

Asia Pacific NGO Consultation with the UN Special Rapporteur on Violence against Women, Its Causes and Consequences, Rashida Manjoo
on
‘My Body, My Life, My Rights: Addressing Violations of Women’s Sexual and Reproductive Rights’

7-8 December 2009
Bangkok, Thailand

CONCEPT NOTE

Background to the Asia-Pacific Regional Consultation with the UN Special Rapporteur on VAW

The Asia Pacific Forum on Women, Law and Development (APWLD) has been facilitating consultations with the UN Special Rapporteur on violence against women, its causes and consequences (SRVAW) since 1995, following the inception of the SRVAW mandate and appointment of the first rapporteur in 1994.

These annual consultations provide an important forum for women from the region to discuss and address critical emerging issues relating to multiple forms of violence faced by women, and contribute to the SRVAW mandate by integrating the regional specificities of violence against women in the Asia Pacific into its general framework. They are also an opportunity to provide critical information to the SRVAW and other Special Rapporteurs whose mandates coincide with the chosen theme of the consultation for inclusion in their reports¹ and to strengthen the capacity of women’s organizations to engage with the UN Special Procedures mechanism in order to develop effective strategies to combat violence against women in the region and their respective countries.

In affirmation of women’s sexual and reproductive rights, the theme of the 2009 Asia Pacific NGO Consultation will address the interlinkages between violence against women and sexual and reproductive rights in this region. The Consultation will be attended by the United Nations Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo.

Objectives of the Consultation

The objectives of the 2009 Consultation are:

- ✓ To identify multiple forms of violence, discrimination, inequalities and injustices faced by women in relation to women’s sexual and reproductive rights, including within national legislation, policies and customary laws and practices in the Asia Pacific region;
- ✓ To identify the intersections of women’s sexual rights and reproductive rights and structural causes of violence against women within the context of patriarchal systems as manifested in fundamentalism, militarisation and globalisation;
- ✓ To articulate and reaffirm sexual rights and reproductive rights as distinct and fundamental human rights, even if sometimes interconnected;
- ✓ To develop recommendations and strategic action plans to ensure women’s sexual rights and reproductive rights are protected, promoted and fulfilled at the national, regional and international levels;
- ✓ To provide a forum to share experiences and strengthen collaboration between groups working on similar issues in the region.

The Consultation will seek to achieve better conceptual clarity on sexual rights, reproductive rights and violence against women, as well to identify ‘action guidelines’ for change and redress which can assist participants in their advocacy efforts and strengthen women’s work and activism on sexual and reproductive rights. The expected outcomes of the Consultation are in particular:

- ✓ To create holistic and positive affirmation of sexual and reproductive rights outside the confines imposed by patriarchy;
- ✓ To identify existing mechanisms for the elimination of all forms of violence and discrimination in relation to women’s sexual and reproductive rights;
- ✓ To develop strategies to advance women’s sexual and reproductive rights, as distinctive but interconnected rights at community, local, national, regional and international levels;
- ✓ To develop concrete recommendations for the SRVAW to mainstream sexual and reproductive rights in international human rights mechanisms, as well in national laws, policies and practices.

¹ In 2004, APWLD held a regional consultation on “Interlinkages between Violence Against Women and Women’s Right to Adequate Housing,” in collaboration with the UN Special Rapporteur on Adequate Housing, Mr. Miloon Kothari. In 2008, with the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. S. James Anaya, on ‘Violence against Indigenous Women in Asia Pacific.’

Context of the forthcoming Consultation with the SRVAW

Issues around sexual and reproductive rights have traditionally been discussed from a reproductive health perspective, thus failing to separate sexuality from reproduction and to address women's autonomy to take decisions on issues concerning their own bodies and sexuality. It is an area of critical concern for all women given the fundamental relationship between control of women's body and patriarchal power, and violence as a means of enforcing this control. In the past few years, it has been confirmed that sexual and reproductive rights are human rights, intrinsically related to other basic human rights, such as right to life, expression, privacy, health, education, and work; these rights are fundamental to individuals, couples and families, as well as to the social and economic development of communities and nations.²

Interlinkage of violence against women, sexual and reproductive rights

Sexual Rights

The realization of sexual rights³ is an integral part of women's full enjoyment of all rights as well of gender equality, development and social justice. Sexual rights has always been, however, inextricably linked to and constructed by social and religious mores and patriarchal values which reinforce the subordination of women in the forms of violence against women, coercion and deprivation of legal and other protections to women.

