinterpreting Koran from a women's perspective'.

The last report on Due Diligence includes identity politics as a major challenge and the exacerbating influence of fundamentalist and conservative movements.¹⁴ It describes the potential of due diligence in addressing the obstacles at various levels – individual, family/community, state and transnational. In relation to culture, it suggests that parallel approaches such as that of 'cultural negotiation' that surfaces competing elements within cultural discourses to counter the negative ones, challenging the legitimacy of those who monopolise representation of cultures and so on. State obligation recommended in relation to community level approaches is that of supporting movements contesting fundamentalist versions and representations of culture as well as public condemnation by political leadership of community-sanctioned violence against women.

"It is hard to assert universality when all the examples used in relation to culture and women's discrimination are only from the global south." Madhu Mehra

Challenges and Opportunities

It was only post-Vienna that women's human rights got recognised as a cross-cutting human rights issue and post-Sept 11 that the conflict between women's equality and culture came to be recognised beyond the women-specific spheres in human rights. Starting from a simple but significant recognition of the negative influence of culture and harmful cultural practices, the discourse has grown to include the recognition of identity politics in how it gets played out between majority and minority communities and between polarised cultural environments. In addition, there is a recognition that cultures are not homogenous and that there is a need to challenge rather than accept monopolistic representations of culture.

¹² E/ CN.4/ 2004/ 66

¹³ E/ CN.4/ 2006/ 61/ Add.3

¹⁴ E/ CN.4/ 2006/ 61

While the above recognition is valuable, we need to examine ways of advancing the discourse, by incorporating the changes they demand in our articulation. In particular, the following areas are flagged for greater attention and discussion:

- The discourse needs to demonstrate a fuller awareness of identity politics, as played out through the dichotomy of traditional versus modern cultures, and more recently by the so-called war on terror. The essentialising 'traditional' as more subordinating and harmful to women risks reproducing elements of identity politics. Cultural identity politics must be addressed at two levels – one, through recording intra-cultural diversity and contradictions more consciously and surfacing linkages between homogenous representations of culture and the interests that it protects; two, through contextualising effects of fundamentalism alongside the stigmatisation and othering resulting from the war on terror. Both trends mutually reinforce women's position as victims or cultural markers and need to be simultaneously addressed to overturn cultural polarisation resulting from identity politics at the international level.
- In combating cultural defence and in challenging women's position as markers of culture, an active recording of women's contestations and agency is important to dismantle the victim narrative that all too often generalise women from less developed countries.¹⁵ All women are not affected by the practices in question, they are not all similarly positioned, and all those affected are not helpless victims. The women are dissenters, voices that are symbolic of contradictions, contestations and heterogeneity of practice. Projecting them as victims and ignoring dissenting voices within the communities, which identify and speak from the cultural position, renders dissenting and alternative versions within culture as inauthentic. Feminists may sometimes construct such essentialised gender narratives to seek greater interrogation of culture, but also as a result become vulnerable to such stigmatisation as 'anti' culture. New ways of seeing, recording and narrating are important to legitimising dissent and debates in human rights law. This is important also for democratising spaces and speaker's debating/representing culture.
- Shifting attention from 'harmful' cultural practices to problematising the construction of culture is necessary. As Arati Rao explains "when we limit our inquiry to egregious violations, we limit our capacity to ameliorate human pain to just that one instance of a "bad cultural practice". Without questioning the political uses of culture, without placing the very notion of culture in a historical context and investigating the status of the interpreter, "we cannot fully understand the ease with which women become instrumentalised in larger battles of political, economic, military, and discursive competition in the international arena."¹⁶ In the context of global identity politics today, women have become convenient subjects of concern for both sides of the political

¹⁵ For a fuller discussion on parallels between gender essentialism and cultural essentialism, see Uma Narayan, *Essence of culture and a sense of history: A feminist critique of cultural essentialism*, Hypatia, Bloomington, Spring 1998.

¹⁶ Arati Rao, "The Politics of Gender and Culture in International Human Rights Discourse", in Peters and Wolper (eds.), *Women's Rights Human Rights: International Feminist Perspectives*, *ibid*, pg. 174.

divide – interrogating and being mindful of the use of culture and women by each is one way to avoid playing into either side of the problem.

“Recognition of a problem is a huge step forward and so our reporting must demonstrate more fully the issue of identity politics. Our reports should carry examples from the north and explicitly record contradictions within culture, including the power relations that they embody.” Madhu Mehra

CHAPTER 4: SOME CRITICAL ISSUES FROM ASIA PACIFIC

Women from the Asia Pacific have seen culture being increasingly used as a tool against imperialism and globalisation. While some aspects of culture have been ruptured completely, such as economic culture with the advent of transnationals and multinationals, other aspects of culture have been reduced to the private realm and these are largely defined on women and often on her body and her sexuality. This deliberate reconstruction of culture is common across countries and communities.

In this chapter, we briefly present some experiences of specific forms of violence against women in the Asia Pacific region face, including those of indigenous women, women in conflict situations, the LGBTI community and the issue of sex-selective abortions.

“All cultures have a common history of oppression and exclusion. Patriarchy and gender inequality are universal. And, likewise, women all over the world have reacted and are renegotiating their roles.” Yakin Ertürk, UN Special Rapporteur on Violence Against Women

4.1 - INDIGENOUS WOMEN¹⁷

Violence among indigenous women must be looked at in the context of the on-going violation of their rights – both individual human rights and their collective rights.

The almost too familiar ways of grabbing lands from indigenous peoples (IP) as well as the on-going militarisation in IP territories escalates the already patriarchal structures that reproduce oppressive conditions for indigenous women. The use of “rape” as a weapon of war by the military to humiliate and attack indigenous communities has been seen from the experiences of women in Guatemala in the 80s and in Chiapas in the 90s and this finds resonance in the present day experiences of indigenous women of Bangladesh, the Philippines, Indonesia and Burma. Even while some cases of such atrocities reach us, we must remember that there many others that never come to light and are never documented.

The presence of military in areas where indigenous communities live, has resulted in curtailing the freedom of movements of IP and has also affected their economic activities. Supplies of food get disrupted and the already poor access to social services such as education and health gets further worsened. In Burma, indigenous women are prevented from going to the fields; in Bangladesh, Jumma women’s mobility is further diminished as they can no longer bring their products to the market.

¹⁷ Drawn from the presentation of Ruth Sidchogan-Batani, Philippines For the full text of the presentation please see Annex 3.1.

This has great implications on women's control of resources. Patriarchy is thus further perpetuated in such militarised situations.

Development aggression in the form of laws, policies and programmes often do not seek the free, prior, and informed consent of indigenous communities and leads to their displacement and loss of heritage. Furthermore, poverty that besets indigenous women has also been exacerbated by the politics and policies of globalisation, as it has increased their vulnerability. More cases of domestic violence and physical violence occur as more men lose their livelihood and as households are dislocated from their traditional settings and exposed to economic uncertainties. Changes in the economic system in indigenous communities such as the intensification of cash crop production and the loss of self-reliant economies have greatly affected the lives of indigenous women and their control over resources. In search of work indigenous women are forced to migrate to cities or even overseas where the worst forms of violence against women are experienced. By working outside their territories, they lose whatever protection offered to them by their customary laws. In crisis situation therefore, the woman often bear the heaviest burden, which reflects the gendered inequality of the impacts of globalisation.

For indigenous women, culture must be seen as a significant force in shaping violence against women. However, once again, we have to remind ourselves that culture is a social construction. This is premised on the view that the "social" or the "society" helps in the construction of culture as seen in the process of on-going negotiations in culture. Despite the denial of women's voices in shaping cultural transformations, despite the constant practice of invoking cultural relativism, and even amidst a very patriarchal society where discrimination and male authority dominate, many forms of negotiations are happening. Women are not just coping; they are constantly and actively negotiating their situations. This is one area that deserves a closer look. For instance, dowry-related violations or early marriages as a continuing practice, is gradually diminishing as more and more women strive to educate themselves or as more women struggle to move-out of traditional economic and social arrangements. In areas where women traditionally cannot participate in decision making (decision making structures such as adat in Indonesia or ator/dap-ay in the Cordillera, Philippines), organised women's groups are able to assert themselves via peace-building, community cooperation, food security and even in social networking. Moreover, indigenous women's engagements are not just limited to home-grown mechanisms: they have also learned to work with state-created spaces and mechanisms – this is seen in the Philippine experience of the Indigenous Peoples Rights Act (IPRA) which gives recognition to IP rights – with the women asserting their participation in the ongoing efforts at ancestral lands delineation. The assertion of indigenous knowledge, as against western bio-medical knowledge, can also be seen as an active reaction to the ongoing homogenisation efforts.

Culture is a contested terrain. While it is agreed that culture is shared, a more incisive question is "shared by whom and under what conditions?" The latter part of the phrase is instructive in that we have to be careful and conscious in citing culture as the "culprit" or even in celebrating culture as the cure-all. Anthropological studies inform us that culture, which used to be a normative concept is now very political. Culture is imbued with power, a fact that many sectors of society refuse to understand, but which is necessary to recognise.

Some experiences of women from the region:

Participants from several countries shared the situation of indigenous women in their countries. There seemed to be an emerging consensus that it is important to bear in mind that indigenous people do not comprise one homogenous identity, and hence it is important to use the intersectional approach while understanding and seeking to address their concerns. It was shared that the Palestinian women's movement, for instance, had almost been killed because of this struggle between opposing identities. Group ideology sometimes becomes so strong that it shuts everything else out. In the debate between group rights versus individual rights, one must not submit to prioritising group rights over individual rights. Group rights and individual rights are not mutually exclusive. What we need to be cautious about is how do we organise group rights in a way that does not violate individual rights.

4.2 - WOMEN IN SITUATIONS OF ARMED CONFLICT¹⁸

It is important to recognise that women are not situated in one singular, unified and homogenous way during armed conflicts. Women are situated differently – women are part of the militia, women are peacekeepers, women are peace negotiators, women are victims, and women are women human rights defenders. Often, it is seen that the most vulnerable amongst these are the women human rights defenders (WHRD), as these women question the community's culture which is treated as sacrosanct, and even more so in times of heightened conflict and also because neither of the warring parties perceive them to be on their respective sides.

Unfortunately, as women's bodies are used by both sides to advance their struggle with each other there is little space to discuss and raise the issue of rape by non-state actors. The burden of being the custodian of cultural norms is, as always, on women. The core is controlling women's sexuality and that is the running thread throughout.

In many of these societies, for instance in the north-east states of India, if a woman is raped by the armed forces, she is not stigmatised as she would be in most non-indigenous communities, as such a rape is recognised as an act of force. However, if a woman, out of her own choice decided to adopt the culture of the enemy, then the kind of punishment and ostracisation meted out is much stronger. The underlying factor of controlling women's sexuality is insidious.

Another dimension is the implication of the presence of huge numbers of armed forces in most conflict-ridden areas. The men from the armed forces come with their own notions of culture and understanding of masculinity, which is a very militarised notion of masculinity and is often quite different than those of the indigenous communities. As the conflict flares up and the armed men permeate deeper and deeper into these communities, its impact is visible in several ways including an increase in the incidence of rape of community women.

In fact, it is not just about increase in sexual violence against women. Patriarchy, armed conflict, militarism and constructs of sexuality are intertwined at a number of

¹⁸ Drawn from the presentation of Roshmi Goswami, India.

different levels. Warfare and conflict are deeply gendered phenomena. The military and armed movements are patriarchal institutions, which reproduce and manipulate the myths of masculinity and femininity. Constructs of masculinity are associated with power, prowess, domination and conquest, all of which define warfare and conflict. And conflicts serve to reinforce, reiterate and reproduce these constructs by creating a forum where men can exert their domination over women and 'groups' outside of their collective identity.

Just as male sexuality, female sexuality also plays a vital role in warfare and armed conflict. Women reproduce biologically, culturally and symbolically their ethnic and national collectivities. Thus women and their bodies become centres of the battlefield, and are thereby considered rightful 'spoils of war', 'symbols of honour' which must be desecrated, and even a vessel for carrying out a strategy of genocide through forced impregnation, and a means of troop mollification.¹⁹

These create new cultures, or reinforce existing cultures, which further oppress women and serve as the breeding grounds for violence against women.

Some experience of women from the region:

*North-eastern States of India*²⁰

The North-eastern States of India have seen an armed conflict that has lasted several decades. Although the conflict is a mix of several conflicts, including ethnic conflict amongst the indigenous communities, the primary conflict is about challenging the hegemony of the Indian state.

In these communities, there used to be no concept of 'rape' as the men did not force themselves on women but had to learn the skills of wooing a woman. This culture no longer exists. Now with armed men permeating deep into these communities with different notions of masculinity and power, an increase in the incidence of rape has been recorded.

It has also been noticed that under protracted periods of conflict, when most men go out to fight the war, women, after a lot of initial struggle, become the heads of households. Intra-household conflict then escalates when the men come back to their families and they re-claim the authority of the patriarch. Having been away from their community for so many years, their notion of masculinity also changes. Violence, therefore, often increases.

"How does one balance a legitimate struggle, respect for culture and yet at the same time treat the WHR agenda as a non-negotiable?" Roshmi Goswami

Being seen as custodians of culture puts additional pressure on women. Women in these states have often faced dictates about dress codes from community

¹⁹ Talking about Taboos: Asia Pacific Women Reflect on Issues of Sexuality, by APWLD, 2004, APWLD, Thailand, p.40

²⁰ Drawn from the presentation of Roshmi Goswami, India.

leaders/insurgent groups asking them to wear only “traditional” clothes, and those who have not obeyed these orders have been attacked.

