



The Commonwealth

Canada 



REGIONAL CONSULTATION ON  
THE ROLE OF KEY STAKEHOLDERS IN

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**Ending Impunity for  
Violence against  
Women and Girls in Asia**

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UN Women is the UN organization dedicated to gender equality and the empowerment of women. A global champion for women and girls, UN Women was established to accelerate progress on meeting their needs worldwide. UN Women supports Member States in setting global standards for achieving gender equality, and works with governments and civil society to design the laws, policies, programmes and services required to implement these standards. UN Women stands behind women's equal participation in all aspects of life, focusing on the following five priority areas: increasing women's leadership and participation; ending violence against women; engaging women in all aspects of peace and security processes; enhancing women's economic empowerment; and making gender equality central to national development planning and budgeting. UN Women also coordinates and promotes the UN system's work in advancing gender equality.



The Commonwealth promotes democracy, rule of law, human rights, good governance, social and economic development, and helps countries with trade negotiations to encouraging women's leadership, supporting youth participation at all levels of society and providing experts to write laws. The Commonwealth's commitment to gender equality draws on international commitments for the realisation of women's rights enshrined in CEDAW, the Beijing Platform for Action, the Sustainable Development Goals 2030, United Nations Security Council Resolutions, and related health and education targets. The Commonwealth Plan of Action for Gender Equality, provides the framework for members to advance gender equality and women's empowerment, strengthen capacity to end violence against women and girls, consolidate achievements, address challenges and respond to global priorities and emerging concerns.

### **Summary of Proceedings: Regional Consultation on the Role of Key Stakeholders in Ending Impunity for Violence against Women and Girls in Asia**

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Government  
of Canada

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du Canada

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

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## ACRONYMS AND ABBREVIATIONS

ARMM	Autonomous Region in Muslim Mindanao
BBL	Bangsamoro Basic Law
CAT	Convention against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW SEAP	Regional Programme on Improving Women's Human Rights in South East Asia
CRC	Convention on the Rights of the Child
DV	Domestic violence
FGM	Female genital mutilation
GBV	Gender-based violence
HRCSL	Human Rights Commission of Sri Lanka
KP	Komnas Perempuan, Indonesia
MOU	Memorandum of Understanding
NGO	Non-governmental organization
NHRI	National Human Rights Institution
PoA	Plan of Action for Gender Equality
SAARC	South Asian Association for Regional Cooperation
SDGs	Sustainable Development Goals
SOP	Standard operating procedure
SUHAKAM	Human Rights Commission of Malaysia
TIJ	Thailand Institute of Justice
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
VAW	Violence against Women
VAWG	Violence against Women and Girls
VMU	Village Mediation Unit

## FOREWORD

November 25th is the International Day for the Elimination of Violence against Women and also marks the first of 16 Days of Activism against Gender-Based Violence (GBV) called for by UN Women globally to galvanize action to end violence against women and girls (VAWG) around the world.

Throughout the region, cultures of reconciliation pressure victims to stay away from court, and women give up on criminal justice systems that appear uninterested, hostile, and sometimes even complicit in crimes like trafficking. This results in GBV cases becoming delegalized and privatized. Only ten of the forty five countries in the Asia Pacific region specifically criminalize marital rape. It is beyond dispute that the justice system is not working for victims of violence.

Invisibility and silence follow most cases of sexual violence. There is a big gap between laws and their effective implementation, and exemption from the legal process is normal for women victims, not exceptional. Victims must not only get law, but they must get the rule of law, which means rules transparently applied and plural legal systems consistent with national norms and standards. Culture should never be invoked to justify stereotypes or to condone discrimination.

In order to ensure equality of outcomes in cases involving VAWG, there is a need to strengthen institutions and accountability mechanisms, which include formal and informal court systems, national human rights institutions (NHRIs) and ombudsmen. There is a need for better jurisprudence informed by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and for identification of gender stereotypes perpetuated by judges and training to address this. The NHRIs, through their education, monitoring and advisory roles, can ensure that state institutions meet due diligence obligations. Ombudsmen allow for individual redress for injustice and also redress for systemic instances of injustice. It is imperative that a multi-stakeholder approach is adopted including clear protocols between police, prosecutors, judges, NHRIs and ombudsmen, so that the victim has a consistently positive experience at every stage of the criminal justice process, from reporting through to after trial.

UN Women is partnering with the Commonwealth Secretariat to facilitate good practice and sharing of opportunities to improve access to justice for victims of VAWG. This report summarizes proceedings and discussions from a regional consultation hosted by UN Women and the Commonwealth, with generous support from the Government of Canada through the Global Affairs Canada (GAC), on the role of key stakeholders in ending impunity for VAWG in Asia.

UN Women wishes to acknowledge the active role played by Commonwealth staff Ms. Vivian Olukwanakemi Obunsanya, Interim Head of Gender, Commonwealth Secretariat; Ms. Diana Copper, Human Rights Adviser, Human Rights Unit; and Ms. Marie-Pierre Olivier, Rule of Law Division, Commonwealth Secretariat in organizing the event as well as in serving as resource persons during the consultation.

This report will be followed by a Judicial Bench Book on Strengthening Judicial Jurisprudence on Violence against Women. It is hoped that this will assist the judiciary and other relevant stakeholders in advancing jurisprudence on VAWG in Asia.



**ROBERTA CLARKE**

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## EXECUTIVE SUMMARY

Widespread violence against women and girls (VAWG) has been well documented throughout the Asia Pacific region and is perpetuated by a culture of impunity. In order to address this culture of impunity related to VAWG in the Asia Pacific region, the Commonwealth Secretariat and the UN Women Regional Office for Asia and the Pacific in Bangkok convened a Regional Consultation for stakeholders, which was attended by judges, lawyers, the police, national human rights institutions (NHRI) staff, ombudsmen, government officials, and academics from 17 countries in the region. The objectives of the Regional Consultation were to locate VAWG in the context of international, regional and national human rights law, normative frameworks such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and redress mechanisms. The Consultation also aimed to facilitate cross-country learning, dialogue and networking, and to identify common regional issues, priorities and strategies to address VAWG. Tools and resources to enhance access to justice for women and girls were presented to the participants, including a new Bench Book, which is being developed by the Commonwealth Secretariat as a tool relevant for judges deciding cases involving VAWG in Commonwealth Asian countries.

### THE LEGAL FRAMEWORK

CEDAW with its Optional Protocol is the most important legal instrument in addressing VAWG because it recognizes the obligations of states to respect, protect and fulfill the rights of women and girls. Through judicial creativity and a 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. In the Commonwealth paper presented at the Consultation, entitled *Addressing Violence against Women in the Commonwealth within States' Obligations under International Law*,<sup>1</sup> it was recommended that States should ensure clear definitions of criminal offences related to VAWG in their legislation based on those adopted by the Committee and by the UN General Assembly, and that different crimes of VAW should be subject to specific legislation. Further, States must prescribe adequate sentences for crimes of VAWG, and effective data collection is essential to allow for effective monitoring of the implementation of the law. The paper concluded that, most importantly, there is a need for a national strategy and a need for all stakeholders to work together.