Sexual rights have long been relegated to the 'private realm,' and associated with male ownership over women's bodies, whether it be by fathers, brothers, husbands or even a community or society at large. To maintain this unequal power relationship between men and women, marriage and family are used as institutions and practices historically perpetuating the logic of the appropriation of women's bodies, by legitimizing rape and other forms of violence by husbands and intimate partners. Furthermore, this has allowed sexual coercion and violence against women to occur on a mass scale, in multiple forms, and in a myriad of contexts – always with virtual impunity. Women's lack of sexual rights reveals itself in both active acts of violation as well as passive acts such as the systematic denial of protection, assistance and redress in cases of violence against them.

The most serious violations of women's sexual rights are related to this implied male ownership of women's bodies or sexuality, and can include violence with either explicit or covert sexual undertones, such as in the case of marital rape, honour crimes, and corrective rapes for LGBTIs. Moreover, it is not just the act of sexual abuse that needs to be taken into consideration, but also the other repercussions and side effects of sexual abuse.. Discrimination and stigma pose as much of a serious threat to sexual rights for many vulnerable and marginalized group, including sexual minorities (LGBTIs)⁴, migrant workers, sex workers, indigenous women, women with disabilities,⁵ non-citizens (refugees and internally displaced people), single mothers, unmarried women and people living with HIV/AIDS. Many cases have been reported, for example, that once women find they are HIV/AIDS infected, they experience physical, psychological or verbal abuse from their husbands, family and community members and in many are forced to get divorced without any right to their property or inheritance.⁶ This applies even when they are infected through their husbands or intimate partners.⁷

Harmful but culturally tolerated practices such as dowry or bride price to the women's family reinforce the concept that a man is purchasing his wife, and allow men to exercise complete power over her. Forced/early marriage hinders girls' abilities to decide on their sexuality (including sexual orientation), to be sexually active or not, as well to enjoy other fundamental human rights such as their right to education, work and choose partners. It is also manifested in legislation and practices which effectively declare women's bodies and sexual identity as the legitimate property of men, such non-criminalisation or legalization of marital rape⁸, definitions and the criminalization of adultery, honour crimes, requirements of virginity and FGM for marriage-ability and even dress codes, which oppose women's right to sexual freedom and pleasure by increased moral policing and regulation of sexuality. The practice among many communities to force the victim to marry her rapists or 'bride kidnapper' in

² "Sexual and reproductive health are integral elements of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." Commission on Human Rights resolution 2003/28, preamble and para. 6. See also the Conclusion of the Keynote statement by UNSRVAW, Yakin Ertürk, "Changing Attitudes to Combat Violence against Women," Council of Europe Campaign to Combat Violence against Women, Including Domestic Violence, Madrid, 27 November 2006.

³ Although the concept of sexual rights is evolving, it can include both rights to be free of violence and coercion around sexuality and also the rights to explore and pursue pleasures, desires and fulfillment. Pinar Ilkcaracan and Susie Jolly, Gender and Sexuality: Overview Report, Institute of Development Studies (2007), at p. 1. Also see the World Health Organisation (WHO) working definition of sexual rights (2004).

⁴ Yogyakarta Principles on the Application of International Law in Relation to Issues of Sexual Orientation and Gender Identity"

⁵ Women with disabilities may be particularly at risk due to stigmas associated with body disability and gender, and are more likely to suffer from discrimination than able-bodied women or men with disabilities.

⁶ Failure to ensure equal property rights upon divorce discourages women from leaving violent marriages, as women may be forced to choose between violence at home and poverty in the street, in either situation women's human rights, particularly her access to treatment/health care being significantly violated.

⁷ Compounded with the social norms of women based on patriarchal gender hierarchies, to provide sex as their marital duty, invisibly force women to have sex with their husbands, in many cases without using protection as a sign of trust and faithfulness to their partners.