Thailand²¹

In the last couple of years, Thailand has seen an escalation of armed conflict which has been in stark contradiction with the general view of Thailand as a “culture of compromise”. The escalation of violence in the southern regions of Thailand has made women very vulnerable. A resurgence of identity-politics can be seen as one such trend which has had specific impacts on women. Women who would previously not wear headgears and scarves, now wear them. The conflict has also had an impact on their livelihood. While previously, many women would go out to the rubber plantations early in the morning, now, with no male members in their families they fear for their safety and cannot go out to work,

Japan²²

The Comfort Women system is the military sexual slavery set up by the Japanese Imperial troops around the Asia Pacific region before and during World War II. Wherever the army went, they established comfort stations and women were recruited, cheated into and kidnapped to work in these comfort stations where all kinds of violations of these women took place. After the war, just before the Japanese army surrendered, several of these women were killed. Those who survived were so shamed, they could never return to their families. The survivors were stigmatised as women who had dishonoured their families. They had been silenced for decades and could not speak out her sufferings until women’s movement took up the issue and supported them. There are survivors who still cannot /do not want to come forward. The Women’s Tribunal in 2000 was one of the attempts led by the survivors and women’s rights activists to seek justice by employing international laws and conventions from a feminist perspective.

“History has been written by men, we want women to write not just her story but people’s story.” Michiko Nakahara

Bangladesh²³

In Bangladesh, all records of the 1971 liberation war against Pakistan, during which the Pakistani army committed numerous atrocities, have one universal portrayal – men as the freedom fighters and women who were the victims, who were shamed as those who had given up their honour. However, women played different roles in the war including that of active combatants. Women’s groups are trying to record an alternate oral history and create the thread of remembrance. Feminists in Bangladesh are looking at recovering and remembering the women.

²¹ Drawn from the intervention of Wanee Bangprapha Thitiprasert, Thailand.

²² Drawn from the intervention of Michiko Nakahara, Japan.

²³ Drawn from the intervention of Sadaf Saaz Siddiqi, Bangladesh.

*Aceh*²⁴

The strength of cultural identity is something that is brought out clearly by the experience of Acehese women. Cultural identity as a tool for political mobilisation is particularly strong when communities come out of years of armed conflict. In Aceh, after the years of armed conflict, what has come in place for the women was Shariah laws – this is how self determination manifested itself and was even defined, after the end of the decade-long armed conflict. For the women, previously the challenge was the violence that they faced; now their challenge is against their own religion and their own symbols of self determination and therefore it becomes a much more difficult terrain for them. They are challenging multiple hierarchies now and therefore have additional vulnerabilities. Acehese women say that they have no protectors now that they are fighting multiple battles. On the other hand, the punishment they face is harsher as they are now being targeted as being unfaithful to the cultural community. They now face ostracisation from their communities. Given the risk of silencing, many Acehese women have decided that the way out for them is to stay silent. For the multiple risks these cultural negotiators face, the price can be too difficult to carry.

4.3 - LGBTI COMMUNITY: EXPERIENCE IN FIJI²⁵

In addition to the factors that make women vulnerable, the LGBTI community often faces compounded obstacles and threats. Homophobia and hetero-normativity are often as deeply entrenched as patriarchy, and exist in almost all cultures. There is growing acknowledgement that the violence these communities face is on the rise, despite, or perhaps because of, the struggle they have engaged in for social and political acceptance and non discrimination particularly in the context of rising conservatism and fundamentalisms in the region.

LGBTI face discrimination and violence throughout the Asia Pacific region, resulting from an intersectionality of oppression that includes their sexual orientation, as well as other identities which attract discrimination including their gender, race, religion etc. The case of Fiji portrays these compounding factors in a culture where traditional institutions, such as the Methodist church and vanua (indigenous traditional leadership processes), play a role in further 'othering' the LGBTI community.

The largest Christian denomination in Fiji is the Methodist church which is supported by many of the country's traditional chiefs and which remains influential in the ethnic Fijian community, particularly in rural areas. It regularly calls for Fiji to be declared a Christian State despite constitutional protection of religious freedom for all Fijians.

The Methodist church has always had influence in politics but their participation has been increasingly direct, strident and explicit since the 1987 and 2000 coups, with high level officials taking on senate and parliamentary positions and acting as official and unofficial advisors to the current government. Their influence cannot be denied as they have access at the highest level to politicians and government officials, many of

²⁴ Drawn from the intervention of Kamala Chandrakirana, Indonesia.

²⁵ Drawn from the presentation of Noelene Nabulivou, Fiji. For the full text of the presentation please see Annex 3.2.

whom attended church-run schools, training institutions and are current members of the church. Methodists also publicly marched twice last year ‘against homosexuals’; their president in October 2003 called for the death by stoning of all homosexuals, and were only prevented from doing so again due to the intervention of the Fiji Human Rights Commission.

These experiences highlight the issues of intersectionality that needs to be addressed when looking at discrimination and violence against women. Issues of race, faith, sexual orientation and membership in different communities all impact on each other and must be addressed holistically, both in mainstream culture and within our own communities, including the women’s movement.

“The intersection/collision sometimes results in bizarre situations. In 2005 the then Assistant Minister for Culture and Heritage Mrs. Nanise Nagusuca told the largest and oldest women’s network in Fiji, “. . . human, women’s, children’s and individual rights are eroding the indigenous national identity”. Mrs. Nagusuca also urged women to accept only what is in accordance with traditional culture and values, with particular stress on hairstyles and dress codes. Meanwhile, the very next day was a workshop on how to increase indigenous women’s voter education and decision-making! Similarly, our ‘democratically’ elected Prime Minister Mr. Laisenia Qarase has repeatedly stated for years that democracy and human rights are ‘foreign flowers’ that are not acceptable to Fijian traditional notions of hierarchy. (Radio New Zealand international report, 29th Aug 2005)”. Noelene Frances Nabulivou, Fiji

4.4 - THE ISSUE OF SEX-SELECTIVE ABORTION²⁶

The issue of the growing numbers of sex-selective abortions was raised as a cause for concern by participants from China and India, although it affects many other countries as well. It was suggested that it needs to be impressed upon the Chinese state that to ensure if the single child policy has to be maintained, the government has to give incentives to make the girl child valuable. Several issues need to be addressed to end sex-selective abortions including old-age insecurity because the widespread belief is that if one invests in the male child, he will take care of the parents in their old age.

Participants from India shared the dimensions of this problem in their country. Census records show that every decade the ratio of girls to boys has fallen and in the recent years, it has fallen more sharply, especially in 0-6 age group. This trend is more marked in economically advanced districts. Some of the reasons for the accentuation of this problem include: son preference, availability of the requisite technology to get rid of the unwanted female foetus; the profit seeking interests of the unregulated private sector; and the state’s failing to regulate the private sector. In India, women’s groups have not been able to address this without addressing the two-child norm (in India now, if one has more than two children, one can’t contest elections at the local

²⁶ Drawn from the interventions of Manisha Gupte, India, and Feng Yuan, China.

government level in several states). The debate on sex-selective abortion is now also being discussed in the context of the government's population policy and in the politics of eugenics. Sex-selective abortion is just a symptom – the problem lies somewhere else. What we need to fight is discrimination through legal recourse and education.

CHAPTER 5: STRATEGIES AND RECOMMENDATIONS

Feminist engagements with culture are not easy since it entails challenging values and beliefs that are deeply rooted in our lives. Our strategies and recommendations have to be informed by our feminist analysis even though they will be determined by the contemporary political context. Section 5.1 describes some of the strategies women from Asia Pacific are engaging in to address culture where it results in violations of women's human rights, and particularly, violence against women. Section 5.2 contains recommendations for future steps.

5.1 - STRATEGIES USED BY WOMEN IN THE REGION

The women's movement has engaged in diverse strategies to address some of the issues relating to culture and violence against women that were identified during the consultation. These strategies have primarily sought to transform human rights principles and laws into realities for women. Below are some of the strategies that women's groups are using.

Documenting cultural practices

There are two major prerequisites to a good strategy – first, there must be good information about the current situation; and, second, there must be thoughtful consideration to those possible future events and developments which might have a significant impact on the issue under consideration. Documenting cultural practices is an important dimension for the first prerequisite. Our documentation needs to highlight the causes, contributing factors and consequences of such cultural practices and/or negative interpretations of culture. Such documentation would be useful as the basis on which to build advocacy strategies, for instance for harmful practices or discriminatory culture to be recognised as a crime. Documentation is also important because societies have short memories and it is important to critically assess what is being defined as 'cultural practices'. For instance, breast burning is a new practice in Africa, in which, women's breasts are burnt so as to 'prevent her from being vulnerable to sexual assaults later on'. While this is a relatively new practice, tomorrow this might be projected as an African tradition and thereby legitimised.

From a human rights perspective, such a process of documentation should also articulate problems as rights violated. This enables women to articulate their powers as rights, to raise issues as violations and to seek redress for violations of their rights. Using this language creates the space within the human rights system to bring women's demands to the international arena and to have them defined as human rights.

Engaging law²⁷

Whether law changes society or society changes law has been a longstanding debate. Culture and law interplay in diverse ways – law can be an instrument of social change while at other times there have been major social movements which have changed laws. Certainly, law is informed by and reflects culture.

Law related strategies have become a key feature in the agendas of many women's movements or groups in the region. The strategies include: campaigns for integration of equality provisions in national constitutions, such as those in transition economies in Central Asia or in states like East Timor and Cambodia; or, in the case of women activists from Burma, formulating proposals for inclusion in their People's Constitution; passage of legislation granting equal rights to women in work and employment, and political participation; reforms in laws or new laws on rape or other forms of violence against women, such as domestic violence, and sexual harassment.

While formulating legislation to address violence against women which challenges dominant patriarchal interpretations of culture, it is very important to make sure the local social, political and economic contexts are taken into consideration. These contexts shape the interpretation and implementation of law at various levels (including the police and judiciary) and thus must be taken into account in using law as a strategy for advancing a women's human rights agenda.

Women's groups in Bangladesh have used the legal system effectively to advance women's human rights agenda. In Bangladesh, in 2005, a total of 46 fatwas²⁸ were reported. In January 2001 two High Court judges *took suo motu*²⁹ cognisance and issued a judgement declaring it unlawful for any authority other than the courts to proclaim fatwas. The radical nature of the judgement instantly drew the ire of the religious right. There were protests against the judgements. Two separate petitions seeking leave to appeal the judgement were quickly submitted to the Appellate Division in the Supreme Court. The judgement was stayed temporarily. The court felt strengthened by the presence of the women's groups who stood there in support and were able to bring in support from all around the world. Feminists from across the world said that fatwas were against the constitution of Bangladesh and against women's human rights. The judgement has been appealed by the Jamat-e-Islami.

Engaging the parallel legal systems

Quasi-formal legal systems, parallel to statutory law, operate in many countries, sometimes informally but with social legitimacy and sometimes with powers formally granted to them by the state. These institutions monitor community norms and practices, often premised on a justification of what is 'cultural'. Often these institutions are deeply manifested with blatant patriarchal ideology and thereby, they frequently

²⁷ We acknowledge the contribution of several participants for this section, in particular, the presentation by Sapana Pradhan Malla, Nepal. For the full text of the presentation please see Annex 3.3.

²⁸ A *fatwa* is a legal pronouncement in Islam made by a mufti, a scholar capable of issuing judgements on Shariah (Islamic law).

²⁹ *Suo motu* is a legal term referring to a court taking action/notice of something on its own motion.

legitimise and perpetuate violence against women. These parallel legal systems were legitimised in many countries of the region during a period of nation building and when independent nations were being carved. By distributing power to these groups, such as religious leaders, the states often were buying legitimacy for themselves by securing the support of these influential groups at the expense of women's human rights.

Therefore, safeguards need to be built into these parallel legal systems to ensure that women are not discriminated. More importantly, though, cultural re-negotiations need to happen with these other power centres. Many women around the region are engaging in such cultural re-negotiations within their communities. In some countries where customary laws are part of the legal system alongside formal laws, these two streams have been used to influence each other. By succeeding in changing one stream, it is possible to use it to pressure the other stream to adapt. This has been the experience of many Pacific Island countries.

Monitoring the state

Although engaging in law-related strategies is already a form of engagement with the state and its machineries, clearly it is not enough to just change discriminatory laws or to formulate new laws. Since states are far from neutral and democratic, and women's groups have always held the state as part of a patriarchal system that sustains the oppression of women, it is extremely critical to monitor the state, its commitments, its policies and programmes.

In the context of violence against women, it is important to keep assessing whether or not the state has met its 'due diligence' obligations. Recognised by the Inter-American Court on Human Rights in the Velasquez case, the concept of due diligence recognises that a State has an obligation to take positive steps and measures in order to ensure that women's human rights are protected, respected, promoted and fulfilled. They must prevent, investigate, compensate and punish violations of human rights, whether committed by State or private actors. Thus the concept of due diligence brings the acts of private individuals within the norms and regulatory frameworks of rights and state accountability.

Implementation of the laws must be ensured by the state and adequate structure and institutions like women's commissions, human right's commissions, etc., also need to be put in place. Further, it must be ensured that these structures and institutions are sensitive to women's needs, for when social and cultural violence are reinforced by state machineries, they becomes even more severe. Civil society can play an important role in monitoring and documenting state compliance with these obligations and using this to lobby government to meet their obligations.

Separating religion from state

When a cultural practice becomes law, it is more difficult to challenge. In Nepal, in a public interest litigation in the Supreme Court, some laws were challenged as being discriminatory. However, being a Hindu kingdom at that time, the argument given by the court was that, that provision could not be said to be discriminatory as tradition and culture are part of the religion. Hence it is very important to ensure our strategies engage in separating religion and state. One such way in which Nepali women's

groups did this was through CEDAW shadow reporting. While the Nepali government was reporting under CEDAW, this issue was critically raised by women's groups. In the concluding observations, the CEDAW committee raised this as a concern that the Supreme Court, while interpreting laws, should not justify culture as a reason for discriminating against women. After this comment was received, the courts in Nepal made many positive judgements guaranteeing right to equality and non-discrimination in Nepal.

