

‘Violence against Indigenous Women in Asia Pacific’
An Asia Pacific Regional NGO Consultation with the
UN Special Rapporteur on Violence against Women, Its Causes and
Consequences,
Dr. Yakin Ertürk

and

UN Special Rapporteur on the Situation of Human Rights and Fundamental
Freedoms of Indigenous People,
Prof. S. James Anaya

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CONCEPT NOTE

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

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 (UNSRVAW) since 1995, following the inception of the UNSRVAW 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 issues relating to multiple forms of violence faced by women as well as contribute to the UNSRVAW mandate in integrating the regional specificities of violence against women in the Asia Pacific into its general framework. The Consultations focus on discussions around the selected topic of the UNSRVAW’s forthcoming annual report to the UN Human Rights Council, making them relevant to contemporary issues related to violence against women (VAW) in the Asia Pacific region.

In accordance with the call of the United Nations Permanent Forum on Indigenous Issues at its sixth session¹ to the Special Rapporteur on violence against women to hold regional consultations with indigenous women,, the theme of the 2008 Asia Pacific Consultation will address violence against Indigenous Women in this region. The consultation will be attended by the United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences, Yakin Ertürk, and the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, S. James Anaya.

Objectives of the forthcoming Consultation

The general aims of the regional Consultations have been: (i) to provide critical information to the UNSRVAW and other Special Rapporteurs, whose mandates coincide with the chosen theme of the consultation for inclusion in their reports;² (ii) to enhance the discourse and to discuss strategies for addressing the issues identified; (iii) to create a forum for women to discuss in a focused manner various critical and emerging issues affecting women in the region related to violence against women; and (iv) to strengthen the capacity of women’s organizations to engage with UN Special Rapporteurs

¹ United Nations Permanent Forum on Indigenous Issues, Report on the sixth session (14-15 May 2007) at para. 105 (E/2007/43).

² In 2004, APWLD held a regional consultation on ‘Interlinkages between Violence Against Women and Women’s Right to Women’s Right to Adequate Housing,’ in collaboration with the UN Special Rapporteur on Adequate Housing, Mr. Miloon Kothari. In 2006, APWLD held a regional consultation on ‘Culture and Violence Against Women in Asia Pacific,’ with the UN Special Rapporteur on Freedom of Religion or Belief, Dr. Asma Jahangir.

and other UN experts with the aim of developing effective strategies to combat violence against women in the region and their respective countries.

The specific objectives of the 2008 Consultation are:

- ✓ To identify multiple forms of violence, discrimination, inequalities and injustices faced by indigenous women within and outside their community in the Asia Pacific region;
- ✓ To identify national legislations, policies and customary laws and practices violating the rights of indigenous women;
- ✓ To focus on the socio-economic dimension of rights violations of indigenous women as this aspect is fundamental for their enjoyment of all rights;
- ✓ To establish the inter-linkages between patriarchy and the current prevailing macro-economic and development paradigms in the region;
- ✓ To apply a political economy approach to indigenous women's rights and identify barriers and challenges faced by indigenous women in the context of fundamentalisms, militarization and globalization;

The Consultation will contribute to analyzing the current situation that indigenous women in Asia Pacific are faced with and as well to identifying action guidelines for change and redress to better equip the participants to advocate for their rights. The expected outcomes of the Consultation are in particular:

- ✓ To identify existing mechanisms for indigenous women to seek remedies;
- ✓ To develop strategies to advance the situation of indigenous women at community, local, national, regional and international levels.

While violence against indigenous women will be a focus of the Consultation, this discussion will necessarily be located within a discussion of indigenous women's rights and women's rights more broadly³.

Context of the forthcoming Consultation with the UNSRVAW and the UNSRIP

Violence against Indigenous Women in Asia Pacific

The destruction of indigenous economic, political and socio-cultural systems, the systemic racism and discrimination against indigenous people and the social exclusion as well as the non-recognition of indigenous peoples' individual and collective rights are often rooted in the history of colonisation and in the subsequent nation-building processes by dominant populations. Furthermore, the push of globalisation and the state development policies in recent decades have endangered their traditional life style and their livelihood driving them into further marginalisation and poverty. Disparities indigenous peoples have been enduring are a collective phenomenon with historical and structural causes and therefore require holistic and collective approach to understand the violent situation faced by them.

Indigenous women in the Asia Pacific region number more than 75 million (approximately 50% of the indigenous population in the whole region based on self identification) and their ways of life as well as their livelihood is closely connected with their ancestral land that ensures their economic, political and socio-cultural survival.

