CONCEPT NOTE

REGIONAL CONSULTATION ON THE ROLE OF KEY STAKEHOLDERS IN ENDING IMPUNITY FOR VIOLENCE AGAINST WOMEN AND GIRLS IN ASIA

‘There is one universal truth, applicable to all countries, cultures and communities: violence against women is never acceptable, never excusable, and never tolerable.’
United Nations Secretary-General, Ban Ki-Moon (2008)

Background and overall context

Violence against women and girls (VAWG) is a grave violation of human rights, affecting around one in three women in her lifetime1. Its impact ranges from immediate to long-term multiple physical, sexual and mental consequences for women and girls, including death. It negatively affects women’s general well-being and prevents women from fully participating in society. Violence not only has negative consequences for women but also their families, the community and society at large. It has tremendous costs, from greater health care and legal expenses and losses in productivity, impacting national budgets and overall development.

Cutting across all distinctions of geography, class or ethnicity, VAWG is pervasive throughout the world and firmly grounded in the subordinated status of women and girls and the pervasive gender-biased mind-sets, norms and practices that contribute to such violations and allow them to continue unchallenged.

A dominant reality in the Asia region is the high incidence of men perpetrating VAWG, though with huge variations across sites: a 2013 study that interviewed more than 10,000 men across nine sites in six countries in the region found that overall, around half admitted to using physical or sexual violence against a partner, ranging from 25-80% across sites. On a more positive note, the region has also seen extensive progress in recent years to strengthen the legislative frameworks around VAWG. An internal mapping found that 23 out of 39 countries in Asia and the Pacific now have laws on VAWG or domestic violence (DV), though critical legal gaps still remain, for instance, only 10 countries in the region specifically criminalize marital rape2. However, as in other regions, progress on implementing existing legislation and commitments and to strengthen overall accountability has been far too slow. Key challenges include inadequate resources for implementing existing laws and policies, capacity gaps amongst sectoral staff as in the judiciary and law enforcement agencies (including in the criminal justice, health and education systems) and flawed coordination and referral mechanisms in regard to human rights and VAWG issues, as well as limited availability of regulations and protocols establishing lines of ministerial responsibility.

International law including the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) clearly stipulates that States have an obligation to exercise due diligence to prevent and respond to VAW. Yet weak implementation of legal frameworks to VAW throughout the region results in inadequate protection, redress and justice for women facing violence.

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1 World Health Organisation Report on global and regional estimates of violence against women, 2013
http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf

2 Internal UN Women mapping - unpublished
Role of key stakeholders in ending impunity for violence against women and girls

There is increasing evidence that gender stereotyping in judicial processes impede women’s access to justice. By contrast, judicial creativity and gender-responsive interpretation of national laws, within the context of international human rights law and norms, can contribute substantially to enhancing women’s access to justice and ending impunity. This demands a rigorous approach to the development and delivery of jurisprudence of equality laws and services. In particular, a renewed policy focus on VAWG and strategic policy advocacy and guidance for the implementation of laws is required to better equip judges, prosecutors, lawyers, Ombudspersons, National Human Rights Institutions (NHRIs) and other key partners including civil society organisations working on VAWG with the required skills and tools for ending impunity of crimes against women.

A factor influencing the fair determination of women’s rights in many countries in the region, including many Commonwealth common law countries, is the combined mixed legal system including, *inter alia*, constitutional/international human rights protection, the application of the common law, statutory legislation, *Sharia* and customary law. By virtue of belonging to the common law tradition, the judiciary of common law countries have particularly contributed to the determination and interpretation of the rights of women to live free from violence. UN Women’s research on plural legal systems in South East Asia supported by the Government of Canada confirms the role formal judicial systems and informal plural system actors play in women’s access to justice.