Distinguishing between state interference and state intervention

In holding states accountable for all acts of violence against women, how far do we allow the state to intervene and where do we draw the line? It was felt that we need to make a clear distinction between state intervention and state interference when we articulate our demands. Whereas we might want the state to intervene, we do not want the state to interfere in our private lives. For example, state intervention in marital rape is not the same as state interference in adultery and while the former is welcome and indeed needed, the latter is not. In Nepal, for instance, when the women's groups challenged marital rape, they were told by the men that "you are asking the state to peep into the bedroom now". However, it is important to remember that states do shape our private lives in any case, whether it is by determining the legal age of marriage or the age at which children should go to school. Women's groups need to consider another language/framework which can be used to articulate our demands for protection of certain liberties and freedoms while not diluting the principles of state accountability and due diligence for women's human rights.

Designing effective advocacy and campaign strategies

Law-related strategies must be complemented by other actions to ensure that legal rights and intended benefits from laws are actually enjoyed by women. For this, effective advocacy and campaign plans need to be developed. For instance, in several countries of the region, women's groups are advocating for the ratification of CEDAW and for the withdrawal of reservations. There are also campaigns for the Optional Protocol. Effective use of media can greatly enhance advocacy efforts.

In Bangladesh, women's groups have been trying to confront acid violence against women through mass awareness-raising campaigns in combination with legal strategies. According to the Acid Survivors' Foundation (ASF) which offers medical, social and legal services to men and women, 130 persons were attacked with acid in 2005, compared to 252 the previous year. The number has dropped from a high of 484 in 2002. This drop can be attributed to the success of a mass awareness campaign undertaken by the media and social activists as well as in the ability of activists to regulate and correct loopholes in legislation.

Supporting women human rights defenders

Principal actors in claiming women's human rights are women human rights defenders (WHRD) but they often go unnoticed or are consciously invisibilised. It is important to recognise WHRDs because they face specific threats which are different from their male counterparts, and more importantly, the threats they face are on multiple grounds. As human rights defenders, they face the same gamut of risks faced by all human rights defenders when they challenge repressive state machinery, for

example, or when they raise demands for freedom of opinion and expression from authoritarian states. As women they are also exposed to or targeted for gender-based violence and gender-specific risks. Recognition of the specific vulnerabilities of women as well as of the specific violations they face in their work in defending human rights because of their sex or gender identity is crucial. This is especially in a broader context in which women's equality and dignity are denied and in which there is violent suppression of women's autonomy and rights. Supporting WHRDs therefore, is an important responsibility of all women's human rights groups.

Community-based interventions and strengthening community activism

Advancements in legislation will be meaningless if they don't reach the women they are meant for. Unless a parallel process of social mobilisation and raising awareness in the communities is initiated, legislative progress will be confined to the books of law. For instance, child marriage is rampantly practiced in South Asia even though it is recognised as a crime against the state under many jurisdictions; there was not a single case in Nepal against child marriage using the provisions of the law, as it was considered as a personal/private family matter. In Nepal formation of paralegal groups and their interventions in awareness raising among the communities had some positive impact on addressing child marriage. Another example from Nepal is that of chaupad, a custom in which a woman is kept in a cowshed during and after childbirth. Public interest litigation was filed to eliminate chaupad. The Supreme Court has issued a directive order to criminalise such action and has also asked the government to study its implications and launch a massive awareness campaign. Due to these twin measures, (raising awareness and the court decision), even though a law has not been enacted, people are gradually changing their behaviour.

While working with communities, there are several sub-strategies that women's groups have used and found useful. For instance, creating support groups of women. Naripokkho used this strategy in working with women who had survived acid attacks in Bangladesh. They brought together a small group of young girls who were survivors of acid attacks and this group started reaching out to other acid attack survivors. Gradually, by visiting the hospitals and talking to other young girls who had experienced burns, a larger group of women who were survivors was formed and a survivors network was created. This network provided support to survivors of acid attacks, worked with doctors for surgery and helped the survivors deal with health and psychological issues. That was the beginning of a personal journey which for many of them led to them becoming activists along the way.

Likewise, Masum, a women's NGO in India, also has found the strategy of forming support groups of women in villages very effective. They were particularly helpful in giving collective strength to the daughters-in-laws of any village, since these were young women who came from different villages and settings and found themselves totally on their own in their marital families and villages. Their collective strength also gives them better bargaining power; for instance, in the villages where Masum works, the daughters-in-law of the village have put pressure on the village by saying that if there is any case of bride burning, all the daughters-in-law of the village will collectively walk out.

Other strategies that women's groups have used are consciously claiming political space for women. This can be done by simple things like having women's meetings not just in homes of women, but in public places and spaces available for local governance institutions in villages. This sends an important message to the communities that women have as much stake in all political spaces available in the village. In addition, on Independence Day celebrations in India for example, getting a woman, whether a widow or woman with disabilities, to hoist the national flag in the Independence Day celebrations is another way of sending the message that women's political space and citizenship is on par with that of men. These examples are drawn from the experiences of Masum.

Community pledges have also been used by women successfully: for instance, women in a village pledge that as long as there is drought, no woman will deny water to another woman, so caste barriers are broken. Educating and engaging religious leaders have also proved helpful in specific circumstances.

5.2 - RECOMMENDATIONS

The women from Asia Pacific who participated in the consultation drafted recommendations on what needs to be done to further a women's human rights agenda in this context. These recommendations were for two broad sets of audiences: a) for our organisations and for the women's movement, more broadly; and b) for the UNSRVAW, in particular.

A. For women's organisations and women's movement

As part of the strategising, we came together to build solid recommendations for our organisations and for the movement, to further our goals.

Within our organisations, first and foremost is a recognition that we must continue to empower ourselves, challenge our own biases and perceptions and create strong and supportive networks of sharing. This will enable us to come up with new creative strategies and to consolidate these strategies with other organisations and networks in the Asia Pacific region. Such consultations give us one such forum to do this, and it is vital that we take our knowledge gained here back to our own communities. It also gives us one opportunity to collect 'best practices' that have worked in other areas, which we in turn can pass on to others, whether formally or informally.

It is also necessary for us to adopt more inclusive approaches to understanding and strategising on issues of culture and violence against women so that we work with diverse, on-the-ground insights, realities and experiences of women of all backgrounds. This includes a focus on documenting cultural practices and identifying those that are harmful to women; identifying ruptures, pluralism, contradictions and positive aspects of culture; and reinterpreting other aspects of culture for violence against women campaigns or long-term work. Specific ideas put forward included: identifying spaces for cultural constructions to be subverted; awareness and recognition of WHRD and self-care; and creating projects that reconstruct 'herstory' – cultural memory and history from the women's experience of struggle. In order to be

able to make some of these strategies a reality it is also necessary to consolidate ways to resist recent trends of donor resistance and resource constraints.

Recommendations were put forth for the movement as a whole also. Once again the importance of revisiting and challenging our perceptions and language was stressed. This includes revisiting our concepts of 'culture', 'violence against women' and 'woman' in an inclusive manner, which will allow us to reframe the terms and the debates. We must also ensure that the discourse on culture is incorporated into the discourse on violence against women and that this discourse is brought to communities at all levels. Further we must document past achievements and challenges, take stock of our current position, and move forward in new and innovative ways. This will include ensuring we create spaces to think which involve women from all backgrounds and at all levels and that we present a unified message on violence against women to our local and international communities.

Our movement could benefit from stronger links with other women's movements at the international level, as well as with other movements globally who also engage in practices such as cultural re-negotiation. We must also ensure that we further facilitate information sharing in the Asia Pacific region and that we continue to work closely with the UNSR and encourage her presence in the Pacific. These links will help us develop strategies for country-specific contexts as well as collaborate to challenge harmful cultural practices. Together we can consolidate our thinking spaces and identify our 'non-negotiables' as well as create a stronger and more unified voice on emerging issues.

B. Recommendations for the UNSRVAW

Participants at the consultation also came together to raise issues of critical importance with the UNSRVAW and to suggest ways she can help them engage with these issues. Although there are many commonalities in the obstacles women face across the Asia-Pacific region, there are also sub-regionally specific issues that are important to acknowledge.

The South-East Asia group focused on the vulnerability of WHRDs and the restrictive policies of donor agencies which affects the women's movement. They suggested the UNSRVAW's report presented before the state parties should acknowledge identity politics as a precursor for violence against women. Further, it should flag issues that individual and group rights should not be positioned as oppositional and women's renegotiations with culture should be acknowledged.

Representatives from South Asia also wanted the war on terror and its contribution to identity politics to be specifically included in the SR's report. Privileging of religion by geo-political actors across the globe as the defining element of communities/societies needs to stop. They also raised concerns about the stereotypes of culture and the perception that women in less developed countries need to be liberated from the men in these countries and these should find a mention in her report. The report should call on the state parties once again, to ensure compliance of their obligations to end violence against women and discrimination against women.

Participants from East Asia also stressed on state parties taking more seriously their commitments to end violence against women, including culture being used as a sanctioning power for violence against women. They stressed the need for collaboration between state and non-state actors in implementing legislation addressing issues such as domestic violence.

Pacific participants stressed the importance of the UN mechanisms, particularly the UNSRVAV, and the need for engagement with Pacific Island countries, including country visits and reports. The report should put pressure on state parties to acknowledge the fluidity, intersectionality and diversity of culture so that culture cannot be invoked to justify violence against women.

The participants from Northern Asia focused on the need to ensure national implementation of CEDAW and other human rights instruments, including commitments such as the BPFA. and the MDGs. They also called for state parties to support women's groups in these countries as well as implement the commitments under CEDAW, BPFA, MDGs, etc., in partnership with these groups. In particular, pressure should be put on the state parties to mainstream gender in all policies, programmes as well as in national and local budgets.

A detailed list of all recommendations can be found in the Annex 1 to this report.

"I am glad to be part of this dynamic group. I do have some power as SR but that power comes from this collective spirit; without it my work may become mechanical. If the support and acknowledgement of women around the world does not exist, I will have no power. When you endorse my work you empower me and give me drive to keep going. The UN work on women's rights has always been a collective effort even if specific mandates are executed through individuals. That you find my work useful, makes me feel that my work has meaning and makes it relevant." Yakin Ertürk, UN Special Rapporteur on Violence Against Women

ANNEX 1: LIST OF RECOMMENDATIONS

Recommendations – for our Organisations

- To focus on documentation of cultural practices and identify harmful cultural practices;
- To learn communication skills for better advocacy;
- To increase sharing with friends and networks;
- To identify spaces for cultural constructions that can be subverted;
- To consciously look at things afresh and develop a new perspective;
- To consolidate strategies from across Asia Pacific to see what are the best ways to take our work forward;
- To recognise WHRDs and the importance of self-care and link that to our existing work;
- To engage in information sharing of all that we have learnt from the consultation;
- To affirm and ensure attention to legislative change and community intervention;
- To have small group discussions on the issue of culture and violence against women and understand it in our context and reflect on what needs to be done or what we need to codify in existing strategies on violence against women;
- To identify the ruptures, pluralism, contradictions and positive aspects of culture and move in to reinterpret those for violence against women campaigns or long term work;
- To carry out writing projects that reconstruct our memory of culture and histories from women's experience of struggle;
- To locate and define spaces in the recently approved UN Declaration on Indigenous Peoples;
- To empower ourselves;
- To consolidate strategies to resist recent trend of resource constraints and donor resistance;
- To share these ideas of culture and violence against women within our own organisation and network;
- To engage with the 16-day campaign on violence against women, basing the focus on this consultation;
- To adopt more inclusive approaches so that the understanding and strategising on issues of culture and violence against women will be done with rich, diverse and on-the-ground insights, realities and experiences of women from diverse groups and backgrounds;
- To create a collection of good practices.

Recommendations – for our Movements

- To give more attention and emphasis to language so that we can reframe the terms and the debates;
- To lobby for the adoption of national laws on violence against women based on lessons learnt here;
- To take stock in order to move forward—rethink and revisit concepts of “culture”, violence against women and strategies used;
- To document past achievements, gaps and challenges to move forward;
- To ensure that the discourse on culture is incorporated in the discourse on violence against women;
- To build linkages between the women’s movement at the international level;
- To create more meaningful linkages with other movements, especially in terms of strategies used, for example, regarding cultural renegotiation;
- To share these ideas with our wider networks;
- To make specific strategies for country specific contexts;
- To bring more responsive and stronger voices to emerging issues;
- To consolidate thinking spaces and identify our non-negotiables;
- To develop unified messages to the community on violence against women and to give quick responses to government actions;
- To know the movement and struggles of women in other countries;
- To create comfortable institutions and spaces for women;
- To facilitate information sharing at all levels and inform them about Asia Pacific;
- To adopt more ‘inclusive approaches’ so that the understanding of issues on violence against women will be done with rich, diverse and on-the ground insights, realities and experiences of women from diverse groups and backgrounds;
- To collaborate and challenge harmful cultural practices;
- To revisit notions of who ‘woman’ is and include all women in our understanding;
- To revisit our notion of violence against women to include all forms of violence against women;
- To create spaces to think which involve women from different backgrounds working at community and national levels to improve our strategies;
- To raise awareness of the general community on gender issues so as to change traditions and cultures;
- To look at the issues afresh, unpacking and developing new perspectives.

Recommendations – Sub-regional Recommendations for the UN Special Rapporteur on Violence Against Women’s Report

From Northern Asia

- To harmonise existing national legislations as well as lobby for the adoption of new laws on equal rights and opportunities and gender-based violence in accordance with CEDAW and other international human rights instruments.
- To facilitate the implementation of national commitments under BPFA and MDGs by the states in effective partnerships with women’s groups;
- To invite the UNSRVAW and other SRs to countries in the region and organise follow-up activities to ensure the implementation of the UNSR’s recommendations by the governments;
- To facilitate the support of women’s NGOs in all countries by the state parties by engendering national and local budgets and ensuring gender mainstreaming of all national programmes and plans.
- To collect the information from other NGOs of the experiences in their countries of opposition, repression and violence against women and to make sure it is available to the UNSRVAW.