Indigenous women have been playing various and essential roles in their indigenous communities, as traditional stewards of the natural environment as well as keepers of the cultural identity and spiritual practices. Degradation of the land, water, natural resources and other natural environment are perceived as a form of violence against indigenous women. Violence against indigenous women, which is perpetrated intersectionally compound the effect of marginalization of indigenous women. Further, the indivisibility of rights ensures that the recognition of collective rights of indigenous peoples is a necessary complement to indigenous women's right to live their lives free from violence. Undoubtedly the past few decades have seen some important developments in international norms, national legislation and state policies on indigenous peoples' rights. However, indigenous women are

³ For further elaboration in the context of the United Nations Declaration on the Rights of Indigenous Peoples.

still facing multiple forms of violence and discrimination against them, actually emerging in new and dangerous forms. The overarching context of patriarchy and indigenous culture, as well as the interconnected forces of neoliberal globalisation, fundamentalisms and militarization perpetuate an environment in which indigenous women's right to live without violence and full enjoyment of their fundamental human rights and freedoms are violated.

Neoliberal-Globalization and violence against indigenous women

The paradigm of economic growth through trade and investment liberalisation, deregulation, and privatisation has resulted in the further impoverishment of indigenous peoples. Structural adjustment programs have been in many contexts a major factor for the exacerbation of poverty and marginalization, making basic social services even more inaccessible for indigenous peoples. Indigenous women are particularly affected by the development aggression, which deprives them of agricultural subsistence and other traditional ways of life as well depletes non-renewable natural resources and the ecological health of their territories. Each of these effects entails forms of violence against indigenous women, specifically damaging indigenous women's health. For instance, due to the mining projects which result in the environmental degradation of their territories and contamination of water resource, indigenous women and their communities do not enjoy their right to safe, clean and affordable water and suffer from different health problems. In many cases, modern health care services are beyond the reach of indigenous women due to unaccessibility and unaffordability. Development projects also deprive indigenous women of their agricultural land and natural resources resulting in loss of livelihoods and their basic needs such as food and water.

Furthermore, to generate foreign exchange to pay for foreign debts, governments have often relied on massive extraction of natural resources for export. The most devastating impacts of the so-called development projects are extractive industries, monocrop agricultural plantations and agribusiness ventures, national parks and protected areas, resulting in the destruction or loss of ancestral territories and resources, and further impoverishment. Affected by these "projects", indigenous peoples are consistently subject to forced migration and/or displacement from their homes and land. Indigenous women who migrate away from their lands, either it by their own choices or by forced situation, are particularly vulnerable to discrimination and violence in many parts of the world through the threefold discrimination: being women, indigenous as well as migrants. Uninformed and uneducated indigenous migrant women are more likely end up in low paid and exploitative jobs in unregulated sectors of the receiving countries. Increased unemployment and loss of livelihoods within indigenous community associated with neoliberal policies raises the tension and violence within families as well.

Militarisation, armed conflict and violence against indigenous women

Decades-long civil conflicts, military regime, insurgency movements, political killings, and other abuses committed in the name of national security, either in the form of struggle against terrorism or secessionism, have taken deadly toll in indigenous communities. For instances, many of indigenous peoples in the region have been exposed to wanton human rights violations in the form of extrajudicial killings, massacres, torture, sexual violence and denial of full citizenship. This is because of the exercise of their basic rights such as their opposition to mining operations and other mega projects that threaten indigenous communities.⁴ In the name of combating insurgencies or terrorists, people's lands and communities are attacked and activists defending their rights are criminalised, prosecuted, incarcerated or simply 'eliminated.'

State security and police forces, in the name of national security considerations, actively suppress dissent on the operations of plundering transnational corporations by taking control of people's lands, forests, water, fisheries, minerals and all other natural resources in indigenous peoples' land and by exercising undue force against communities. The US-led global war on terror puts pressure on and provides legitimacy to the governments to squash local protests, to increase militarization and to enact national laws on "national security" or against terrorism, to cast indigenous peoples, who are fighting for self-determination and control over their natural resources, as terrorists. Furthermore, escalating costs for national security are used to justify the cut back on social services. The poor,

⁴ "General considerations on the situation of human rights and fundamental freedoms of indigenous peoples in Asia" presented by the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, 2007. page 14-15. (E/C.19/2007/CRP.11).

women, indigenous people and all other marginalized sections bear the worst brunt of these budgetary cuts for essential services.

Worsening armed conflict and militarization concentrated on indigenous lands in the region increase indigenous women's vulnerability to violence by defending their rights. Furthermore, physical and sexual violence against indigenous women committed by military and paramilitary forces has been tremendously increased after the September 11⁵. In the context of a patriarchal culture in which honour of men, in many instances, is intrinsically associated with their ability to guard the sexuality of women in their community, violence against women and especially rape is used as "a tool to terrorize indigenous communities in several South-East Asian countries such as some parts of the Philippines and Burma."⁶ In Pacific countries such as Fiji, PNG, Bougainville and the Solomon Island, women in the community suffered through sexual assault and increasing domestic violence during the ethnic conflicts.

Climate Change and violence against indigenous women

Indigenous peoples are among the first to face the direct consequences of climate change and natural disasters, due to their dependence upon and close relationship with the environment and its resources. Rapid increase in the large-scale production of liquid biofuels which requires an intensive use of resources such as land and water or inputs such as chemical fertilizers and pesticides in developing countries threatens the livelihood, work and health of Indigenous women.