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1. Chinkin, C., *Addressing Violence against Women in the Commonwealth within States' Obligations under International Law*, *Commonwealth Law Bulletin*, vol. 40, Issue 3 (August 2014).



In Asia and the Pacific, much progress has been achieved in recent years in the area of legal reform, and as at 2013, a total of 21 out of 39 countries in Asia and the Pacific had laws on VAWG or domestic violence (DV). Nevertheless, many legal gaps remain; for instance, marital rape is still only criminalized in 11 countries in the region. Although three-quarters of the countries in the region now have laws in place to address VAW, implementation of policy commitments is much slower. Even in countries where it is criminalized, VAWG still routinely goes unreported because of widespread cultural barriers, and acceptance of violence as something normal, the silence and stigma surrounding this issue, and fear of many victims that law enforcement will not intervene. This problem is compounded by the widespread mediation and ‘counselling’ on the part of many criminal justice sector actors where victims are pressured to settle out of court, as well as the often gender-insensitive judgements of those cases that do reach court, which indicate that such fears are well-founded. A culture of impunity is created whenever perpetrators of VAWG go unpunished, perpetuating violence and discrimination by reinforcing a message that they will not be held accountable for their actions.

## IMPLEMENTATION

An as-yet-unpublished multi-country study carried out in 2014 by UN Women, the United Nations Office on Drugs and Crime (UNODC) and the United Nations Development Programme (UNDP), which looked at the policing and prosecution of sexual violence in India, Thailand and Viet Nam,<sup>2</sup> was presented at the Consultation. The study found that there are a number of factors that can lead to attrition, which is the process by which cases of rape and sexual violence fail to proceed through the formal justice system. Such weaknesses included narrow legal definitions that focus on the behaviour of the victim rather than the perpetrator; the exclusion of marital rape or allowing for lesser punishment; and statute of limitations requirements.<sup>3</sup> The study found that in India, Thailand and Viet Nam, government institutions such as the police, prosecution and courts often do not keep adequate administrative data.<sup>4</sup> Further, the study found that attrition often occurred at the reporting stage, due to the handling of the case by police officers, and victims were often treated disrespectfully and without regard for their privacy or dignity, having to repeat their story multiple times.<sup>5</sup>

Through focus group discussions, participants at the Conference concluded that in many countries in the region, mediation and conciliation is routinely used, in particular in cases involving domestic violence. Examples of good practice were shared, such as the use of technology courts in Brunei and video conferencing in Thailand, to ensure witness protection. Some countries in the region, such as Afghanistan and Pakistan, have challenging political and security situations that render the context for implementing

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2. Study pending publication.

3. Presentation by Ms Eileen Skinnider, Session 1, Day One. Study pending publication.

4. Presentation by Ms Eileen Skinnider, Senior Associate, International Centre for Criminal Law Reform and Criminal Justice Policy, Session 1, Day Two.

5. Presentation by Ms Eileen Skinnider, Senior Associate, International Centre for Criminal Law Reform and Criminal Justice Policy, Session 1, Day Two.

human rights law highly complex. There are also issues in the region concerning plural legal systems, which include traditional justice systems as well as Sharia law courts.

Even in countries where the national legal framework reflects most of the rights contained in the CEDAW, there can still be challenges in terms of implementation of the law, and without effective implementation, human rights laws are rendered meaningless. It was agreed by participants that sensitization of the public on women's rights is essential for the effective implementation of the law, which would encourage victims to report crimes involving VAWG and men would clearly understand the implications of violence and that perpetrators will be held accountable. It is imperative to recall that women and girls are the primary stakeholders in ending VAWG, and addressing impunity means taking a victim-centred approach to gender-based violent crimes. Great progress has been made in the region in data collection, including data covering prevalence, costs and men's attitudes towards VAWG, which are also extremely important.

### A MULTI-STAKEHOLDER APPROACH

Most importantly, addressing impunity for VAWG requires a multi-stakeholder approach. This involves effective cooperation, information-sharing, and a shared commitment to a victim-centred approach. Participants at the consultation discussed the roles of the different stakeholders and the ways in which they can collaborate to end impunity for VAWG in the region.

The participants noted that in order to initiate her legal case against the perpetrator, the victim must report the crime to the police, and it is crucial that the case be handled properly at this stage to ensure that the evidence is gathered in a timely and appropriate manner, and in a way that inspires confidence in the victim and encourages her to pursue the case to trial. It was found that all forms of VAWG continue to be seriously underreported in the region. Prosecutors need to present the seriousness of the case to the court, where victim-centred approaches are applied. Police and prosecutors in the region face a number of challenges in their work, including difficulties in obtaining forensic and other evidence, a lack of safe homes for victims, and general insecurity.

Lawyers play an important role in assisting the prosecutor and the judiciary. They can engage in legal activism, conducting public interest litigation and advocating for law reform. Lawyers who attended the Consultation reported challenges due to gaps in the laws related to VAWG, the re-victimization of victims at trial, political influence over the court, and a lack of well-qualified lawyers willing to work on such cases.

Judges from the region explained that the main obstacle is the lack of adequate laws to address VAWG, and the very slow speed at which the courts generally operate. There is generally inadequate infrastructure to safeguard witnesses and ensure their security.

Ministries can contribute to ending impunity for VAWG by signing commitments and pledges to implement international law, promoting political will and inter-agency cooperation, and increasing accountability of the different state actors. However, ministerial staff from the region expressed the need for specialized training on the issues of VAWG.

NHRIs and ombudsmen's offices are among the mechanisms that ensure the compliance of States with their human rights obligations. Their work can have a direct role in combating impunity and promoting the rule of law.<sup>6</sup> NHRIs play varied roles and functions throughout the region, depending on their national mandate. At a minimum, most NHRIs monitor government implementation of laws on VAWG and other human rights issues. They also carry out human rights education and awareness raising on VAWG. Some NHRIs are empowered to carry out investigations and to intervene in cases relating to VAWG. Challenges faced by NHRIs in the region include security issues, a limited remit that does not allow them to go beyond making recommendations, cultural attitudes, and a lack of relevant data and evidence to support advocacy work.

Ombudsmen differ substantially from the judicial process in several ways. They are free, fast and flexible, and not bound by the rules of evidence. They can also investigate allegations that do not necessarily constitute a legal cause of action. However, the ombudsman can only make recommendations that are not binding, the impact of which depends on his or her ability to formulate effective recommendations and to name and shame government officials. Participants at the Regional Consultation explained that a key issue for ombudsmen in the Asia Pacific region is a lack of public awareness about their role.