From South Asia

- To emphasise the impact of the war on terror in contributing to identity politics.
- To combat the privileging of religion by geo-political actors across the globe as the defining element of communities/societies needs to stop. This reduces plurality and space to contest violence with reference to culture;
- To include examples relating to culture and violence against women from western and northern cultures as one way to break the focus on southern cultures;
- To recognise that problems of poverty and power get communalised under hegemonic politics. “Culture” becomes the marker through which stereotypes are propagated like ‘third world women need to be liberated from the men in these countries’;
- To ensure that States comply with their obligation to not allow discrimination or violence against women to continue under “a” culture because there are many cultures—secular manifestations are also manifestations of culture;
- To ensure that States demonstrate respect for the pluralities and fluidity of cultures.
- To prevent funds for women’s issues being channelled through faith based organisations which reduces space for secular organisations;
- To ensure that women do not become invisible in the name of culture and ethnicity, as they are in Afghanistan where tribal conflicts are resulting in increased sexual assaults of women.

From East Asia

- To ensure that States take immediate action to prevent violence against women from being legitimised on the grounds of culture;
- To stop boy-favoured and discriminatory “1.5 family planning policy” in China;
- To take steps to ensure that violence against women is addressed appropriately by the judiciary, especially on issues like marital rape and sexual assault;
- To implement laws for prevention of domestic violence and to ensure there is coordination between state and non-state actors for its effective implementation;
- To encourage State parties to give due consideration to the reports of the UNSR report and not dismiss it;
- To pressure the Japanese government to accept the UNSRs recommendations on comfort women issues;
- To ensure that State parties end impunity of war crimes, such as a crime against women, to prevent future and ongoing violence against women;
- To oppose US military bases in Japan.

From South-east Asia

- To identify identity politics as a pre-cursor for violence against women and gender-based human rights violations;
- To identify both positive and negative aspects of culture and to emphasise that culture is constructed and re-constructed;
- To clarify the inter-linkages between individual rights and collective rights in order to overcome the tendency to juxtapose the two rights as oppositional;
- To raise attention to the vulnerability of WHRDs when defending their rights within their own cultures and religions;
- To challenge donor agencies to restructure their funding system to be more responsive to women’s movements needs.

From Pacific

- To ensure special attention is given to the unique situation of Pacific Island countries where there is both direct and indirect discrimination against women;
- To call on PI governments to comply with CEDAW through formal/legal reform as well as informally through community implementation and monitoring;
- To recognise that while culture can be a barrier to WHR there is fluidity and diversity and intersectionality in culture that needs to be acknowledged by communities, states and the UN;
- To invite the UNSRVAW to the Pacific.

ANNEX 2: DISCUSSIONS ON THREE CRITICAL AREAS OF EXPLORATION FROM THE CONSULTATION

On the first day of the Consultation, the three critical arenas that emerged were:

1. Reformulating and reframing the language we use to reflect a more nuanced understanding of culture as fluid and constantly changing and being challenged by women and other groups within a given culture;
2. Creating a third space outside of the overpowering options presented to women by fundamentalist forces on the one hand and imperialist forces on the other.
3. Recognising that women resisting, challenging and re-negotiating culture within their communities as women human rights defenders face particular vulnerabilities and risks when working within communities on issues like culture, we need to develop support structures for them that are cross-country and cross-cultural.

These were discussed in greater details by the participants. According to their areas of interest, the participants divided themselves into three groups, with each group addressing one of the three issues outlined above, and discussed the following four questions:

1. what are the strengths we already have to engage these issues;
2. what are the weaknesses within our movement that we need to overcome;
3. what are the obstacles that we face;
4. what are the opportunities that we must utilise.

The following were the key issues that were discussed:

GROUP 1 - ON REFORMULATING AND REFRAMING THE NEW LANGUAGE

Strengths:

- To give a fuller picture of what happens and the reality of the community. Rather than discussing only violence we must also talk about other practices - like forced marriage, etc;
- To own the plurality of cultures within our contexts;
- To integrate the perspective of the woman and how she sees her own struggle in our work. When women narrate their stories, they are often not talking about themselves as victims but rather as demanding support. As intervention groups, we see them as clients or victims. Therefore, it is important to see women from their own perspective;

- To give meaning to the terms we use. We may either invent our own vocabulary or give meaning to existing language that can carry a lot of weight.

Weaknesses:

- The threat of this new approach could be that it might not give violence against women the kind of prominence it has currently. The weaknesses of rearticulating might be that it has the possibility of diluting the problems, viz, might “normalise” it;
- We must also realise that there are limits to reinterpretation.

Obstacles:

- Structures are so patriarchal that it is hard to really change those. We have not started working on structural inequalities;
- The inter-generation issues within the movement need to be looked into, in terms of the older and younger women within the movement. Things that we learnt through doing are now taught through academic degrees. With this more “professional” approach, the younger women are therefore looking to assess needs and we see ourselves as providers of the solution;
- Approach of donors that want us to produce results in short periods of time. We are asked, “how long do we keep doing awareness?”

Opportunities:

- Talking in a new language introduces a conceptual change. Language has potential to limit or expand our understanding of issues;
- New media technologies are available to connect with a wider range of communities and with a virtual audience. It is necessary to look beyond just the print and electronic medias.

GROUP 2 - CREATING THE THIRD SPACE

Some of the key discussion points were:

- Media: While women have made inroads into the media, there is a need to look for alternative media—not just mass media but looking at new ways of communicating;
- Identity politics: While identity politics gain dominance, the feminist movement wants to present the complexities, which is not easy. Black and white projections don’t do much good. Women’s movement has been identified as “the Opposition” that needs to be silenced;
- Those who cannot speak English are not heard very easily and similarly; those not located in cities and in urban centres also find it difficult to reach out.

Weaknesses:

- We do not use enough human rights mechanisms;
- Lack of unity amongst ourselves in the women's movement;
- We are not really engaging the outside world as much as we should be and end up only talking to ourselves;
- Foreign funding that women's groups use is being used to project them as "foreign" but if you take government funding then you have to be very careful.

Strategies:

- Opening new safe spaces/forums, for instance the venue of a museum in Japan creates new and comfortable areas to attract a variety of women;
- Rewriting of herstory;
- Challenging nationalist stories and myths with stereotypical projection of women;
- We need to link with other groups and identify and work with them. Right now, our engagement with broader issues is almost non-visible and we continue to be narrowly focused;
- We need a deeper theoretical understanding; we also need to sit back and think;
- We need to present a vision and define our non-negotiables;

Threats:

- Peoples without states or identities, for instance, refugees from Burma, slip through the cracks;
- The challenge of link from the local to the global;
- Reinventing the image of women to make it positive;
- Funders that support human rights often have their own contradictions.

Challenges:

- The nature of women's movement is a social movement but the problem we are facing is a political one – so how does a social movement try to address political agendas?;
- Within the third space, there is so much need for engaging with each other that often we end up not prioritising engagements with the external world.

GROUP 3 - WOMEN HUMAN RIGHTS DEFENDERS

Strengths:

- Our networks at the local, regional and international levels;
- One of our strengths is our personal courage and visibility and we have to acknowledge that;
- The visibility within the media could become a part of one's protection;
- Individual women working in male-dominated spaces can be our strength;
- Networking our strength by showing solidarity with each other and working with other people in the human rights system.

Weaknesses and challenges:

- Naming and locating our personal beliefs and the need to continually keep investigating our own beliefs;
- Keeping the momentum of WHR work in a country. The work will have to change dramatically and so we need to keep checking where we are;
- When you feel lonely in our work self care becomes important. This is necessary for ongoing work and should become part of the way we work;
- There are just too many emerging issues that we grapple with and we seem to be running all the time trying to work on this ever-increasing set of issues, including globalisation, identity politics, etc;
- There is so much need to focus on implementation of human rights (e.g shadow reporting and feeding into special procedures) but we also need to focus on the implementation of these human rights at the ground level;
- We need to have thinking spaces;
- Working with progressive religious leaders;
- There is a closing down of spaces available at the moment for WHR defenders. Need to strategise for how we address that.

ANNEX 3: PRESENTATIONS

The following are presentations from the Consultation. Further presentations by Madhu Mehra, Manisha Gupte and Farida Shaheed have been incorporated into the body of the report.

3.1 PRESENTATION - INDIGENOUS WOMEN, CULTURE AND VIOLENCE AGAINST WOMEN

By Ruth Sidchogan-Batani, Tebtebba, Indigenous Peoples International Centre for Policy Research and Education, Cordillera Region, the Philippines

Introduction

Culture is a contested terrain. This is premised on the view that culture is imbued with power. The enduring customs and practices that are expressions of violence against women is political; it speaks of cultural relations where power mediates. At the same time, culture is shared – but one also has to ask, “shared by whom” and “under what conditions is it shared.” This question is incisive in that ‘culture’ has become the easy escape for the continuity of violence against women, sometimes deliberately dropping the context under which this culture endures. I wish to proceed from this formulation of ‘culture’ in the presentation of the indigenous women of Asia, the enduring gender-based discrimination and other forms of violence against them. The first part discusses patriarchy as a historical and colonial creation; the second part discusses at length, the conditions under which continuing violence against indigenous women in their territories, endures, and the last part puts forward recommendations.

Patriarchy

The enduring patriarchal system that cuts across the subconscious of individuals and groups accounts for violence against women. Patriarchy, the power disparity between men and women, results in dichotomies and gender-based roles, ultimately leading to sexual discrimination to the extent that women are not only looked at as inferior but where also the “right and authority of men to use violence against women”, is justified

Like other societies, Asia has had a diverse history which places patriarchy as socially constructed in history. On closer look, patriarchy is also a colonial construction and reconstruction and this overarching institution continues up to the present. In many indigenous communities which were able to maintain their autonomy and sovereignty vis-a-vis colonialism, matriarchy persisted. The succeeding waves of colonialism (like nation-state building), however, slowly absorbed them into the patriarchal state. With new power relations came new roles and new relationships between men and women, and an increasing gap between genders prevails. These introduced new gender-biased texts, vocabularies, gender-based roles and practices that reinforced patriarchal relations. In turn, women see it as somehow “their fault” and that it is something to be “ashamed of”. This has had great implications on the curtailment of their rights and in accessing support for the realisation of their basic women’s rights.

During the second Asian Indigenous Women's Conference in 2004, women participants shared the view that reproductive rights do not exist in most indigenous communities. Women do not have a say in reproductive issues such as the number of children, when to bear children and the male preference is still dominant. In instances where a wife bears only daughters, she is pressured to have more births until a son is born or the husband takes advantage by divorcing or taking another wife. In a strongly patriarchal society like South Asia, discrimination is expressed in almost all spheres of the indigenous woman's life. In Bangladesh, widows are discriminated against by society, with men taking advantage of her vulnerability through sexual harassment. In India, it is said that widow burning still persists – although not openly. The Hindu culture that has eventually influenced the culture of the Jhummas of the Chittagong Hill Tracts, puts women into the man's domain in terms of accessing and controlling resources. For instance, while women can sell their produce, the disposal of the money lies in her husband's hands. This 'culture of silence' is seen even in community work where organisational structures reveal that women do not have the self-esteem and confidence to assume posts of authority and decision making. In a recent visit to Bangladesh, women who were called to participate in a community meeting literally chose to sit behind male participants.

Decision Making

While women make everyday decisions about food security, when to weave, and sourcing water and firewood, they are not given space in governance and administration. The latter is important as decisions made at this level have a far reaching and lasting effect. In the Philippines, the *ator* or *dap-ay*, the indigenous socio-political institution among the Igorots of Northern Luzon, excludes women in decision making; in Indonesia, the *adat* also excludes women. This is why, in today's process of ancestral land delineation, the women have little information, thus rendering them impotent when called in the negotiation processes. In Thailand, Bangladesh, India, Nepal women cannot decide autonomously especially in policies or programmes that affect them. Even in the forging of the peace accords in the Hill Tracts, indigenous women were not given a space in the negotiations. In cases where the women were able to assert a space for themselves, the patriarchal structure does not give full recognition. In the Dayak Bahau community, women have become *adat* leaders; among the Bago-Kankanaeys of Bakun, Benguet, Philippines, women have become members of the council of elders; however, in high level consultations, women's interests are not accommodated. Even in progressive movements like resistance to development projects that transgress their territories, women's participation was limited. In the Marga-Benakat South Sumatra case, in which PT Musi Hutan Persada seized their lands for HTI (forest industry crop), the indigenous peoples lobbied, dialogued and consolidated alliances but the women were not given enough participation in formulating strategies and in engaging in the dialogue processes. An exacerbating factor is the lack of education and lack of information; there are also policies that deliberately deny the indigenous women access to resources (education, health, employment and credit, to name a few). In Thailand, those who do not have Thai citizenship have no access to education, health, credit and other social services. This is not to deny the fact that formal schooling also reinforces male domination in the school curriculum. A complicating factor is the value put on women who stay at the village and at home. In peninsular Malaysia and Nepal, women who confine themselves to the village are respected. In a strongly patriarchal

society like Bangladesh, traditional leadership (headmen and karbaries) in 99% cases are men; this is further expressed in the formal local government like district councils where women occupy only 6% with the rest occupied by men (94%); at the Union parishad level, out of 111 Union parishads, there are 110 chairmen and one chairwoman. (CHTDF, 2006).

The far-reaching effects of discrimination against women is also seen in decisions on sexual harassment. As women are made invisible in decision making, a sexually abused woman can be made to marry the very same man who dishonoured her integrity. Escalation of this form of human rights violations is seen in militarised areas. A case in point is a woman in the Chittagong Hill Tracts. This Chakma woman was raped by a military man, and because of taboos traditionally associated with rape, it took her some time to come out in the open. When she finally gained strength to seek legal aid from assisting organisations, the very patriarchal processes and the discriminating attitude of the legal system made it all the more difficult for her case. (Interview, 2006).