UNSRVAW report, E/CN.4/2005/72, paras 29-31. UNAIDS reports in its fact sheet on "Women and AIDS: A Growing Challenge" that for instance, in Thailand, 75 per cent of women living with HIV were likely to have been infected by their husbands.

⁸ Annual report of the SRVAW, E/CN.4/1995/42, paras 58-62.

order to save the family's honour are stark examples showing the patriarchal foundations lying behind the control of female sexuality.

Many cases of the violation of sexual rights have also been reported in the workplace in the form of sexual harassment, and particularly the situation of female migrant workers is of great concern. Importantly, the social and political construction of male and female sexualities based on unequal power relationship creates the market for trafficking as well. Globalization generally has not produced jobs that contribute to the long-term social advancement of women and often produced new forms of exploitation of women and of violence. Women in most cases find jobs in cheap and unregulated labour markets without monitoring and protection mechanisms, leaving them exposed to new forms of sexual and even reproductive exploitation or abuse (e.g. hiring of women's wombs).

Armed conflict and war involve an overall militarisation of the population, resulting in generalised violence with women themselves becoming a battlefield. It has been demonstrated that violence against women, particularly in a form of sexual violence such as rape has been deliberately used as an integral part of military and war strategy to humiliate, demoralize or dispossess the 'other' side in many countries in the region, including Burma, India, Indonesia, Nepal, Timor-Leste, Pakistan, Sri Lanka and Philippines. War also increases population displacements, a factor that places women at higher risk of sexual violence, HIV/AIDS and other sexually transmitted infections. Importantly, access to medical care/services for survivors of violence is greatly reduced and furthermore, they are left unrecognized and without protection and redress, including in post conflict and transitional justice processes.

Reproductive Rights

Reproductive rights include the right to decide when and if to get pregnant, number and spacing of children, the right to voluntarily marry and establish family among others. It also includes the right to attain the highest standard of sexual and reproductive health.⁹ Women's reproductive rights in multiple ways intersect with sexual rights, and are linked to the control over women's sexuality. It thus has to be placed within a comprehensive human development framework, providing women a wide range of enabling conditions, including their access to health care, housing, education, employment, property rights and legal equality in all spheres as well as freedom from physical abuse, harassment, genital mutilation and all forms of violence against women.¹⁰

Attaining the goals of sustainable, equitable development requires that individuals are able to exercise control over their reproductive lives, which includes the right to reproductive security such as freedom from sexual violence and coercion. Forced pregnancy, forced/early marriage and forced sterilization/impregnation (particularly as a tool of genocide) all represent serious breaches of women's reproductive rights,¹¹ deeply intertwined with sexual rights. Particularly, forced/early marriage, predominant in South Asia where over 50 per cent of girls are married by the age of 18 disproportionately affects girls, such as premature pregnancy and sexual relationship without having proper education/information on the issue and their basic rights.

Reproductive rights can be seriously impeded when compounded by lack of adequate health care or lack of access to basic and universal health care services. It is reported¹² that an estimated 74 percent of maternal deaths,¹³ for example, can be averted if all women had access to the interventions for addressing pregnancy and birth complications, in particular emergency obstetric care, including access to safe abortion¹⁴. Women living in poverty and in rural areas and women belonging to ethnic minorities or indigenous populations are among those particularly at risk. Importantly, women's access to contraceptives is controlled by and subjected to the policies of the dominant society, including religious fundamentalist groups and developed countries monopolizing and controlling and sometimes restricting the distribution of contraceptives.

Particularly women experience discrimination and violence in relation to their reproductive rights based on their HIV status, in being pregnant, giving birth/family planning, and medical care, especially with regard to mother-to-child transmission of HIV.¹⁵ The choice of whether or not to have children and information on the means of avoiding transmission of the disease to an unborn child or a newborn infant make women the focus of intense scrutiny. Pregnancy and childcare are areas around which multiple stigmas of family, community and health care

⁹ International Conference on Population and Development (ICPD) Programme of Action, at para 7.3. Also see www.unfpa.org/rights/rights.htm

¹⁰ DAWN

¹¹ Annual report of the SR on Health, E/CN.4/2004/49, para. 25

¹² Wagstaff, A., and Claeson, M., The Millennium Development Goals for Health: rising to the challenges, World Bank, 2004.