## EXAMPLES OF GOOD PRACTICE

Despite all of the challenges, there are many examples of good practice from the region in terms of strengthening state accountability, judges making good decisions, and methods being adopted to effectively render justice. Participants at the Regional Consultation noted that in many countries, the judiciary, NHRIs and ombudsmen have been instrumental in actively promoting access to justice in cases involving VAWG by insisting on implementation of the law in spite of pressure to do otherwise, and sometimes by initiating their own enquiries. Non-governmental organizations (NGOs) and judges have been active in lobbying for changes in the law where they are not working for women and girls. In some countries, efforts have been made to increase the accountability of public officials, including police and the judiciary. Good practices reported by the participants included efforts to enhance coordination between stakeholders, judicial activism, advocacy to change the law, and enhanced accountability of judicial mechanisms. Efforts to increase public awareness and to promote victim protection and support also proved effective. Promising examples were given from the region of engagement with traditional justice systems in addressing VAWG.

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6. Impunity and the Rule of Law, OHCHR Report (2011).

## TOOLS

There are several tools that have been developed based on international norms and standards, and the due diligence obligation, and specifically to provide further details that can assist stakeholders in ending impunity for VAWG. There are also a number of tools currently in development, including a Bench Book for judges in Asia on cases involving VAWG. Tools presented at the consultation included the UNODC publications, *Handbook on Effective Prosecution Responses to Violence against Women and Girls and the Blueprint for Action: an implementation plan for criminal justice systems to prevent and respond to violence against women and girls* (UNODC). Among other resources, a Booklet on Gender Stereotypes and Other Forms of Indirect Discrimination, in development by UN Women, was presented for comments. This booklet is a training resource manual focusing on eight countries in South-East Asia, and will include laws and court decisions from all levels of courts from Cambodia, Indonesia, Lao People's Democratic Republic, Myanmar, Philippines, Thailand, Timor-Leste, and Viet Nam. Court decisions discussed will be illustrative of harmful gender stereotypes or wrongful gender stereotyping in adjudication, as well as those illustrative of good practices in this regard.

The Commonwealth Secretariat presented a *Bench Book on Building a Jurisprudence of Equality*, which is a tool relevant for judges in Commonwealth Asian countries that is currently in development. The Bench Book is designed to assist judges in ensuring women's equality with men before the law in cases of VAWG. Stakeholders at the consultation recommended, among other things, that the Bench Book should include guidance on the use of gender-sensitive language, as well as sensitization on gender stereotypes; judges should be encouraged to write full decisions that can be reviewed for gender sensitivity; the Bench Book needs to highlight how fighting impunity is a holistic process and there are a number of phases: the violation, the reporting, the investigation, the prosecution, the trial, and the post-conviction or acquittal stage; the Bench Book should direct judges on how to deal with vulnerable witnesses, and how to assess the evidence and apply the procedure; it should also include guidelines on recording evidence and taking witness statements, and guidelines on victim compensation. It was requested that the Bench Book be translated into local languages to ensure that it is accessible to all judges, and there needs to be an implementation plan.

## INSTITUTIONAL STRATEGIES AND MECHANISMS

In terms of gender-sensitive investigation techniques, participants noted that there is a widespread problem of re-victimization of the complainant when the victim has to retell her story several times. There is often a lack of privacy: for example, if the victim is interviewed in the presence of family members, this may prevent her from telling her story due to fear, shame, or embarrassment. Key issues in the region related to re-victimization through multiple interviews and through a lack of privacy in written judgements, which sometimes contain verbatim sections of the witness statement.

Due to the noted lack of coordination between law enforcers and prosecutors, the prosecutors cannot find any probable cause. Some questions from investigators are offensive and use gender stereotypes. The behaviour of investigators can be a barrier to continuing with the complaint, combined with a lack of awareness of the law by the victim. A victim can understand years later that she has been raped and then her credibility decreases because she cannot remember the details of the crime. Promising strategies in the region included criminalization of revealing the victim's identity, witness protection schemes, and victim support units.

It was agreed by participants that the set-up of the court infrastructure is generally not gender-friendly, and often judges do not have adequate legal or gender-awareness training. The problem is particularly acute in domestic violence (DV) cases, because there is still widespread belief, even among judges, that DV is a private matter. Effective strategies in the region have involved increasing the number of women judges, fast-tracking cases, and improving victim protection throughout the trial. Participants recommended training for judges, law enforcement officials, prosecutors, and health professionals, as well as community information campaigns aimed at the public.

Participants discussed the significant capacity gaps identified throughout the region in terms of collecting and analysing data. In general, the quality, integrity and reliability of data are still a challenge. Data are often hard to access, and attitudes of criminal justice actors make sharing of data with other departments a challenge. Best practices identified by the participants include integrated protocols, Memoranda of Understanding (MOUs) and monitoring networks. It was agreed that there is a need for adequate funding for gender-sensitive policy and research to inform the evidence base and that the development of indicators is a critical priority.

Oversight, accountability and coordination mechanisms for cases involving VAWG were found by the participants to be lacking in the region. It is often difficult to get victims to court, and to prove incidents and seek justice. There are low levels of reporting in remote areas and on islands, verification of reports is difficult, and it is difficult to get witnesses to court. In terms of coordination it was felt that the stakeholders do not have equal power, whether it is differences in power between government departments, or between government and civil society.

Promising strategies identified in the region include: MOUs between stakeholders that clearly indicate lines of accountability at a local level; a legal duty imposed on hospitals to report abuse to the police; and the sharing of resources between stakeholders. It was recommended that stakeholder policies on VAWG be coordinated and reporting duties defined in law to protect conflicts of interest. Referral systems, national action plans and inter-ministerial working groups were also proposed as ways to promote, and if necessary enforce, partnerships.

Participants at the Regional Consultation were invited to make recommendations regarding possible ways forward to improve access to justice in cases involving VAWG. As a result, participants from the 17 participating countries drafted a one-year (2015) Action Plan to plan the way forward, at both the national and regional levels. These recommendations and the Action Plan are set out in detail at Section VII of this report.

## I. THE ISSUE

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**“UNLESS WE ADDRESS IMPUNITY WE ARE UNABLE TO ADDRESS ACCESS TO JUSTICE, AND EQUAL ACCESS TO JUSTICE IS ESSENTIAL IN CREATING AN EQUAL SOCIETY.”<sup>7</sup>**

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**OPENING REMARKS  
H.E. PHILIP CALVERT,  
AMBASSADOR OF CANADA TO THAILAND**

### 1.1 VIOLENCE AGAINST WOMEN AND GIRLS (VAWG)

VAWG refers to any act of gender-based violence that results in, or is likely to result in, physical, sexual abuse or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life'.<sup>8</sup>

VAWG is both cause and consequence of gender inequality. It remains widespread and systematic, and is a grave violation of human rights, affecting around one in three women in their lifetime.<sup>9</sup> Its impact ranges from immediate to long-term multiple physical, sexual, psychological/emotional consequences for women and girls, including death. Such discrimination impedes their full potential and equal participation in political, economic and social activity across both private and public spheres. VAWG is disturbingly persistent and pervasive, and is reflected in women's subordinated status, prevalent gender-biased norms and practices. VAWG knows no boundaries and is the most widespread human rights violation, affecting one third of all women in their lifetime. In many parts of Asia, there is still a high prevalence of honour killings, child marriage, female genital mutilation (FGM), acid attacks, and sexual assault in a variety of contexts. All forms of VAWG are grounded in discrimination that women and girls continue to face in all aspects of their

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7. Ibid.