Customary practices in many indigenous communities also have gender-biased standards when it comes to property inheritance. In many parts of the Philippines, Indonesia, Bangladesh, India and Nepal, daughters cannot inherit properties such as land; what is passed on to them are beads and other body ornaments. In some cases like in Thailand and the Philippines, the eldest male child inherits family assets as he is expected to look after his siblings and elderly parents. With various factors coming into play, however, the burden of looking after the elderly and younger siblings often falls on daughters. This gender-biased practice therefore is no longer practical, yet, due to patriarchal attitudes, it persists. The reason for this is that a woman is expected to marry and so can share in her husband's properties; there is also the fear that women may marry outsiders and hence threaten the property if she is allowed to inherit.

Dowry-related violence is still prevalent in many Asian countries. In Indonesia, women are valued less when the dowry is more expensive. In Bangladesh, Nepal and India, a girl-child is less preferred because of the fear of raising dowry. This also breeds discrimination in households.

Polygamy, another custom among Islamised indigenous peoples, poses another form of violence. In the southern Philippines, Lumad women have to live with other wives in a household and find themselves classified as first or last wife. This is a classical case of women oppressing women, with the last wife almost always the most discriminated against.

Early marriages that result from parentally arranged marriages, on the surface seem to be acceptable. At first, this is rationalised as a way of 'protecting' the purity of the group but on closer examination, this is another form of restricting the woman's mobility. This is also cited as one reason why daughters cannot inherit properties as they will soon share in their husband's property.

Female genital mutilation, one of the worst forms of expression of gross human rights violations that results from power disparities, still prevail, albeit secretly, among Islamised indigenous peoples. In Indonesian adat communities, despite the

observance of some gender-sensitive practices, female genital mutilation still persists. In the Philippines, this is said to have been transformed into just a symbolic ritual without the actual mutilation, yet remains to be an expression of the essentialist approach to treating womanhood.

Physical wife or partner battering is more apparent in melting pot communities such as mining communities or migrant communities. In the Philippines, statistical data on the beating of Igorot women has consistently been recorded in mining communities and in urban and urbanising areas.

Violence Against Indigenous Women in the Context of the Ongoing Rights Violations in I.P. Territories

Whenever we talk of indigenous women and the violence against indigenous women, it has to be contextualised in the situation of ongoing rights violations against them and their communities. It is therefore important to talk not only of their individual human rights but also of their collective rights. Such rights emanate from the lands they occupy. The almost-too-familiar ways of grabbing their lands and the resources therein becomes central. Lands and the resources on it, which is the material basis of our lives and existence, have been defended from colonial times to the present. This has, however, left us marginalised and impoverished and has contributed to the continuity of violence against women, if not provided more leeway for perpetrators to take advantage of the already vulnerable situation of indigenous women:

Militarisation

The escalating human rights violations of indigenous women is due to militarisation and state repression. Rape continues to be used as a weapon of war by the military to humiliate and attack indigenous communities. Girls and even old women are not spared. This leads us to the conclusion that gender-based violence continues to be an instrument of occupying indigenous peoples territories. The experiences of our sisters in Guatemala in the 80s and in Chiapas Mexico in the 90s (FIMI, 2006) finds resonance in the present day experiences of IW in Bangladesh, the Philippines, Indonesia and Burma, who have been subjected to harassment, torture, rape, humiliation of women, forced prostitution and compulsory servitude. In 1997, reports show that 10 Bodo women in Assam, India were gang-raped by 22 military men; indigenous women in central Luzon and the Cordillera region in the Philippines were raped by military men but were scared to file cases. This has caused disintegration of communities. With security problems and increasing poverty, entering into relations with the military becomes an option, only to be abandoned by these men upon transfer to other destinations. This prompted a women's network, the AIWN, to coin this emerging phenomenon of "contract marriages" as another effort to dishonour and humiliate the indigenous women. Military rule in our communities have curtailed our movement and economic activities, the entry of food supplies and basic social services and have even disrupted the education of our children. In Burma, women are prevented from going to their fields; in Bangladesh, Jumma women cannot bring their products to the market. This has further restricted the Jumma women's mobility with the men taking over the marketing. This would have great implications in the control of money as a resource and Jumma women, whose participation in decision making is limited to the domestic, all the more experience gender discrimination in this militarised situation. Under India's national security act, IP in Nagaland have

disappeared or were killed on mere suspicion of being involved in the insurgency. The military rule in Burma resulted in massive human rights violations especially to women and children. In Bangladesh, from April to August this year, seven Marma women of the Chittagong Hill Tracts were raped and killed. The war on terror that finds its way into national policies such as in the Philippines where the Anti-Terror Bill labels any indigenous person who fights for self determination as a terrorist. To date, more than 900 political activists have been killed and these political killings include 72 indigenous people's leaders.

Aside from the state's accountability for state-instituted violence such as rape, arrest and harassment, the government is also accountable when policies and projects impact heavily on the lives of basic sectors of the population.

Loss of Culture

Development aggression in the form of laws, policies and programmes that do not seek the free, prior and informed consent of indigenous communities usually leads to displacement where culture (language, traditional source of livelihood, indigenous knowledge on healing, entry of fundamentalist religion that destroys "images of paganism") leads to heritage loss. The entry of such elements is not gender-neutral; it impacts heavily on indigenous women. In a recent visit to Barman communities in Dhaka, the already restricted movements of adivasi women is further reinforced by the security threats brought about by the Bengalis and the noncommittal stance of the police force. Aside from the situation of living under threat in their own territories, they are forced to work in the factories since their traditional source of livelihood has been seized and has left them helpless with very limited space for settlement. Barman women need to go out from their hamlets in groups and have to be fetched by their men after work. This is in a context where the Bengalis who are grabbing their lands continuously harass them while the police, who are supposed to provide protection, only serve as spectators idly standing by.

Poverty

Poverty that has been exacerbated by globalisation policies, is increasing the vulnerability of indigenous women. More cases of domestic violence and physical violence occur as more men lose their livelihood and families are exposed to economic uncertainties. Changes in the economic system in indigenous communities such as the intensification of cash crop production and the loss of self-reliant economies have greatly affected the reproductive health of indigenous women. In urban areas and other melting pot areas in the Philippines, Indonesia and especially Bangladesh, in times of economic difficulties, women serve as the de facto coping mechanism either by remedying the food security concerns of the household or by forcing them to work outside the village while at the same time serving as shock absorbers for husbands who find themselves out of work. Indigenous women who want to work are forced to migrate to the cities or even abroad where the worst forms of human rights violations and sexual harassments are experienced. By working outside their territories, they lose the protection afforded by gender-sensitive customary laws.

Forced migration is caused by increasing poverty, the military presence in indigenous peoples' areas and development aggression. The poverty situation has also caused

women to turn to prostitution and has made them prone to trafficking. When our culture is used to attract tourists, we are asked to commercialise it.

In Nepal, sex trafficking is said to increase day by day and many indigenous women are lured by middlemen to Bombay, Malaysia and some Arab countries. Sex trafficking across borders is also seen in Mongolia and Thailand.

A distinct problem suffered by indigenous peoples is the discrimination by government and mainstream society that has resulted from nation-state building. For many generations, indigenous peoples enjoyed territorial integrity and sovereignty, but when nation-states came into being they were divided and separated into many provinces, districts and even countries. Indigenous peoples were once one people with distinct culture and history that wove them together. Nagaland, for example, used to be semi-autonomous but when India won its independence, it was incorporated into the Indian Union. The Jumma peoples of the Chittagong Hill Tracts share a similar historical experience when they were integrated into Bangladesh.

The access and control of resources by “outsiders” renders the indigenous woman secondary. Worse, some social services like reproductive health become sites of discrimination perpetrated by health care givers themselves. In Indonesia, family planning services led to the massive introduction of contraceptives where women were not fully informed of its side effects thereby suffering from nausea, bleeding, dizziness, to name just a few. Stories like this also abound in many parts of the Philippines.

Formal education has also become an area of discrimination against IW. Educational curriculum reinforces discrimination against IPs. The prevalence of new courses offered in the Philippines like Hospitality and Tourism is perceived to be fertile grounds for reinforcing stereotypes as well as the commercialisation of IP culture whose customary garb and tourist sites with IW are projected as objects of curiosity, display and commercialisation. Needless to say, prostitution has increased in tourist sites alongside the creation of the cash dependence of children to tourists.

Patriarchy likewise finds itself in state’s positions in the international realm. It is interesting to note that in relation to international human rights instruments like CEDAW, while 180 countries ratified it, governments made their reservations. Article 16 most reserved (meaning positions of government) equal rights of marriage and family. One is prompted to ask, why is article 16 most reserved? In Cambodia, parents arrange the marriage of children, so children will have no right to choose partner. Cambodia has local laws to train women to be good wives, good mothers, but not to be brave in decision-making. Women are deliberately confined to the family sphere. There was no mention of the indigenous woman in the CEDAW, to begin with.

Against this background, what challenges and recommendations are we putting forward?

Challenges and Future Actions

- *Call to end patriarchy in all forms and at all levels.*

The prerequisite for this is to eliminate gender disparities found in customary laws and in various programmes and policies affecting indigenous territories.

- *Culture can be negotiated, can be transformed.*

This is shown in the everyday lives of indigenous women. Dowry-related violence in Bangladesh and the Philippines among the educated women is gradually being reduced if not totally eliminated. Female genital mutilation in Indonesia and in the Philippines has been negotiated by their involvement in health and women-related endeavours. This is evidence that culture can be transformed. It is therefore imperative that we empower the indigenous woman by providing appropriate capacity-building efforts to these women. There is also no substitute for Education and awareness-raising.

- *Revitalising and renewing customary laws that are gender sensitive and values that promote gender-fair relations.*

Indigenous socio-political structures have also mechanisms that give equal respect to the human rights of men and women. As it is, indigenous women of Bangladesh are relatively more visible and have extensive mobility than their Bengali counterpart. Marma women can also pass on their properties to their daughters. Also, Marma widows are entitled to claim the whole property of their deceased husbands; similarly, the girl child is also entitled to claim the whole property of their deceased mother. Among the Igorots of the Cordillera, Philippines, sexual harassment is a public issue. There is therefore a need to revitalise traditional support systems against domestic violence and work towards removing prejudice and negative perceptions of indigenous peoples and women which undermine our pride and self-confidence.

- *There is a need to recognise and correspondingly give support to IW efforts at peace building.*

This can be done by engendering indigenous conflict resolution where we have a space for full and effective IW participation in peace processes and accords. More specifically, the AIWN calls for increased international pressure on the Burmese military regime to stop its military offensives in territories of indigenous peoples and violent crimes against indigenous women. We therefore demand the immediate end to militarisation.

- *We also uphold that all indigenous women and men are entitled to be free and equal to all others in terms of dignity and rights.*

Every indigenous person has the right to belong to a nationality and to enjoy legal status and to be granted citizenship of the country in which they live. The indigenous people of Thailand are a case in point. Due to the long processing of citizenship documents, they are denied the most fundamental rights and entitlements, including access to education and other public services, land and property rights and social mobility, thereby making them extremely vulnerable

and marginalised. Urgent government action is needed to redress this situation. Empowerment of indigenous women for leadership and decision making is therefore imperative.

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3.2 PRESENTATION – GENDER AND SEXUALITY, CULTURE AND RELIGION: INTERSECTIONAL VIOLENCE AGAINST WOMEN IN FIJI BY FAMILY, COMMUNITY- AND FAITH-BASED ORGANISATIONS

By Noelene Nabulivou, with input from Peni Moore, informed by work at Women's Action for Change (WAC), Fiji

Introduction

My overall focus in this paper is on culture and violence against women in Fiji, with specific attention to family, community- and faith-based institutions. Throughout the paper, while concentrating primarily on certain non-state actors in Fiji as violators, I want to particularly show their links to each other, and also to the State.

The focus of my paper is specific to Fiji, but links into wider, targeted regional and international discussions because it is framed in reply to the challenge in the summary report of the Asia-Pacific NGO Consultation with the United Nations Special Rapporteur on Violence against Women, Yakin Ertürk (5-6 Oct, 2005), that any work on violence against women be placed firmly in the context of cultures and systems of patriarchy that contain “the fundamental lack of respect and recognition of women as human beings to be treated equally”.³⁰

This paper contains three case studies and accompanying comments, the components of which raise four key points:

Firstly, the main human rights violators of women and children in Fiji are patriarchal and masculinist processes represented in this paper by indigenous traditional leadership processes (hereafter called ‘vanua’), a dominant Christian faith-based institution, and enabled by the State actor, the Fiji government. As a cautionary note, while the vanua and Fiji Methodist Church provide my case studies, this is not to say that Hindu and Muslim faiths and community-based leadership are not perpetrators of violence against women. I have chosen these case studies specifically because of their wide-ranging and intersectional impact on all women in Fiji, but they are by no means the only non-state violators. For example, for many Fijian women of Indian ethnicity, the immediate danger from other non-state actors is possibly greater. Relatedly, violence against women by and through any non-state actors is also experienced in multi-ethnic communities which makes the violence even more difficult to resist.

Secondly, while the church, state and vanua provide such ultimate legitimatisation of violence against women and children and sometimes even outrightly encourage this violence, the immediate violators of women and children rising from such systems are one's own families and communities, making resistance near impossible for many women, and further making the culpability of the enabling church, vanua and state difficult to establish and address.

³⁰ 2005, APWLD: “Realising our Rights: Holding the State Accountable for Violence Against Women in Asia Pacific Region”, p 12

Thirdly, as girl child and women living within these patriarchal systems, we ourselves often become the enablers and even perpetrators of such violence against women, which makes it even more difficult for many to bear witness to and address violence against ourselves and other women.