In the Commonwealth, the enactment and implementation of specific legislation addressing violence against women has long been perceived as a policy solution. Through judicial creativity and gender responsive interpretation of national laws within the context of international human rights law and norms, judges and magistrates have been found to contribute substantially to the protection of women and other vulnerable groups against further harm. The Commonwealth’s mandate is to effectively address violence against women and girls in the Commonwealth and strengthen the jurisprudence of equality on violence against women in accordance with the Commonwealth Charter, Commonwealth Plan of Action for Gender Equality 2005-2015 (PoA), Tenth Women’s Affairs Ministerial Meeting, 2013 Commonwealth Heads of Government Meeting, and 2014 Commonwealth Law Ministers Meeting’s outcomes on gender equality.

The importance of the office of the Ombudsperson and NHRIs is significant in strengthening the administration of justice. While the Ombudsman was neither a tool of legal accountability nor of political accountability, the Officer serves as a mechanism for accountability which allows both the redressing of individual experiences of injustice as well as addressing systemic systems and structures to ensure a more effective and equitable access to state actions and resources. The presence and functioning of the office of the Ombudsperson is expected to present opportunities for the advancement of both awareness and implementation of human rights. Ombudsperson offices do not only respond to individual complaints but have the power to undertake investigations on their own motion. The Ombudsman can pursue matters where it appears that there are underlying patterns and common causes for mal-administration. In this way, such a broad and systemic approach can serve as a resource for governmental institutions in identifying and preventing recurring unfairness.

NHRIs are ideally placed to address violence against women and girls. Their core functions contribute substantially to preventing and providing redress for gender based violence. NHRIs functions include: human rights education, receiving and resolving complaints, making recommendations to policy makers and reporting to the international human rights system on identified gaps and challenges in state fulfilment of international obligations relevant to VAW, for example provisions in CEDAW and the Convention on Torture (CAT). During the most recent International Coordinating Committee of National Human Rights Institution’s biennial conference in Amman, Jordan, NHRIs adopted the Amman Declaration and Programme of Action, committing NHRIs to use their mandate and powers under the Paris Principles to eliminate VAWG3.

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In response to challenges identified in regard to the formation of jurisprudence of equality, and given the urgency to enhance the implementation and ensure effective enforcement of State commitments, the Commonwealth Secretariat and UN Women Asia Pacific Office with support from Department of Foreign Affairs Trade and Development Canada for south East Asian countries have agreed to convene a regional meeting to address the strengthening of jurisprudence of equality on violence against women and ending impunity. This regional meeting will focus on the role of key stakeholders within the criminal justice system (CJS), including judges, prosecutors, lawyers, Ombudspersons and National Human Rights Institutions working on cases of VAWG. The meeting will enable the Commonwealth Secretariat and UN Women to bring together important stakeholders determining women’s rights in situations of violence, in particular sexual violence, and share information on strategic policy advocacy including case law research, reports from relevant expert group meeting and judicial fora.

UN Women’s and the Commonwealth’s work to end impunity for VAWG

Ensuring a life free of violence for every woman and girl is a key area of work for UN Women as identified in the UN Women 2014-2017 Strategic Plan. UN Women works with governmental and non-governmental actors to strengthen state accountability and community actions to end impunity, to better protect victims/survivors and ultimately to build a culture of zero tolerance. Accountability of the state in its ability to ensure that public officials are answerable for their behaviour, they are able to protect women and girls from violence and when a violation takes place, able to arrest and prosecute perpetrators is important part of state’s social contract with its citizens.

UN Women Regional Office for Asia and the Pacific has done extensive work to increase women’s and girls’ access to justice and ensure the realization of their human rights. In particular, the CEDAW South-East Asia regional programme has a strong focus on increasing awareness among formal and informal justice system of CEDAW commitments and increasing access to justice with the judiciary. With the support of the Government of Canada through the Department of Foreign Affairs, Trade and Development (DFATD), UN Women has been working with the justice sector in eight countries in enhancing women’s access to justice through awareness raising and capacity development of government and civil society organizations and improve understanding of the CEDAW Convention among judges and court personnel, and promote its use in courts. The Programme also works to enhance regional exchange and learning among judiciaries in Southeast Asia.