¹³ WHO defines maternal death as the death of a woman while pregnant or within 42 days of termination of pregnancy, irrespective of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management but not from accidental or incidental causes.

¹⁴ Securing women's access to safe, legal and affordable abortion and contraception is another way of enhancing women's sexual rights as women's control over their own body integrity has been violated under the family planning which confirming socially acceptable lines of reproduction.

¹⁵ Mother-to-child transmission (MTCT) may take place during pregnancy, childbirth, or while breastfeeding, in which case mothers with HIV are held to be solely responsible for infecting their child, thus constituting another source of gender discrimination for women with the virus, despite in many cases they are infected by their husbands and/or intimate partners.

converge. Worse, HIV-infected pregnant women may be advised or pressured to terminate their pregnancy which in many cases occur in a form of forced sterilization, another fundamental violation of women's reproductive rights.

Empowering Women: Positive affirmations of sexual and reproductive rights

Many barriers to the enjoyment of sexual and reproductive rights may be subtle and indirect, as are some of its links to violence against women. Sexual and reproductive rights should therefore include both the right to freedom and protection from sexual violations and coercion, as well as positive sexual and reproductive rights such as individuals' rights to decide as to their own sexual and private life (self-determination), and related rights including the right to be free from all forms of discrimination, freedom of thought and expression, right to information and access to reproductive health care services. Protection and promotion of sexual and reproductive rights must be accompanied by both legal and social interventions which aim to achieve gender equality in law and in practice.

There is a need, as a first step, for positive affirmations of sexual and reproductive rights. Unless sexuality is deconstructed, reconceived and articulated from a feminist perspective, women's bodies and sexuality will be used as means of subordination and oppression by dominant society, including both men and women. State and customary laws that uphold patriarchal system and privilege, honouring men and controlling women's sexuality and rights should be challenged as well. Exploring and affirming sexual and reproductive rights, including the right to sexual pleasure and fulfillment outside of the heterosexual norm is an essential part of breaking the control of and violence against women.

One-stop-crisis centers, places where violated and abused women and children can get all the services they need in one place, including medical treatments, police services, counseling, forensic tests and shelter services set up by women's organizations in some countries in the region can be a good practice.

International framework for women's sexual and reproductive rights

Several international instruments within the United Nations and special agencies can be used for the advancement of women's human rights, and in particular the protection and promotion of women's sexual and reproductive rights. Specifically, the UN Commission on Human Rights (Human Rights Council since 2006) has recognized the link between violence against women and sexual rights particularly in the Programme of Action of International Conference on Population Development (ICPD) and ICPD+5.

International human rights instruments that include sexual and reproductive rights include, inter alia: Universal Declaration of Human Rights (UNHR); International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Constitution of the World Health Organization; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Declaration on the Elimination of Violence against Women (DVAW); General Recommendation No. 14 of the CEDAW Committee (on female circumcision); General Recommendation No. 19 of CEDAW Committee (on violence against women) and General Recommendation no. 24 of CEDAW Committee (on women and health).

The growing recognition of women's sexual and reproductive rights needs to go beyond the 'health' discourse/approach. There is a need to positively formulate and define 'sexual and reproductive rights.' Such a formulation will contribute to the empowerment of women and combat the root causes of multiple forms of violence and discrimination against women. Furthermore, different international human rights instruments needs to be creatively and seriously read in conjunction with one another, in order to have a broader and holistic approach and understanding such as Convention on the Rights of the Child (CRC), Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Protection of the Rights of All migrant Workers and Members of Their Families (CMW).

Participants

The Consultation will bring together approximately 45 women/human rights activists and health professionals across the Asia Pacific region, including partners, regional and international NGOs and UN agencies.

Organisers

This consultation is organized by the Asia Pacific Forum on Women, Law and Development (APWLD). APWLD is a regional women's network based in Chiang Mai, Thailand which is committed to enabling women to use law as an instrument of social change for equality, justice and development.