Lastly, the government may appear to be outwardly supportive of advancement of women's rights, but is often simultaneously eroding such rights by ignoring, enabling and sometimes outrightly supporting violence by non-state actors against women and children.

Fiji – The local context

Fiji is in the Pacific Ocean, with an area of approximately 6,800 square miles of landmass spread over 300+ islands, and its population is an estimated 840,000 (1996 census). The Pacific region is extremely complex and diverse ranging from very small islands and groups (Kiribati, Nauru, Palau), medium and large island groups (Fiji, Solomon Islands, New Caledonia) through to a large landmass such as Papua New Guinea, with over 800 language groups.

The Pacific also has some of the last colonial territories and protectorates (New Caledonia, Cook Islands, Guam, Tahiti, etc). It is also fairly recently that Pacific countries such as Fiji, Vanuatu, Solomon Islands and others gained independence (in the case of Fiji, 1970). As nation-states and peoples we are therefore still experiencing mixed feelings about colonialism, decolonisation and independence in the midst of competing nationalist and globalist processes.

In Fiji we continue unpacking and reinvesting diverse and often conflicting indigenous Fijian, Christian, Hindu, Islamic, colonialist, capitalist, democratic, human rights, feminist, nationalist, regionalist and globalist ideas and beliefs into our everyday lives. The problem is that all of these meaningful systems exist simultaneously; all have their own assumptions, herstories and histories, and those who think they will win or lose from any changes.

The intersection/collision sometimes results in bizarre situations. In 2005 the then Assistant Minister for Culture and Heritage Mrs. Nanise Nagusuca told the largest and oldest women's network in Fiji, in a speech to their pre-annual general meeting, that human, women's, children's and individual rights are eroding the indigenous national identity. Mrs. Nagusuca also urged women to accept only what is in accordance with traditional culture and values, with particular stress on hairstyles and dress codes. Meanwhile, the very next day was a workshop on how to increase indigenous women's voter education and decision-making! Similarly, our 'democratically' elected Prime Minister Mr. Laisenia Qarase has repeatedly stated for years that democracy and human rights are 'foreign flowers' that are not acceptable to Fijian traditional notions of hierarchy. (See Radio New Zealand international report, 29 Aug 2005).

Christianity and violence against women in Fiji

Add to this potent mix the very strong voice of Christian churches in Fiji and work with women and children on violence and women's rights becomes even more complex and problematical.

This paper specifically examines culture and its intersections with violence against women. Culture can usefully be seen as a learned pattern of existence providing a particular view of the world and how we fit within it (1999, Barr, p 3). For many people, spiritual beliefs and hence religious bodies provide a major framework for these cultural understandings.

As Father Barr highlights in his paper 'Beyond the Mundane, Fiji's Religions and Worldviews' (1999) we can see three "waves" in the coming of Christianity to Fiji. The first wave was made up of the early churches – the Methodist, Catholic, Anglican, Presbyterian with strong connections to colonial and trade movements. This was followed slightly later by the Seventh Day Adventists and the Assemblies of God. A second wave followed the Second World War and brought the Salvation Army, the Mormons or LDS (1953), Jehovah's Witnesses (1958) and the Baptist Convention. The third and most recent wave is of many evangelical and pentecostal groups coming directly or indirectly from the US, many with very fundamentalist and isolationist beliefs.

Where patriarchally-based religious and indigenous traditional systems intersect with the State, the effect is often heartbreaking, as the overall patriarchal structure and process starts to look almost immovable and unbreakable because the violence and discriminations used to prop up these systems are in our own homes, schools, health centres, churches, mosques, temples, parliament, senate, private sector and even NGOs.

Case study 1: Methodist Church in Fiji

According to the 1996 census, fifty-two percent of the population of Fiji is Christian, 32 percent Hindu, 6 percent Muslim, with 10 percent other and undeclared. However, there have been great changes to Fiji in the decade since the 1996 census and so unfortunately we do not have accurate national statistics to support or refute claims. The largest Christian denomination is the Methodist Church, claiming approximately 214,000 members (but this includes children and young people). Other Protestant denominations and the Roman Catholic Church also have significant followings.

The Methodist Church have always had influence in politics but their participation has been increasingly direct, strident and explicit since the 1987 and 2000 coups, with high level officials taking on senate and parliamentary positions and acting as official and unofficial advisors to the current government. Their influence cannot be denied as they have access at the highest level to politicians and government officials, many of whom attended church-run schools, training institutions and are current members of the church.

The Methodist Church is supported by many of the country's traditional chiefs and remains influential in the ethnic Fijian community, particularly in rural areas. The Methodist Church regularly calls for Fiji to be declared a Christian State despite constitutional protection for freedom of religion for all in Fiji with its significant numbers of Hindu, Muslim, and other Christian faiths.

Methodists also publicly marched twice last year against homosexuals; their president in October 2003 calling for the death by stoning of all homosexuals. They were only prevented from doing so due to the intervention of the Fiji Human Rights Commission.

At the recent annual conference (August/Sept 2006) they restated their aim to remove sexual orientation rights from the Fiji 1997 Constitution. They also called for continued corporal punishment in their schools and homes despite Fiji's ratification of the Convention on the Rights of the Child (2003), two High Court rulings declaring it illegal and unconstitutional, and a ban by the Ministry of Education.

Linkage to violence against women:

- Christian churches in Fiji, including the Methodist Church have enormous influence within State processes and communities as a whole. Their views are growing increasingly fundamentalist, now publicly espousing physical discipline of children, with direct impact on girl children in many homes and schools.
- Their views also impact directly on general status and decision-making capacity because of widespread and prevailing attitudes to women and children predicated on selective, conservative and incomplete biblical interpretations of woman as 'site of original sin'; 'from the rib of man'; 'under the husband'; and 'helpmate to husband'.

Eliminating violence against women - Challenges for human rights activists:

- To make clear the linkages between such Christian interpretations and impact on violence against women and children;
- To acknowledge the intersections between churches and states and how this impacts on human rights access for women and children;
- To advance joint strategies for fundamentalist church teachings to be challenged and expanded toward more human rights-based approaches. For example, the UN system, global, regional and national theological networks need to be more focused and strategic in opening up local spaces (using local liberal christian resources and networks wherever possible) where fundamentalist church leaders and their communities are encouraged to explore liberal and human rights-based interpretations of their faith.

Case study 2: Desecrations of Hindu temples as an example of human rights violations against Fijian women of Indian ethnic background

As far back as colonial times, Fiji has been constructed as ethnically divided, and our formal voting and other community systems continue along such divisive lines, while grassroots communities continue to find ways to live together despite constant manoeuvring and politicisation by churches, state and indigenous political systems.

The great injustice of indentured labour (or girit) happened in Fiji between 1879 and 1920. As a result of an agreement between the colonial powers in India and Fiji, some 60,553 Indians from various states (provinces) in India were brought to Fiji to work on the sugar cane plantations mostly for the Colonial Sugar Refinery. This was a violent

and dehumanising system, and had enormous religious, cultural, and economic repercussions for those who came to Fiji, and who call it home today. (Many have left in the years after the 1987 coup, so that the stated figure of 48% Fijians of Indian ethnic background is now out-of-date).

Many leaders in Fiji use Indians as convenient scapegoats for numerous social ills, disregarding intersecting multiple manifestations of patriarchy that are at the heart of what is wrong in Fiji: Colonial and decolonisation ideology and impact, Indigenous intra-group conflicts, class-based conflicts (including between women), religious politicisation, machismo and personal and communal economic self-interest. Results include multiple coups and attempts since 1987, low numbers of women in formal and informal decision-making positions, and high levels of violence and human rights violations against women and children and minorities. Women and children of ethnic minorities in Fiji are intersectionally and diversely impacted, just as are rural women, urban women living in informal settlements, lesbian, bisexual and transgender women, girl child. (Note: This is not to say that indigenous women in Fiji are not heavily impacted, as the violence at the heart of such a patriarchal, masculine culture are seen in every aspect of our lives – for some economic and social classes far more than others.)

Increasing incidents of disrespect and violence in Fiji toward Indians (and therefore to Indian women and children) are reflected in the number of both Indians and indigenous Fijians now living in poverty, violent attacks on person and property of Indians, verbal and physical abuse, low levels of Indians in the civil service, army (with recent efforts in the police seeing gradual changes), attitudes of second-class citizenship at the highest levels (including our current prime minister), inability to address long-time disputes over land lease allocations for farmers leading to further internal displacement of Indian families into informal settlements, and desecrations of places of worship.

A Member of Parliament and Arya Pratinidhi Sabha President, Kamlesh Arya informed the Lower House in 2004 that of the 149 total desecrations since 2001, 103 were Hindu temples with the highest figure of 30 recorded in 2004. (Fiji Times Online, 24 September 2004).

Linkage to violence against women:

Women and children in Fiji face discrimination and human rights violations by State actors, and as certain communities are under particular economic, social or other stress, they face more violence in homes, schools and churches (non-state actors). Comparison of official police statistics from 2005-2006 (Fiji Police Report: 2006 First Quarterly Report) show a 48% rise in offences against public morality including rape and attempted rape, indecent assault, defilement and incest. While not desegregated by ethnicity, overall these show high levels of violence against women and children in Fiji, further substantiated by Fiji Women's Crisis Centre research in 1998 that showed 66% of women in Fiji had experienced violence within their homes, over 42% of those while pregnant. (Fiji Women's Crisis Centre, 1998).

- Fijians of Indian ethnic background are living in a country where Christian, Indigenous and State fundamentalism is rising, so the effects on them as a minority (albeit diverse) are intersectional.
- Further vulnerable and marginalised individuals and groups such as rural Indian and Fijian women; girl child; women of diverse gender and sexuality identity; widows; disabled women; women human rights defenders and others are similarly intersectionally violated;

Eliminating violence against women - Challenges for human rights activists:

- Eliminate violence against women programmes that address needs of all diverse women and girls in Fiji, especially those who experience intersectional human rights violations and discrimination including Fijian women of Indian ethnic background and other ethnic minorities, indigenous women, and also further vulnerable groups such as rural Indian and Fijian women; girl child; women of diverse gender and sexuality identity; widows; disabled women; women human rights defenders and others.
- Also to ensure that the State recognises that its failure to protect, defend and promote the human rights of all women in Fiji is a direct violation of its International UN commitments, as well as being contrary to national constitutional and regional laws and commitments.

In Fiji, the older pre-Christian indigenous systems and processes (sometimes called *vanua*) have not been supplanted by Christianity and democracy, but rather incorporated in newer forms. Manifestations of such patriarchal systems are seen in the political, economic, social and cultural spheres. Fiji has a Great Council of Chiefs, a body of traditional leadership transformed and codified in the British colonial period. It has constitutionally defined powers, including appointment of the president and certain senators, and has great influence on the Indigenous people of Fiji and our wider community and state. Secondly it is observed through intra-state alliances, chiefly and kin systems and networks and in the intertwined roles of *vanua* with the church, state, private sector and wider communities.

For example, after first supporting the new 1997 Constitution with its strong Bill of Rights, in May 2000 after the attempted coup, their national statement simply said: "We do not approve of what [coup leader] Speight has done, although there is a lot of sympathy for his views". This ambiguous statement gave Speight more fuel for his violence and treason. The chairman of Fiji's Great Council of Chiefs in 2000, Sitiveni Rabuka, says that in fact many of its members were fully behind George Speight's coup. Mr Rabuka told Radio Legend this year that many of its members wanted Speight to go ahead with the takeover of parliament. Mr Rabuka says things worsened when the Great Council of Chiefs' committee, appointed to resolve the issue, took Speight's side. (Radio NZ International, 25 August 2005).

Case study 3: The *vanua* or indigenous traditional system as human rights violator

Indigenous women and girls are part of a continuing traditional political, cultural, social and economic system that always privileges men over women. While there are some

women high chiefs, for most indigenous women in Fiji the traditional political system is not accessible and contestable, because this means going up against the combined and entwined masculinist vanua (political processes), matanitu (national government) and lotu or Christian church. While some women have worked for decades in Fiji on greater human security for themselves and others, the very small numbers of women in parliament and local government, the fact that we have a male as Minister for Women, the high levels of violence against women, the prevalence of statements that discourage women from positions of gender equality made by church and vanua, and the familial, religious and cultural restrictions on even educated, employed and middle-class indigenous women show the extent of influence of the vanua as a non-state actor.

Linkage to violence against women:

During a recent workshop programme for semi-rural young women (mixed ethnicity) on elimination of violence against women, participants spoke about the violence in their homes from brothers, mothers, fathers and extended family members. They spoke about violent discipline, depressed and frustrated mothers who also hit them, and the double burden of heavy household work as compared to male siblings and relatives.

They also spoke about their fear associated with frequent parental absence due to vanua, church and community commitments as well as long recreational kava sessions in communities when both fathers and mothers were absent from the home. Related to vulnerability of girls in the homes and communities in Fiji is another high-risk programme at WAC, where just under half of the girls stated they had experienced sexual abuse by close male relatives and all of the rest had experienced physical abuse and neglect by their closest relatives. Creative director of WAC, Peni Moore observed recently that there are many ways to kill, and one of the most frequently employed is to 'kill the spirit'. This process can start from birth, and continue into adulthood after which it seems no longer to be possible to counter such violence against women.