The Commonwealth convened five regional colloquia on gender, culture and the law to heighten awareness on VAWG and adoption/implementation of CEDAW, and a substantive publication on women’s rights in the context of culture and CEDAW was produced. To strengthen jurisprudence of equality on VAW, judicial leadership and women’s access to justice, the Commonwealth held series of Judicial Panels and Forums and produced an information brief on VAW, and judicial resource manual for the East and Southern African jurisdictions. For the first time in the history of the Commonwealth Law Ministers’ Meeting, the Jurisprudence of Equality regarding VAW was included in the April 2014 agenda. In October 2013, The Commonwealth convened a Roundtable on Early and Forced marriage, bringing together senior officials from eleven Commonwealth countries to explore best practice in tackling this VAWG issue. The report of the Roundtable informed the Office of the High Commission for Human Rights Report on Preventing and Eliminating Child, Early and Forced Marriage presented at the United Nations Human Rights Council panel on Eliminating Child, Early and Forced Marriage in June 2014.

Objectives and expected outcomes of the regional consultation

Building on previous work and results, the Commonwealth Secretariat and the UN Women Regional Office for Asia and the Pacific have agreed to hold and co-fund a regional consultation on the role of key stakeholders in ending impunity for VAWG in Asia. The regional consultation will comprise presentations

and focused discussions that will lead into working groups for the identification of key policy and advocacy strategies and concrete priority actions for strengthening jurisprudence of equality on VAWG.

The objectives of the regional consultation are to:

1. Locate VAWG in the context of international, regional and national human rights law, normative frameworks such as CEDAW and redress mechanisms;
2. Facilitate cross-country learning, dialogue and networking among key stakeholders addressing women’s rights and VAWG, including sexual violence, and disseminate new and relevant evidence and information, including case law research, reports from relevant expert group meetings and judicial fora, and sexual violence attrition study findings;
3. Highlight the need for enhanced policy and advocacy focus to VAWG and identify common regional issues, priorities and strategies in this area;
4. Enable the judiciary, investigators, prosecutors, lawyers, Ombudsperson and NHRIs to share views and good practices with regard to ending impunity for VAWG in the region;
5. Develop a regional strategy with multi-stakeholder cooperation to improve access to justice, for example through comprehensive response protocols; and
6. Outline a framework for a Judicial Resource Book / Judicial Bench-book on strengthening jurisprudence on violence against women which will assist the judiciary and other relevant stakeholders in advancing jurisprudence on violence against women in the region.

The expected outcomes of the regional consultation include:

1. Increased knowledge among participants on the causes and consequences of impunity for cases of VAWG, especially sexual violence, and improved capacity for how attrition within the criminal justice system can be reduced;
2. Sharing of judicial and quasi-judicial experiences of countries within the region, and the role of the judiciary with a view to contributing to strengthened jurisprudence of equality on VAWG;
3. Enhanced understanding on how to strengthen collaboration and coordination between key stakeholders to support the effective administration of justice, including the role of the Ombudsperson and NHRIs in ending impunity for VAWG, specifically developing a regional action plan through a consensus of participants to strengthen functional cooperation;
4. Identification of a common vision and set of recommendations that will assist key stakeholders within the criminal justice system, including investigators, prosecutors, lawyers, judges and Ombudsperson, to contribute more effectively in addressing the identified gaps and challenges in the delivery of justice in cases of VAWG; and
5. Inputs provided for the development of a Judicial Resource Guide and Judicial Bench-book for strengthening jurisprudence on addressing VAW for the Asia region.

Dates and venue for the consultation

The regional consultation will take place at the Centara Grand and Bangkok Convention Centre in Bangkok, Thailand, from 25-27 November 2014.