8. UN Declaration on the Elimination of Violence against Women, A/RES/48/104, 1993 World Health Organisation, Global and Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence., available at <http://www.un.org/documents/ga/res/48/a48r104.htm>

9. UN Women Expert Group Meeting, EGM/MDG/EP7 'Beyond the silos and the silences: Addressing violence against women and girls within the post-2015 agenda', October 2013, available at <http://www.unwomen.org/-/media/headquarters/attachments/sections/csw/58/ep7-marailarasi%20pdf.pdf>

public and private lives. Of all of these forms, domestic or intimate partner violence is generally the most pervasive. VAWG is rooted in the low value attached to women and their unequal power in the family, in their communities, and in society at large.<sup>10</sup>

Such discrimination is often embedded in and supported by social and cultural values, structures and practices. Both the Commonwealth Secretariat and UN Women work globally in partnership with governments, civil society organizations and other institutions towards the realization of women's human rights, women's empowerment, non-discrimination and substantive equality between women and men in all societies – particularly in the justice system. In recognition that women's access to justice and ending impunity for VAWG require gender-sensitive and rights-based comprehensive, long-term and multisectoral responses, both the Commonwealth Secretariat and UN Women made great efforts in improving access to justice for women and girls worldwide, and specifically in the Asia Pacific region. UN Women Regional Office for Asia and the Pacific, with the support of the Government of Canada, has been working with the justice sector in eight countries on enhancing women's access to justice and women human rights-compliant justice delivery through awareness-raising and capacity development of government and civil society organizations. Moreover, it aims to improve understanding of CEDAW/ gender-responsive judiciary among judges and court personnel, and to promote its use in courts/court decisions. In this regard, the Commonwealth Secretariat convened five regional colloquiums on gender, culture and the law to heighten awareness on VAWG and the adoption/implementation of CEDAW. This aimed to strengthen jurisprudence of equality on violence against women (VAW), promote judicial leadership and women's access to justice, providing inputs to the substantive publication on women's rights in the context of culture and CEDAW. Furthermore, the Commonwealth Secretariat reaffirmed its commitment to promote the rule of law, gender equality and social development by hosting a series of judicial panels and forums, and producing information briefs on VAW, as well as a judicial resource manual for the East and Southern African jurisdictions.

Over the last few decades, efforts to address VAWG have developed considerably. Building on previous work and results, the Commonwealth Secretariat and the UN Women Regional Office for Asia and the Pacific convened the Regional Consultation on the Role of Key Stakeholders in Ending Impunity for VAWG in Asia in Bangkok, Thailand in November 2014. The workshop brought together all stakeholders including the police, prosecutors, judges, national human rights institutions and ombudsmen involved in the justice system to raise their knowledge and awareness about the states' obligations, ways and means of strengthening institutions, responses to VAWG, and build partnerships address the issue of violence against women. The Regional Consultation comprised presentations and focused discussions, which led to establishing working groups to identify key policies, advocacy strategies and concrete priority actions for strengthening jurisprudence of equality on VAWG.

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10. Opening remarks, Ms Anna-Karin Jatfors, Regional Programme Manager, UNiTE to End Violence against Women. 25 November 2014.

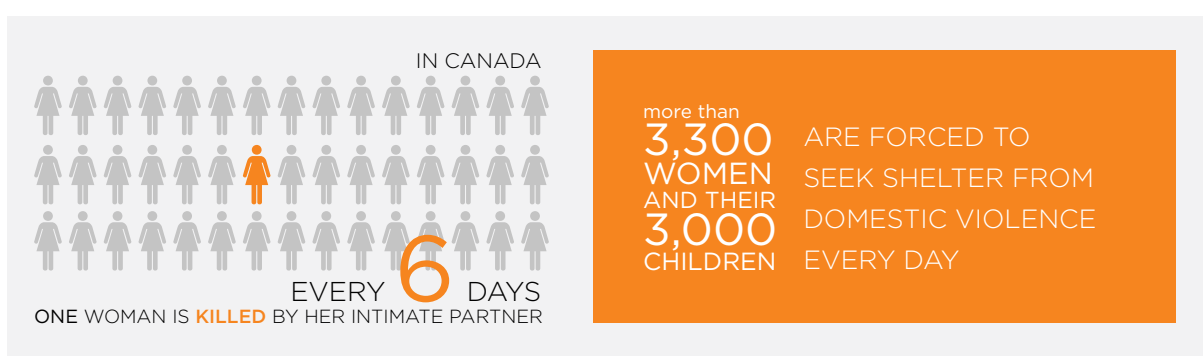


The objectives of the Regional Consultation were:

- Locate VAWG in the context of international, regional and national human rights law, normative frameworks such as CEDAW, and redress mechanisms.
- 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.
- Highlight the need for enhanced policy and advocacy focus to VAWG and identify common regional issues, priorities and strategies in this area.
- Enable the judiciary, investigators, prosecutors, lawyers, ombudsmen and NHRIs to share views and good practices with regard to ending impunity for VAWG in the region;
- Develop a regional strategy with multi-stakeholder cooperation to improve access to justice, for example through comprehensive response protocols.
- 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.

## 1.2. CROSS-COUNTRY LEARNING: THE CANADIAN EXPERIENCE

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 mindsets, norms and practices that contribute to such violations and allow them to continue unchallenged.



11. Opening remarks, H.E. Mr. Philip Calvert, Ambassador of Canada to the Kingdom of Thailand, 25 November 2014.

While all women can be affected, VAWG does not affect all women equally.<sup>11</sup> Women experience violence across the life course in different ways and context, and many forms of violence against women are also experienced by girls. VAWG most acutely affects the women who are already vulnerable and marginalized, even in more developed countries such as Canada. In his opening remarks, H.E. Calvert, Ambassador Extraordinary and Plenipotentiary of Canada to Thailand mentioned that there are over 600 known cases of missing or murdered Aboriginal women in Canada. Half of all women in Canada have experienced at least one incident of physical or sexual violence since the age of 16. On average, one woman in Canada is killed by her intimate partner every six days. On any given day, more than 3,300 women (together with their 3,000 children) are forced to sleep in an emergency shelter to escape domestic violence. Every night, around 200 women are turned away because these shelters are full. The Government of Canada has been involved in ongoing legal reform to strengthen the criminal justice response to address VAWG, including gender sensitivity training for the police force, and changes in legislation to increase penalties for violent crimes in order to make communities safer.<sup>12</sup> The Canadian Government recognizes that it is absolutely critical to strengthen the role of all stakeholders and that all actors of the justice system mandated to provide services to victims and survivors must provide them in a coordinated manner.