Biofuel production is competing either directly or indirectly, for land, water and firewood supplies, and replacing local crops with monoculture energy crop plantations, which will result in depletion of agrobiodiversity, deprivation of indigenous peoples of their subsistence and impoverishment. In addition, new financial mechanisms such as various loans provided by the World Bank expand the private sector in biofuel production which may exacerbate those situations increasing violence against indigenous women as well, without taking into consideration the dimension of human rights, further displace and marginalise indigenous peoples.

Customs, culture and rights of indigenous women

Customary law and practices in some indigenous societies are based on patriarchal gender hierarchies, influencing community norms and practices that monitor and control women's lives and which reinforce male power over women. These discriminative and harmful practices include forced marriages, dowry-related violence, frequent domestic violence, polygamy, female genital mutilation, child rape, dispossessions of property and limited access to land ownership.⁷ In an era of rising fundamentalism, such crimes are often justified as honouring "religion" or "culture".

Furthermore, indigenous women are also abused by the inter-play of dominant powers between the formal judicial system and customary laws. In several countries and communities across the Asia Pacific, traditional authority or customary law operates alongside the formal, statutory legal system. These parallel legal regimes monitor and control community norms and practices, which often means reinforcing male power over women and claims based on custom, tradition and indigenous cultural values have been used by the dominant judicial system to excuse acts of violence against women and girls.⁸ In most Pacific Island countries, the law is a combination of English common law and customary law of the indigenous people, and custom is recognized in many of the Constitutions. Custom in all Pacific countries have a strong influence in qualifying a women's role in society and of perpetuating the traditional concept of women and her place in the family, home, community reinforcing gender stereotypes and violence against women. In most countries in the Pacific, there is a culture of silence around domestic violence and sexual abuse, and women who seek other forms of justice are alienated even by the members of their own families.

⁵ Report of the 2nd Asian Indigenous Women's Conference presented by Victoria Tauli Corpuz at the 3rd Session of Permanent Forum on Indigenous Issues, 2004. Page 1.

⁶ Annual report of the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Mr. Rodolfo Stavenhagen (2002), at para.107 (E/CN.4/2002/97).

⁷ 2007 annual report of the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Mr. Rodolfo Stavenhagen (2007).

⁸ Annual report of the UN Special Rapporteur on Violence Against Women, Its Causes and Consequences, Dr. Yakin Erturk (2006) at para. 66.

Furthermore, women are excluded in decision making at indigenous peoples' institutions. Even in progressive movements like resistance to development projects that transgress their territories, women's participation at the decision-making level is limited. Women may not have access to the free, informed and prior consent on some development projects, even if this is given to the affected indigenous communities.⁹

It is equally important to acknowledge and promote indigenous customary laws, practices and culture which uphold the value of equality between men and women. Culture can serve to strengthen people's sense of self, history, and community in ways of fortifying women's capacity to resist and respect their roles in the communities. For indigenous women, culture can be used as a source of resistance to violence. For instance, in some indigenous communities in Bangladesh and the Philippines, women's right to inheritance of properties is guaranteed and there are mechanisms to deal with sexual harassment against women in a gender sensitive way. It is critical to defend those values and traditions of indigenous people that promote their human rights and fundamental freedoms equally to men and women within a struggle for the rights of indigenous peoples as a whole.

International Framework for Indigenous Women

To enhance and ensure indigenous women's access to justice, several international instruments within the United Nations can be used for the advancement of the human rights and fundamental freedoms of indigenous women. Specific rights of indigenous peoples have been recognised and codified in the Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted on 13 September 2007. The Declaration in its Article 22(2) stipulates that States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination. Article 21(2) of the UN Declaration also recognises that States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of the economic and social conditions of indigenous peoples, and that particular attention shall be paid to the rights and special needs of women, youth and children, among others. Besides these general provisions, the Declaration fails, however to address the rights of indigenous women in specific areas of life. There is thus a need to read the Declaration in conjunction with other instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Rights of the Child (CRC), Declaration on the Elimination of Violence Against Women and Beijing indigenous Women's Declaration and Convention on the Elimination of Racial Discrimination (CERD). In-depth studies such as the United Nations Secretary General's Study on All Forms of Violence Against Women of 2006 and a Companion Report to the UN SG's Study should be read in conjunction with other international instruments mentioned above.

Participants

The Consultation will bring together approximately 60 women/human rights activists and indigenous women 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) in collaboration with Mahila Sarvangeen Utkarsh Mandal (MASUM), India. 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. MASUM is a women's organization based in Pune, India and as a member of the APWLD is represented on its Task Force on Violence Against Women.

⁹ Ruth Sidchogan-Batani, 'Indigenous Women, culture and Violence Against Women,' presentation paper at the APWLD Asia Pacific NGO Consultation with the UNSRVAV (2006).