That is why our elimination of violence programmes with young women at WAC is not simply, or even primarily, about human rights information. Rather, they incorporate at least the following:

- Guidelines to building healthy communities, as for many young women in Fiji their homes and community are actually the site of most violations and violence;
- Conflict and power analyses, so that they are introduced to the possibility that power is not fixed but pliable and that they can play a part in this. For most of the young women we work with in Fiji, their lives illustrate a great degree of gender powerlessness, and their experience confirms this picture;
- Affirmation of their personal experiences of gender-based conflicts, with no pretence that this work is easy or short-term focused, with lots of affirmation, trauma healing and solidarity through personal stories and sharing with no judgement of them or their families – as often there are mixed feelings about the violence from their families and peers;

- Introduction to restorative justice centred mediation, and simple processes to practise these skills in their own lives, with discussions about when, where and how they can do so safely, and where they themselves identify situations where it can be most useful in their daily lives;
- These programmes are usually supported by community theatre performances, such as our play 'Another Way' dealing with community responsibility for the mental health and suicide of young women in Fiji, and also our recent play called 'War of Words and Swords', dealing with women's levels of personal and community decision-making and how it impacts on HIV and AIDs and overall human rights of women in Fiji.
- Where possible, we aim to support more networks and advocacy by young women, but we are hampered by internal resources and the realities of young women's lives in Fiji.

Eliminating violence against women - Challenges for human rights activists:

- To design programmes that clearly take into account the realities for women in countries such as Fiji where non-state actors such as families, communities and faith-based organisations are the primary sites of human rights violations;
- To show clearly how the state has a duty under due diligence to ensure that women's rights are protected, implemented by state and non-state actors, and that violations by both state and non-state actors are fully addressed.
- Where the state is reluctant to do so, or is actually assisting non-state actors to carry on violating, it is the challenge of women human rights defenders in country and in regional and global solidarity, and through the UN system to ensure that such states and non-state actors are held accountable.
- Finally, those states that are supportive of women's human rights must provide networks and strong advocacy and practical support (financial and otherwise) to those human rights defenders who continue their difficult work among women in those places where states are most complicit in assisting continued violations by non-state actors, with their implicit or explicit consent.

Conclusion:

If we agree that there are multiple non-state actors that work in concert with state actors in perpetuating violence against women in Fiji and elsewhere, we must acknowledge that this must be carried out by women and girls themselves with support from in-country initiatives, by sub-regional, regional and international efforts including the UN system, and taking into account the recognition that this is work that necessarily goes to the very heart of patriarchal processes, and therefore it must be viewed as urgent, hard and long-term work, with no quick fix solutions but incorporating determined and strategic work for progressive change. The challenge for all of us is how to balance that long-term work with the lived reality where women and girl child every day in our country and around the world are experiencing the horrors of institutional, emotional, physical and sexual violence.

3.3 PRESENTATION – STRATEGIES TO ADDRESS CULTURE AND VIOLENCE AGAINST WOMEN

By Sapana Pradhan Malla, Forum on Women, Law and Development Nepal (FWLD), International Women's Rights Action Watch Asia Pacific (IWRAP-AP)

At times culture is formed and practiced by society, other times institutionalised by law or governed by state practices. Depending on the forms, effect and institutionalised process, different strategies are required to address violence. It is also based on the context; for example, in Afghanistan when the state has patriarchal alliances and alternative mechanisms, and the judiciary is dominated by religious leaders, negotiating for cultural rights and justice becomes impossible.

No doubt, dealing with culture is not easy: you are challenging the values, beliefs that are deep rooted in our behaviour. However, when it turns into violence, it is a crime, no matter how many people are practicing it. In South Asia there are various forms of cultural practices that violate the right of women to live with dignity, equality and freedom. Women are being tortured, abused, and discriminated against in the name of culture but this practice is not recognised as a crime.

Therefore, the most important strategy will be to document and identify cultural practices violating women's rights. In order to achieve this, causes and contributing factors in practicing such culture and negative implications or identification of denial of right with that culture is necessary to develop further strategies. The framework developed by the IWRAP AP has already become quite successful in the region.

Thereafter, those harmful practices or discriminatory culture must be recognised as a crime against women through the formal expression of law. For example, sati pratha (the practice of widows immolating themselves on the funeral pyres of their dead husbands) has been abolished after its declaration as a crime.

The debate whether law changes society or society changes law has always been going on. However, the reality is that at times law leads to social changes while at other times there have been major social movements which have changed laws. It can therefore be stated that constant interplay between law and society needs to go hand in hand. Although the practice of dowry has been declared a crime in India, the violence related to this practice has not been wholly eliminated as the cultural mindset of the society has not been changed yet and the underlying causes have not been addressed. Hopefully the amendment of Hindu Succession Act, which guarantees equal inheritance rights to daughters, will bring positive results.

It has also been realised that state mechanisms need to interfere in the private realm if it turns into violence. But the approach needs to be rights based.

It is not enough to just change or formulate new laws but it is also needed to monitor how state mechanisms have responded to these laws and followed due diligence. At the same time having legislation alone is not enough unless institutions like women's commissions, human right commissions and sensitivity in the structure is created, and awareness programmes to change the mindset of society has been launched.

While formulating legislation to address cultural violence, it is very important to make sure the local social, political and economic context is taken into consideration. For example, in Nepal a law was enacted to reform social practices to regulate extravagant expenses during social functions. Although this was a very good move, the law did not keep pace with the social norms and, consequently, became defunct.

When social and cultural violence is reinforced by state machinery, it becomes more severe. For example in India, when a dalit women was raped, the court, the institution that is supposed to maintain rule of law, itself mentioned in it's verdict that the defendant, a Brahmin Hindu, cannot rape a dalit ("untouchable") woman. Myths and prejudiced mindsets need to be challenged.

We all live in cultural and religious diversity. Personal laws need to be respected together with customs and practices. However, such recognition should pertain only in the matters of family life. If it is violence against women, international human rights standards should be applicable, and in criminal cases civil and personal law should not prevail over criminal law.

When cultural practice becomes law, it is more difficult to challenge it. In Nepal in a public interest litigation, the Supreme Court referred to the challenging of some laws as discrimination as these laws were part of Hindu tradition and custom. Nepal being a Hindu kingdom then, the argument given by the court was that that provision could not be said to be discriminatory as tradition and culture is part of the religion. Hence it is very important to have a strategy to separate religion and state at the macro level. However, while reporting under CEDAW, this particular issue was critically raised by civil societies. In the concluding observation of CEDAW Committee, they expressed particular concern on the Supreme Court interpreting laws justifying culture for discriminating against women. Subsequent to the CEDAW comment, the court has made many positive judgements guaranteeing right to equality and non-discrimination in Nepal. (Note: Nepal is now a secular country and no longer a Hindu kingdom.)

There are cases where in a particular culture the community takes pride in traditional practices. The family and caste from which the kumari is selected takes pride in being the "chosen" family/caste for such a tradition. (Kumari is a living goddess respected and worshipped since several generations and has become an integral part of state practices.) The practice of kumari is discriminatory and restrictive on the girl who is chosen as kumari. The girl ceases to be worshipped as a goddess when she reaches puberty. It is very difficult to make any changes in the elimination of such practices. Therefore, in order to minimise violence, advocacy is being conducted for counseling, education, to ensure family love and care. At times it seems impossible to eradicate the prevalent culture but at least minimising the negative impact should be a strategy to be adopted, especially when community, family and state would like to continue the practice along with continuous advocacy for reform. In such situations, it is also strategic to link the principle of children's rights with CEDAW and other human rights frameworks.

Some cultural practices like tij (fasting for longevity of husband) and panchami (asking the god for forgiveness because the woman is "self-polluted" (menstruation)) are still widely practiced by women. Choices made by women need to be respected but

women must be encouraged to make informed choices independent of social or family pressure. There are numerous cases of dehydration as many people actually believe that by keeping the husband's age increases.

Identifying alcohol as a major cause of domestic violence, women at the community level mobilised for declaring alcohol-free zones, and were successful in reducing violence; but ultimately to continue such zones they could not get adequate support from the administration as alcohol is a major source of revenue for the government. Hence in any strategies to end violence, its connection with financial matters needs to be analysed.

Some cultural practices such as kanayadan, gotra parivartan, etc, do not have serious implications but consider women as subordinate. In order to eliminate them awareness needs to be created through rights-based approaches. Some interventions could be initiated through school curricula and media campaigns

Child marriage is rampant in South Asia even though it is recognised as illegal in some areas. Considering it as a personal/private family matter, no one takes initiatives to challenge it. Research-based advocacy is necessary to show the evidence and its impact on morbidity, mortality, opportunity, and in development. In Nepal formation of paralegal groups and their interventions has become successful in addressing child marriage.

Advocacy with victims to show the implications of cultural violence has become a very effective tool in internalising the issue for policy and law reform and enforcement.

PIL has also become a strategic tool to eliminate cultural violence, for the enactment of laws or for the enforcement of laws. In Nepal a case was filed to eliminate chaupadi (women to be kept in cowshed during and after delivery of the child) practices. In this case, the Supreme Court has issued a directive criminalising such action but also asked government to do a study on implications and launch massive awareness campaigns. Due to raising it as an issue and the court's decision, though a law has not been enacted, people are changing their behaviour. Similarly, the Supreme Court had issued a directive order to the government to enact a law criminalising the practice of witchcraft and to provide compensation to the victim.

A cultural practice that was reinforced is the law that allowed husbands to divorce wives for not bearing children. This was challenged and the court declared the provision ultra vires. Women's right to dispose of property exclusively was curtailed within the legal frame. When challenged, the law was declared unconstitutional. However, the lesson we have learned is that having such positive judgements is not enough: we need to follow up and monitor its implementation.

Educating religious leaders has also helped to prevent certain cultural practices in South Asia. Advocacy for the ratification of CEDAW and other mainstreaming human right instruments and monitoring mechanisms to make state accountable and respond positively is necessary. Separation of religion from culture and clear understanding of difference between culture and religion is also vital.

General Recommendation No 19 of CEDAW should be used widely. CEDAW should not be understood only on the basis of one article (article 16) that governs family matters but also policy frame work like articles 1, 2, 3, 4, 5 should be used broadly in dealing with relevant cases of violence against women.

Empowering women's right defenders with support and security systems is critical for addressing cultural violence.

ANNEX 4: INFORMATION ON THE UNITED NATIONS SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN

4.1 - UNSRVAW MANDATE

Special Procedures

“Special procedures” is the general name given to the mechanisms established in 1967 by the Commission on Human Rights to address either specific countries or territories situations, known as country mandates, or on major phenomena of human rights violations worldwide, known as thematic mandates. The themes cover a wide range of civil, political, economic, cultural and social rights. As of Feb 2006, there were 28 thematic and 13 country mandates in place.

Creation of The VAW Special Procedure

The United Nations Commission on Human Rights in resolution 1994/45, adopted on 4 March 1994, decided to appoint a Special Rapporteur on violence against women, including its causes and consequences. The mandate was extended by the Commission on Human Rights in 2003, at its 59th session in resolution 2003/45.

UNSRVAW Mandate

According to her mandate the Special Rapporteur is requested to:

- Seek and receive information on violence against women, its causes and consequences from Governments, treaty bodies, specialised agencies, other special rapporteurs responsible for various human rights questions and intergovernmental and non-governmental organisations, including women's organisations, and to respond effectively to such information;
- Recommend measures, ways and means, at the national, regional and international levels, to eliminate violence against women and its causes, and to remedy its consequences;
- Work closely with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities and with the treaty bodies, taking into account the Commission's request that they regularly and systematically include in their reports available information on human rights violations affecting women, and cooperate closely with the Commission on the Status of Women in the discharge of its functions.

VAW Special Rapporteurs:

- Yakin Ertürk (Turkey), since August 2003
- Radhika Coomaraswamy (Sri Lanka), 1994 - July 2003

Definitions of VAW

“Violence Against Women, ...”

“any act of **gender-based** violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life” (UN Declaration on the Elimination of VAW, article 1)

Violence against women includes:

- Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.
- Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.
- Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women, forced prostitution.

“... its causes and its consequences”

- Including discriminatory laws, policies, administrative measures and social attitudes that perpetuate, exacerbate or facilitate violence against women
- Including failure to remedy the consequences of violence against women.

Individual complaints

The Special Rapporteur is mandated to seek and receive information on violence against women, its causes and consequences and to respond effectively to such information.

The Special Rapporteur transmits urgent appeals and allegation letters (communications) to States regarding alleged cases of violence against women which she receives. It should be emphasised that, in accordance with her mandate, the Special Rapporteur is in a position only to process cases of alleged violence or threats of violence directed against women because of their sex/gender. The definition of gender-based violence used by the Special Rapporteur is taken from the United Nations Declaration on the Elimination of Violence against Women, adopted by the General Assembly in its resolution 48/104 on December 1993.

Who can report:

- Any individual, group, non-governmental organisation, intergovernmental agency or Government with reliable knowledge of situations and cases in areas relating to the mandate of the Special Rapporteur.

When to report:

- If violence against a woman is ongoing or there is a high risk that will occur in the near future, the information should be submitted **immediately**.
- If the violation has ended, information can be submitted at **any time**.
- There is **no** need to exhaust domestic remedies prior to submitting information.

How to report:

- The sources of all information remain confidential.
- Please provide as much as detail as you can gather. The individual complaint form can be used to document cases of violence against women.
- The victim or, if she is unable to, her family has to consent that her full name is included in the communication to the Government. Exceptions apply only in emergencies. Unless the victim specifically requests to have her full name included, only her initials will appear in the publicly available, annual report.
- The full name of the alleged perpetrator is submitted to the Government, but not included in the annual report that is available to the public.
- It would be helpful to receive a summary of the main points of the case. The summary could identify the rights that have been or may be violated. If your government has ratified human rights treaties, you could refer to the specific provisions of the treaties you believe have been violated.
- If your submission is in regard to a law, practice or policy which affects women in general or women in a specific group, explain how other women are affected or describe the group. A consistent pattern in individual cases can be used to demonstrate a general failure to prevent and respond to private abuses.
- If you submit information about violations committed by private individuals or groups (rather than government officials), include any information which might indicate that the government failed to exercise due diligence to prevent, investigate, punish, and ensure compensation for the violations. For example information on:
 - whether or not there is a law which addresses the violation
 - any defects in existing laws such as inadequate remedies or definitions of rights
 - the refusal or failure by authorities to register or investigate your case and other similar cases
 - the failure by the authorities to prosecute your case and other similar cases
 - patterns of gender discrimination in the prosecution or sentencing of cases
 - statistics and other data concerning the prevalence of the type of violation described in the submission.