### 1.3. VAWG IN THE ASIA-PACIFIC REGION

The prevalence of VAWG in the Asia-Pacific region is high and varies across sites; it is not simple and one-dimensional, but rather it is characterized by inter-sectionality. Quantitative findings from the United Nations Multi-country Study on Men and Violence in Asia and the Pacific study shows that intimate partner violence perpetration is common in Asia and the Pacific. More than half of the 10,000 men interviewed across nine sites in six countries in the region admitted to using physical or sexual violence against a partner, ranging from 25-80 percent across sites.<sup>13</sup> The analysis explored the different factors associated with men's perpetration of violence against women. Men who reported having perpetrated violence against a partner were significantly more likely to: have gender-inequitable attitudes and want to control their partners; have experienced physical, sexual or emotional abuse as a child; and have practices that reflect idealized notions of male sexual performance. Nonetheless, out of the 10,000 men interviewed, 80 percent who had committed VAW had not been prosecuted, and the majority did not feel guilty.<sup>14</sup>

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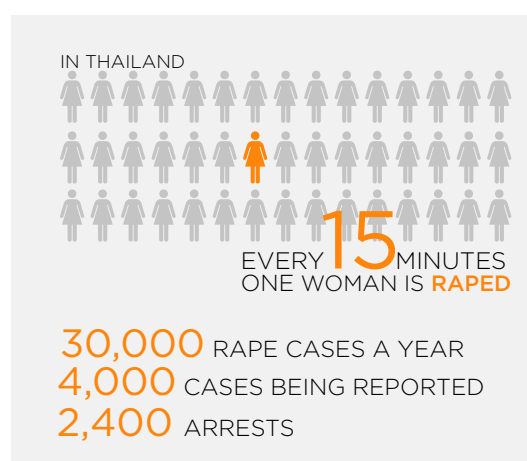
12. Partners for Prevention, UNDP, UNFPA, UN Women and UNV, 'Why do some men use violence against women and how can we prevent it?', 2013, available at [http://unwomen-asiapacific.org/docs/WhyDoSomeMenUseViolenceAgainstWomen\\_P4P\\_Report.pdf](http://unwomen-asiapacific.org/docs/WhyDoSomeMenUseViolenceAgainstWomen_P4P_Report.pdf), p.2

13. Ibid, p. 45

14. Internal UN Women mapping - unpublished.

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 DV, though critical legal gaps still remain: for instance, only ten countries in the region specifically criminalize marital rape.<sup>15</sup> However, as in other regions, progress on implementing existing legislation and commitments, and strengthening overall accountability has been far too slow. Key challenges include inadequate resources for implementing existing laws and policies, capacity gaps among 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.

According to research carried out by the Thailand Institute of Justice, one woman in Thailand is raped every 15 minutes, resulting in 30,000 rape cases a year with as few as 4,000 cases being reported and resulting in only 2,400 arrests.<sup>16</sup> The Thailand Institute of Justice (TIJ) this year marked the first of the 16 Days of Activism against Gender-Based Violence by launching two campaigns, in collaboration with UN Women, #SpeakUpWomen and the global campaign 'HeForShe' - a solidarity movement for gender equality aiming to encourage the elimination of violence against women, raise public awareness on sexual violence and inspire people to take action against gender-based discrimination and VAWG, encouraging women to speak up and increasing reporting of cases of sexual violence against women in the country. The project also presents a creative action toolkit containing useful information for victims of sexual violence among relevant authorities, practitioners and the public to promote better understanding of the criminal justice system, and to empower women to report cases of sexual violence.<sup>17</sup>



Ms Niknik Rahayu, Commissioner at the National Commission on Violence against Women (Komanas Perempuan) in Indonesia, presented the research findings from Indonesia. Komnas Perempuan monitors and documents incidents of VAWG. It also advocates for policy reform and engage in public awareness-raising campaigns. The Commission aims to develop a recovery system to fulfil the needs of women victims of violence and seeks to strengthen human rights mechanisms at local, national, and

15. Thailand Institute of Justice 2014, <http://www.tijthailand.org/main/en/content/218.html>

16. Thailand Institute of Justice, <http://www.tijthailand.org/main/en/content/218.html>

17. Presentation by Ms Niknik Rahayu, Commissioner, Komanas Perempuan, Indonesia, Session 3, Day Two.

international levels to protect women's rights. According to the Komanas Perempuan study, 71 percent of reported cases of VAWG involved intimate partner violence.<sup>18</sup> In 2014, Komanas Perempuan Indonesia recorded 279,760 reports of violence against women, and concluded that every day there are 35 women in Indonesia who experience sexual violence. Through their research, Komanas Perempuan has identified 15 different forms of sexual violence, whereas the law only recognizes four forms, and they are now advocating for a new sexual violence law that will integrate all of these forms. Ms Rahayu explained that Komanas Perempuan aims to mainstream the concept of non-state actors as human rights offenders. This includes analysing the anatomy of power and policy makers in Indonesia, and making domestic violence a public issue. Komanas Perempuan is further encouraging public awareness and state commitment on the issue of VAW in Indonesia, which includes widening the definition of VAW to cover violence against transgender women and polygamy. It is working to engage the media in enhancing public awareness about VAW through a campaign to recognize and deal with sexual assault. Komanas Perempuan also engages in significant efforts at policy reform, including advocacy related to Penal Code revision and the adoption of the Gender Equality Bill and the Sexual Violence Bill. However, influencing policy makers and achieving tangible access to justice for victims remain challenging.

#### 1.4 INTERNATIONAL HUMAN RIGHTS LAW AND VAWG

Ms Marie-Pierre Olivier, Acting Head of Law Development Section, Rule of Law Division of the Commonwealth Secretariat, presented findings from the 2014 Commonwealth publication, *Addressing Violence Against Women in the Commonwealth Within States' Obligations Under International Law*, which examines international human rights standards with respect to redressing violence against women.<sup>19</sup>

Ms Olivier explained that although there is no specific international treaty that States have signed that particularly deals with VAWG, CEDAW is a persuasive policy document because it sets out general international consensus on what state obligations are in respect to VAW. Under the international law, VAW is recognized as a grave violation of women's human rights and fundamental freedoms. States have clear obligations to exercise due diligence in preventing VAW, protecting victims/survivors, punishing perpetrators, and providing reparation and remedies in cases of VAW as emphasized in a number of international treaties, soft laws and international instruments.<sup>20</sup> CEDAW

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18. Chinkin, C., *Addressing Violence against Women in the Commonwealth within States' Obligations under International Law*, *Commonwealth Law Bulletin*, vol. 40, Issue 3 (August 2014).

19. *Ibid.* p.3.

20. See *Ibid.* p.3: The Committee has found that the CEDAW also includes girls because they are "a part of the larger community of women", referring to CEDAW Committee, General Recommendation No. 28 (Article 3), UN Doc. CCPR/C/21/Rev.1/Add.10 (2000), para 21.; and further *ibid.* p.3, referring to: CEDAW Committee, General Recommendation No.12 (eighth session, 1989), *Violence against women*, citing CEDAW, Articles 2, 5, 11, 12 and 16 in support.

together with its Optional Protocol is the most important legal instrument in addressing VAWG because it recognizes the obligations of States to respect, protect, and fulfil the rights of women and girls. The Committee on the Elimination of Discrimination against Women (the CEDAW Committee) has interpreted CEDAW as including obligations on states to address VAWG,<sup>21</sup> and in 1992 the Committee interpreted ‘discrimination’ as defined in CEDAW at Article 1 to include gender-based violence.<sup>22</sup> Furthermore, according to the Beijing Platform for Action, States must “*refrain from invoking any custom, tradition, or religious consideration to avoid their obligations.*”

Elaborating on the Commonwealth publication, Ms Olivier explained that under due diligence standards, the CEDAW Committee has found that States have a duty to respect, protect and fulfil the rights of all women and girls to be free from gender-based violence.<sup>23</sup> The obligation to respect requires States to provide an effective legal framework, and to organize the governmental apparatus and structures through which public power is exercised to address VAWG. This includes making sure that all laws – criminal, civil, and administrative – are free from discrimination. It also involves monitoring the behaviour of public officials and public powers exercised through them. The duty to protect means taking appropriate measures to prevent state and non-state actors from committing acts of VAWG, which includes cases of intimate partner violence. Allegations must be investigated promptly, independently and impartially. Access to justice is “an essential component of the system of protection and enforcement of human rights”.<sup>24</sup> In a broad sense, access to justice may be defined narrowly as an individual’s right to bring a claim to a court or tribunal and to have that court or tribunal decide the claim. It could also refer to the right to be given legal aid when the individual does not have the resources required to obtain legal remedies. In general, access to justice also includes, as a critical element, the individual’s right to have her claim decided according to substantive standards of fairness and justice.<sup>25</sup> Access to justice is a human right and is an essential component of the system of protection and enforcement of human rights. Cases of VAWG are often highly sensitive and require special care to ensure that, women are supported throughout the process, which may require psychological support, healthcare workers, and legal advocates, counsellors, etc. Finally, the obligation to fulfil requires positive, forward-thinking and long-term measures, such as public policy and programme strategies, to be adopted by states to enable women to enjoy their human rights. The obligations to respect, protect and fulfil are all subject to the standard of due diligence. It is imperative that there is effective prosecution of perpetrators of VAWG, and that informal means of resolution such as mediation or cultural practices are not allowed to impede prosecution.<sup>26</sup>

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21. Ibid, p.3, referring to CEDAW Committee, General Recommendation No. 19, 29 January, 1992, UN Doc. HRI/GEN/1/Rev.1 at 84 (1994).

22. Ibid., p.7, referring to CEDAW Committee, General Recommendation No. 28.

23. Francioni, *Access to Justice as a Human Right*, Oxford University Press (2007).

24. Ibid.

25. Ms Marie-Pierre Olivier, Acting Head of Development Section, Rule of Law Division, Commonwealth Secretariat, Oral presentation of Commonwealth paper, Chinkin, C., *Addressing Violence against Women in the Commonwealth within States’ Obligations under International Law*, Commonwealth Law Bulletin, vol. 40, Issue 3 (August 2014).

26. Ibid.

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 VAWG in the Commonwealth and strengthen the jurisprudence of equality on violence against women in accordance with: the Commonwealth Charter; the Commonwealth Plan of Action for Gender Equality 2005-2015 (PoA); outcomes from the Tenth Commonwealth Women's Affairs Ministerial Meeting 2013; outcomes from the Commonwealth Heads of Government Meeting, 2013; and the outcomes on gender equality from the 2014 Commonwealth Law Ministers Meeting. The PoA was also highlighted by Ms Olivier at the Regional Consultation, specifically its framework. She pointed out the key structural, systemic, cultural and ideological barriers to the realization of women's rights in four critical areas, namely gender, democracy, peace and conflict; gender, human rights and law; gender, poverty eradication and economic empowerment; and gender and HIV/AIDS. The PoA recognizes the linkage between gender equality and socio-economic development, democracy and peace, and promotes and advocates for the achievement of gender equality. Governments are encouraged to take action to mainstream gender equality, human rights, and HIV/AIDS into training of law enforcement personnel, and to develop peace and citizenship programmes to promote individual rights, freedom, gender equality and diversity. At the Commonwealth Heads of Government Meeting, held in November 2013 in Sri Lanka, leaders agreed that policy attention should be given to VAWG.<sup>27</sup>

Building on such efforts, the Commonwealth Secretariat convened five regional colloquiums on women, gender and the law, and produced a round-table report in 2014 on early and forced marriage, which will be followed soon by a judicial resource manual for the east and southern African region. At a meeting of Commonwealth Law Ministers and senior officials held in Gaborone, Botswana, in May 2014, Law Ministers and Attorney Generals from 29 countries, including senior officials, agreed that VAW was an issue that had to be addressed by non-ministers. The Law Ministers present at the meeting endorsed the Commonwealth paper, 'Addressing Violence against Women in the Commonwealth within States' Obligations under International Law'.<sup>28</sup> The meeting recalled another meeting held in November 2013 in Colombo, Sri Lanka, during which Commonwealth Heads of Government endorsed the intergovernmental process to be launched at the 69th Session of the United Nations General Assembly to develop and agree on a post-2015 Development Agenda.<sup>29</sup> One of the main findings from this meeting

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27. Chinkin, C., *Addressing Violence against Women in the Commonwealth within States' Obligations under International Law*, *Commonwealth Law Bulletin*, vol. 40, Issue 3 (August 2014), pp. 471-501.

28. *Communique: Commonwealth Law Ministers Meeting 2014. The Rule of Law and the Post-2015 Development Agenda*. 8 May 2014.

29. Ms Marie-Pierre Olivier, Acting Head of Development Section, Rule of Law Division, Commonwealth Secretariat, oral presentation of Commonwealth paper, Chinkin, C., *Addressing Violence against Women in the Commonwealth within States' Obligations under International Law*, *Commonwealth Law Bulletin*, vol. 40, Issue 3 (August 2014). For a full list of recommendations, see the Commonwealth paper at pp. 22-24.

was that the challenge is at the level of implementation of the law and that there is a need for a multisectoral and comprehensive national strategy involving all stakeholders in addressing VAWG.