- Please bring to the attention of the Special Rapporteur any information which becomes available after you have submitted information about a case. For example, if your human rights concern has been adequately addressed or a final outcome has been determined in an investigation or trial, or an action which was planned or threatened has been carried out.

What the Special Rapporteur will do with information received:

- If the government violated its human rights obligations the Special Rapporteur will send a confidential letter of allegation or an urgent appeal (in cases involving ongoing violations) with the relevant information to the Government.
- The Special Rapporteur will ask for clarification of the issue, demand adherence to applicable human rights standards and call for remedial action.
- All letters of allegation and urgent appeals are published in an annual report that is made available to the public at the beginning of the following year.
Reports available at: <http://www.ohchr.org/english/bodies/chr/special/index.htm>

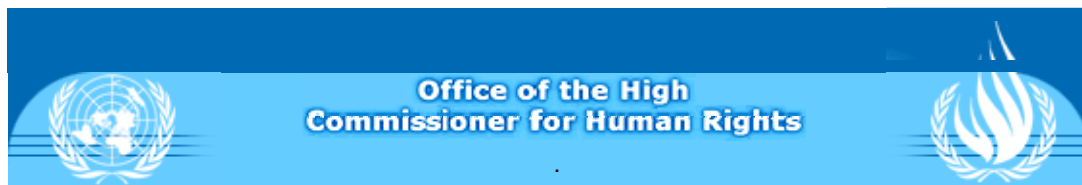
Information should be transmitted in written form, by e-mail, fax or mail:

E-mail: urgent-action@ohchr.org

Fax: +41 22 917 9006

Mail: Special Rapporteur on Violence against Women
c/o Office of the High Commissioner for Human Rights
United Nations at Geneva
8-14 Ave de la Paix
1211 Geneva 10, Switzerland

4.2 - CONFIDENTIAL VIOLENCE AGAINST WOMEN INFORMATION FORM



1. PETITIONER :

(This information, if taken up by the Special Rapporteur, will remain confidential).

(a) Name of person/organization:

(b) Relationship to victim(s)

(c) Address:

(d) Fax/tel/e-mail, web-site:

(e) Date petition sent:

(f) Other:

2. ALLEGED INCIDENT

(i) information about the victim(s):

(a) Name:

(b) Sex: (c) Date of Birth or Age:

(e) Occupation:

(f) Ethnic / religious / social background, if relevant:

(g) Address:

(h) Other relevant information: (such as passport, identity card number):
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(i) Has the victim(s) given you her consent to send this communication on her behalf?
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(j) Has the victim(s) been informed that, if the Special Rapporteur decides to take action on her behalf, a letter concerning what happened to her will be sent to the authorities?

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.....

(k) Is the victim(s) aware that, if this communication is taken up, a summary of what happened to her will appear in a public report of the Special Rapporteur?

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.....

(l) Would the victim(s) prefer that her full name or merely her initials appear in the public report of the Special Rapporteur?

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(Please note that the full names of victims appear in communications with governments unless it is indicated that exposing the victims' names to the government would place the victims at risk of further harm. In the public report, the names of victims under the age of 18 and victims of sexual violence will not be disclosed, but initials will be used)

(ii) information regarding the incident:

(a) Detailed description of human rights violation:

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(b) Date: (c) Time:

(d) Location/country:

(e) Number of assailants:

(f) Are the assailant(s) known or related to the victim? If so, how?

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(g) Name or nickname of assailant(s) (if unknown, description, scars or body marks such as tattoos, clothes/uniform worn, title/status, vehicle used):

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(h) Does the victim believe she was specifically targeted because of her sex?

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If yes, why?

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(i) Has the incident been reported to the relevant State authorities?

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If so, which authorities?

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When?.....

(j) Have the authorities taken any action after the incident?

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.....

If so, which authorities?

What action?.....

When?

(l) If the violation was committed by private individuals or groups (rather than government officials), include any information which might indicate that the Government failed to exercise due diligence to prevent, investigate, punish, and ensure compensation for the violations.

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(m) Has the victim seen a doctor after the incident took place? Are there any medical certificates/notes relating to the incident concerned?

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(iii) Laws or policies which are or are likely to cause or contribute to violence against women

(a) If your submission concerns a law or policy, please summarize it and the effects of its implementation on women's human rights. Provide concrete examples, when available.

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Please inform the Special Rapporteur of any further information which becomes available after you have submitted this form, including if your concern has been adequately addressed, or a final outcome has been determined in an investigation or trial, or an action which was planned or threatened has been carried out.

Please return to the Special Rapporteur on Violence Against Women, Office of the High Commissioner for Human Rights, OHCHR-UNOG, 1211 Geneva 10, Switzerland
(fax: 00 41 22 917 9006, e-mail: urgent-action@ohchr.org)

ANNEX 5: CONSULTATION PROGRAMME AND PARTICIPANT LIST

5.1 - CONSULTATION PROGRAMME

Day 1 - Monday 11 September 2006

9:00-10:00 - Welcome and Introductions		
OBJECTIVES	SPEAKERS	ACTIVITY
For organisers to welcome participants to the Consultation;	Enkhjargal Davaasuren, National Centre Against Violence, Mongolia: Welcome	Short presentations followed by introductions
To introduce participants;	Lynnsay Francis, Regional Coordinator of APWLD: Introduction to UNSRVAW Mandate: A Mandate for the Women's Movement	
To introduce APWLD and the close working relationship with the UNSRVAW mandate;	Manisha Gupte, Convenor of Violence Against Women Task Force of APWLD and Convenor of MASUM, India: Introduction to the Objectives of the Consultation	
To outline the objectives of the meeting.		
10:30-12:00 - Session 1: Inter-linkages and Connections - Moderator: Manisha Gupte		
OBJECTIVES	SPEAKERS	ACTIVITY
To understand the framework of the UNSRVAW's next report on 'Culture and violence against women';	Manisha Gupte, Masum, India: Defining the Concepts	Presentations followed by roundtable discussion
To identify the inter-linkages between the focuses of the UNSRVAW and the UNSRFRB;	Yakin Ertürk, UN Special Rapporteur on Violence Against Women: Introducing the Framework of 2007 Thematic Report	
To identify contemporary challenges relating to Culture and violence against women.		

13:00-15:00 – Session 2: Identifying the Issues: Culture and Violence Against Women in Asia Pacific - Moderator: Shyamala Gomez		
OBJECTIVES	SPEAKERS	ACTIVITY
<p>To identify how discourses of culture which ignore or justify discrimination against women gain dominance;</p> <p>To examine the challenges to the human rights discourse on culture and violence against women;</p> <p>To have a deeper understanding of emerging and persistent violations and abuses of women’s human rights (particularly violence against women) linked to harmful cultural paradigms in the Asia Pacific region;</p> <p>To identify the role of both state and non-state actors.</p>	<p>Noelene Nabilouvu, Women’s Action for Change, Fiji: Gender and Sexuality, Culture and Religion: Intersectional Violence against Women by Family, Community and Faith-based Organisations</p> <p>Ruth Sidchogan-Batani, Gender Coordinator, Tebtebba Philippines: Indigenous Women, Culture and Violence Against Women</p> <p>Roshmi Goswami, India: Militarism and Armed Conflict</p>	<p>Trigger presentations followed by roundtable discussion</p>
15:30-17:00 – Session 3: Culture and the Human Rights Discourse - Moderator: Shyamala Gomez		
OBJECTIVES	SPEAKERS	ACTIVITY
<p>To discuss the concepts and the relationships between culture, religion, gender and the human rights framework.</p>	<p>Madhu Mehra, Partners for Law in Development, India: Culture and the Human Rights Framework</p> <p>Farida Shaheed, Shrikat Gah, Pakistan: Means of Power and the Power of Meaning</p>	

17:00-18:30 – Synthesis and Responses from the UN Special Rapporteurs		
OBJECTIVES	SPEAKERS	ACTIVITY
<p>To synthesise the critical and emerging issues relating to violence against women and culture in Asia Pacific;</p> <p>To provide the UNSRs with an opportunity to comment on the discussions during the day.</p>	<p>Kamala Chandrakirana, Komnas Perempuan, National Commission on Violence Against Women, Indonesia: Synthesis</p> <p>Asma Jahangir, UN Special Rapporteur on Freedom of Religion or Belief [via teleconference]</p> <p>Yakin Ertürk, UN Special Rapporteur on Violence Against Women</p>	<p>Presentation of key points from previous session followed by brief comments from UNSRs</p>

Day 2 - Tuesday 12 September 2006

9:00-10:15 - Break-out session: Group Work on our Strategies		
OBJECTIVES	SPEAKERS	ACTIVITY
<p>To use experiences to suggest 5 strategies to engage with, address, challenge or confront cultural practices and beliefs related to violence against women in the region.</p>	<p>Brief introduction to objectives and guidelines for group work.</p> <p>Group will have a facilitator/rapporteur appointed</p>	<p>Small group work</p>

10:45-12:15 - Reporting Back - Moderator: Lisa Pusey		
OBJECTIVES	SPEAKERS	ACTIVITY
<p>To outline effective strategies elaborated in small group discussions</p>	<p>Rapporteurs followed by discussion</p>	<p>Rapporteur presentations followed by roundtable discussion</p>

**13:15-15:30 – Session 4: Protecting Rights, Preventing Abuses: Strategies for Addressing Culture and Violence Against Women
- Moderator: Shahnaz Iqbal**

OBJECTIVES	SPEAKERS	ACTIVITY
<p>To outline and assess existing initiatives by NGOs for addressing, challenging and confronting harmful cultural paradigms through engaging with international, state and non-state actors;</p> <p>To identify further effective strategies and mechanisms for addressing harmful cultural paradigms.</p>	<p>Faustina Pereira, Human Rights Lawyer, Ain O' Salish Kendra, Bangladesh: Addressing Harmful Cultural Practices through the Law</p> <p>Madhu Mehra, Partners for Law in Development, India: Strategies Addressing Fundamentalisms and Identity Politics</p> <p>Virisila Buadroma, Fiji Women's Rights Movement, Fiji: Strategies Addressing Culture and violence against women in Pacific</p> <p>Sapana Pradan Malla, Forum on Women, Law and Development, Nepal: Strategies to Address Culture and Violence Against Women</p>	<p>Trigger presentations and roundtable discussion</p>

16:00-18:00 – Session 5: Recommendations and Strategies - Moderator: Eleanor Conda

OBJECTIVES	SPEAKERS	ACTIVITY
<p>To identify and share recommendations and strategies for addressing culture and violence against women;</p> <p>To synthesise the outcomes of the Consultation;</p> <p>To outline the follow-up actions after the regional consultation.</p>	<p>Group work and facilitated discussions</p>	<p>Group work and facilitated discussions</p>

18:00-18:30 - Closing

SPEAKERS

Lynnsay Francis, Regional Coordinator of APWLD

Shyamala Gomez, Co-Convenor of Violence Against
Women Task Force of APWLD

Closing words from Yakin Ertürk

5.2 - PARTICIPANT LIST

Name	Organisation	Country
Yakin Ertürk	UN Special Rapporteur on Violence Against Women;	Turkey
Soraya Sobhrang	Afghanistan Independent Human Rights Commission	Afghanistan
Bu Wei	Institute of Journalism and Communication, Chinese Academy of Social Sciences (CASS); Director of Research Centre for Media and Children of Journalism Institute of CASS	P.R.China
Feng Yuan	Women's News, Beijing, China	P.R.China
Faustina Pereira	Advocate, Supreme Court of Bangladesh	Bangladesh
Noelene Frances Nabulivou	Women's Action for Change	Fiji
Virisila Buadromo	Fiji Women's Rights Movement	Fiji
Madhu Mehra	Partners in Law and Development	India
Roshmi Goswami	Ford Foundation	India
Yamini	Centre for Budget and Governance Accountability	India
Kamala Chandrakirana	National Commission on Violence Against Women (Komnas Perempuan)	Indonesia
Rosa Gharachorloo	Women's human rights advocate; Centre of Human Rights, Peace and Democraci of Shahid Beheshti University; Central Iranian Bar Association of Tehran	Iran
Michiko Nakahara	Violence Against Women in War Network (VAWW-NET) Japan	Japan
Alma	The Women League of Creative Initiative (WLCI)	Kazakhstan
Shin YeongOk	Korea Women's Hot Line	Korea
Sapana Pradhan Malla	Forum for Women, Law and Development (FWLD); International Women's Rights Action Watch Asia Pacific (IWRAP-AP)	Nepal
Farida Shaheed	Shirkat Gah: Women's Resource Centre	Pakistan

Eleanor C. Conda	Human rights lawyer	Philippines
Ruth Sidchogan-Batani	Tebtebba (Indigenous Peoples' International Centre for Policy Research & Education)	Philippines
Marina Pisklakova-Parker	National Centre for the Prevention of Violence ANNA	Russia
Wanee Bangprapha Thitiprasert	Peace and Culture Foundation	Thailand

Violence Against Women Task Force Members

Sadaf Saaz Siddiqi	Narripokkho	Bangladesh
Nang Lao Liang Won (Tay Tay)	Women's League of Burma (WLB); Shan Women's Action Network (SWAN)	Burma
Manisha Gupte	Mahila Sarvangeen Utkarsh Mandal (MASUM)	India
Yvegeniya Kozyreva	Feminist League	Kazakhstan
Enkhjargal Davaasuren	National Centre Against Violence (NCAV)	Mongolia
Moogii	(translator of Enkhjargal), NCAV	Mongolia
Shahnaz Iqbal	Shrikat Gah: Women's Resource Centre	Pakistan
Shyamala Gomez	National Human Rights Institute	Sri Lanka

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