Key recommendations from the Commonwealth paper were as follows:<sup>30</sup>

- States should ensure clear definitions of criminal offences related to VAWG in their legislation based on those adopted by the Committee and by the UN General Assembly, and different crimes of VAW should be subject to specific legislation, for example: there is a need for specific laws on sexual harassment in the workplace and public places; rape should be criminalized with a definition that is not too restrictive or limited to rape cases where force has been used; and marital rape must be criminalized. There is also a need for robust criminal procedural rules to ensure that evidence is dealt with promptly, in a gender-sensitive way, by properly trained law enforcement officials who understand gender-stereotyping.
- States must prescribe adequate sentences for crimes of VAWG. Low sentences undermine the equality of women before the law.
- Effective data collection is essential to allow for effective monitoring of the implementation of the law.
- Most importantly, there is a need for a national strategy and a need for all stakeholders to work together.

Ending VAWG is one of the key priorities in the post-2015 Development Agenda Sustainable Development Goals (SDGs). UN Women is calling for both adoption and implementation of gender equality targets in the post-2015 Development Agenda, with VAW as a key component.<sup>31</sup>

## 1.5 NATIONAL LEGAL FRAMEWORKS IN ASIA

Countries across the world have adopted different approaches to legislation on VAW. Most have either reformed general laws or inserted specific provisions within general laws, either incrementally or at one time. Many countries have adopted special laws on VAW. For example, as of 2011, 125 countries had enacted special legislation on DV.<sup>32</sup> While national law reflects culture, regulates behaviour, and provides a foundation for the prevention and responses to Violence against Women and Children (VAWC), it is recognized that different approaches to violence and enforcement of international human rights law – including CEDAW – also depend on the type of legal system involved.

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30. Opening remarks, Ms Anna-Karin Jatfors, Regional Programme Manager, UNiTE to End Violence against Women

31. UN Women, '2011-2012 Progress of the World's Women: In Pursuit of Justice', 2011.

32. South-East Asia Regional Judicial Colloquium on Gender Equality Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice: UN Women Summary of Proceedings from September 2013 Meeting.



In States with a monist system, international law does not need to be translated into national law. It applies directly to the State's legal order, for example in the Philippines and Indonesia.<sup>33</sup> The act of ratifying an international treaty immediately incorporates that international law into national law. This means that international law can be directly applied by a national judge and can be directly invoked by citizens just as if it were national law. In theory, this makes the rights contained in CEDAW directly accessible to citizens in monist countries through the courts. In dualist systems, international law must first be translated or transformed into national legislation by the competent political institutions of the legislative or of the executive before it can be applied by the national courts. In dualist countries, existing national law that contradicts international law must be modified, set aside or eliminated in order to conform to international law. In general, common law countries that were colonized by the British have subscribed to a dualist approach. In Malaysia, Brunei and Singapore, the States must translate international law/treaties into national laws before they become applicable. However, this distinction is not always clear-cut, and judges in some traditionally dualist jurisdictions do sometimes refer directly to international treaties, on the basis of the Bangalore Principles which allow for judges to look to the international human rights framework for guidance on otherwise ambiguous national legal provisions.<sup>34</sup> Furthermore, whether judges in monist countries entertain plaintiffs who invoke international law directly depends on their knowledge of international human rights law and jurisprudence, and on their ability and willingness to apply international standards of gender equality in practice.<sup>35</sup>

In the Philippines, it took the Government 29 years to fulfil its obligations under CEDAW to provide an adequate legal framework for women's equality, through their Magna Carta of Women Act of 2009.<sup>36</sup> Also in the Philippines, the Women's Peace Table, with the support of UN Women, is involved in the drafting process of the Bangsamoro Basic Law (BBL).<sup>37</sup> The BBL establishes the new Bangsamoro political entity in replacement of the Autonomous Region in Muslim Mindanao (ARMM) as part of the peace agreement. The Women's Peace Table is advocating for gender-responsive provisions to be contained in this new legislation, in accordance with international human rights law. To date, it is not clear to what extent international conventions such as CEDAW have been entrenched in Filipino national law, and whether the standards contained therein will be fully reflected in the BBL.

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33. UN Women, *South-East Asia Regional Judicial Colloquium on Gender Equality Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice: Summary of Proceedings*, 4 to 5 September 2013, Bangkok Thailand, p.14

34. *Ibid.*, p.16.

35. *Ibid.*, p.17.

36. Women's Peace Table, *Proposals for Gender Provisions in the Draft Bangsamoro Law*, 25 February 2014, available at: [http://asiapacific.unwomen.org/-/media/Field%20Office%20ESEA/Docs/Publications/2014/6/CEDAW\\_Proposals\\_for\\_Gender\\_Provisions\\_Draft\\_Bangsamoro\\_Basic\\_Law.pdf](http://asiapacific.unwomen.org/-/media/Field%20Office%20ESEA/Docs/Publications/2014/6/CEDAW_Proposals_for_Gender_Provisions_Draft_Bangsamoro_Basic_Law.pdf) [accessed 10 September 2015].

37. UN Women, *South-East Asia Regional Judicial Colloquium on Gender Equality Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice: Summary of Proceedings*, 4 to 5 September 2013, Bangkok Thailand, p.25.



In Indonesia, Komnas Perempuan (National Commission on Violence against Women) has been instrumental in advocating for national standards in compliance with CEDAW. Pursuant to their ratification of CEDAW, the Indonesian Government passed Act No. 23/2004 on the Elimination of Domestic Violence (PKDRT), which contains critical provisions for the protection of women such as recognition of different types of violence, including physical, non-physical, and psychological violence, as well as provisions which criminalize rape.<sup>38</sup> However, the Indonesian Government has not yet repealed discriminatory provisions in the Marriage Act of 1974, or discriminatory by-laws including those in the province of Aceh that impose severe punishments in alleged relationships that result in gender-based violence.<sup>39</sup>

The provisions related to gender equality contained in the Malaysian Constitution were interpreted by the Malaysian High Court with reference to CEDAW in the case of *Noorfadilla Ahmad Saikin v. Chayed Basirun et al.* (2012) 1 CLJ 781-3.<sup>40</sup> The judge found CEDAW to be directly applicable in Malaysia, stating:

**CEDAW IS WITHOUT DOUBT A TREATY IN FORCE AND MALAYSIA'S COMMITMENT TO CEDAW IS STRENGTHENED WHEN ARTICLE 8(2) OF THE FEDERAL CONSTITUTION WAS AMENDED TO INCORPORATE THE PROVISIONS OF DISCRIMINATION BASED ON GENDER. THE COURT HAS NO CHOICE BUT TO REFER TO CEDAW IN CLARIFYING THE TERM 'EQUALITY' AND 'GENDER DISCRIMINATION' UNDER ARTICLE 8(2) OF THE FEDERAL CONSTITUTION.**<sup>41</sup>

The legal recognition of human rights is a vital component in efforts to enable women's access to justice and a powerful tool to protect women from violence. It provides the foundation for individuals to claim the rights they are entitled to under international law, which should apply equally to all women, regardless of marital status, including a mixture of civil and criminal remedies.<sup>42</sup> While legislation is necessary, implementation structures and capacity must also be in place to ensure and enhance women's access to justice. Data, coordination and a shift in mindset about changing stereotypes and ensuring victim protection are equally important. In addition, States play a key role in enhancing accountability by providing a robust legislative framework, and must exercise due diligence to meet their obligations under national and international law. States have the reach and the mandate to create an enabling environment to protect and promote the rights of women and girls to live free from violence, which can involve other sectors and include all state actors and institutions. States also play a crucial role in data collection related to prevalence, causes and consequences of VAWG, can monitor administrative data on how the State is responding, and can set and track progress towards ending VAWG. Moreover, States must "refrain from invoking any custom, tradition or religious consideration to avoid their obligations".<sup>43</sup>

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38. Ibid. p.17.

39. Cited in Ibid. p.16.

40. Ibid.

41. The Commonwealth, *Strengthening Jurisprudence of Equality: Violence Against Women* (2014), p.5.

42. Beijing Platform for Action, 1995.

43. UN Women, *The Costs of Violence*, 2013.

In Asia and the Pacific, there has been much progress in recent years in the area of legal reform, and as of 2013, 21 out of 39 countries in Asia and the Pacific had laws on VAWG or domestic violence.<sup>44</sup> Yet, many legal gaps remain: for instance, marital rape is still only criminalized in 11 countries in the region. Girls are especially vulnerable to many forms of violence. For instance, in Asia, nearly 4 in 10 women aged 20-24 were married before the age of 18, while globally more than half of victims of sexual assault are girls under the age of 16.<sup>45</sup>

However, although three-quarters of the countries in the region now have laws to address VAW, implementation of policy commitments still needs improvement. Even in countries where it is criminalized, VAWG still routinely goes unreported because of widespread cultural barriers, acceptance of violence as something normal, the silence and stigma surrounding this issue, and fear of many victims that law enforcement will not intervene. The widespread mediation and ‘counselling’ on the part of many criminal justice sector actors, where victims are pressured to settle out of court, as well as the often gender-insensitive judgements of the cases that do reach court, indicate that such fears are well-founded. A culture of impunity is created whenever perpetrators of VAWG go unpunished, perpetuating violence and discrimination by reinforcing a message that they will not be held accountable for their actions.

In November 2014, the Asia Pacific Conference on Gender Equality and Women’s Empowerment was concluded as part of the Beijing +20 Review Process.<sup>46</sup> The Conference reinforced the centrality of gender equality to development and peace in Asia and the Pacific, while noting the persistent challenges to the realization of gender equality and women’s empowerment, notably: the persistence of VAWG; traditional roles and gender stereotypes; engagement in political life; emerging environmental issues including climate change and natural disasters; and access to health services including reproductive health services. The review found that challenges and gaps remain in terms of access to and funding for support services for victims/survivors, and reaching the most underserved or vulnerable women. Resource allocations are often small, and national action plans often do not have budgets attached. In order to prevent violence before it occurs, States need to take action to work with education systems and young people and families to sensitize them about VAWG, and moreover to secure resource and budget to ensure that laws, policies and protocols are effectively implemented.

### 1.5.1. Evidence from UN multi-country study on policing and prosecution of rape

In her presentation, Ms Eileen Skinnider, Senior Associate at the International Centre for Criminal Law Reform, shared some preliminary findings from an as yet unpublished multi-country study carried out in 2014 by UN Women, UNODC and UNDP.

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44. UN Women internal mapping – unpublished (also referred to in Concept Note at Appendix 1).

45. United Nations ESCAP website: Gender Equality: Beijing +20 Review Process, [www.unescapsdd.org/beijing20/review-process](http://www.unescapsdd.org/beijing20/review-process)

46. Study pending publication.

The study looked at the policing and prosecution of sexual violence in India, Thailand and Viet Nam.<sup>47</sup> The research involved a mapping of sexual violence legislation and legal processes in each country, as well as the collection of both quantitative and qualitative data. The study highlighted a number of factors that can lead to attrition, which is the process by which cases of rape and sexual violence fail to proceed through the formal justice system. Such weaknesses included: narrow legal definitions that focus on the behaviour of the victim rather than the perpetrator; definitions based on use of force that often result in the crime being made dependent on evidence of bodily injuries of the female victim; the exclusion of marital rape or allowing for lesser punishment; and statute of limitations requirements, which, as a result, in one country victims were required to report within three months of the incident.<sup>48</sup> In one country, the only form of sexual violence against an adult circumscribed in law is adult female vaginal penetration, and consequently anal rape is not criminalized. The study revealed that numerous cases were deemed false because the woman did not have any injuries to show as evidence that she fought back, based on the myth that modest women would rather die than be raped.

The study found that in India, Thailand and Viet Nam, government institutions such as the police, prosecution and courts often do not keep adequate administrative data. Even where records are kept, there is also a problem of accessibility and transparency of existing data.<sup>49</sup>

The study found that attrition often occurred at the reporting stage, due to the handling of the case by police officers. Many victims were turned away, reports were refused, or reports were accepted but not formally registered. The study also found that victims were often treated disrespectfully and without regard for their privacy or dignity, having to repeat their story multiple times.<sup>50</sup> In addition to the risks of re-victimization, chances of inconsistency are also increased when a victim is required to go over their story repeatedly, which is then used against the victim when assessing her credibility. Minor contradictions in dates and times can result in an acquittal or at a minimum create doubt about her credibility.

One woman from the UN study was interrogated four times by male inquiry officials and went to the police station more than ten times for her case to be able to proceed: *“The first question that was put to me was ‘Why didn’t you report earlier?’... Then another police officer asked me ‘Why didn’t you simply accept compensation from him (the offender)? You already have children, why were you asking for so many things?’”*<sup>51</sup> Knowing her right not to settle through a mediation process empowered this woman to continue with her complaint within the formal justice system. Her case highlights the importance of providing support and assistance to the survivor throughout the criminal justice process.

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47. Presentation by Ms Eileen Skinnider, Session 1, Day One. Study pending publication.

48. Presentation by Ms Eileen Skinnider, Senior Associate, International Centre for Criminal Law Reform and Criminal Justice Policy, Session 1, Day Two.

49. Presentation by Ms Eileen Skinnider, Senior Associate, International Centre for Criminal Law Reform and Criminal Justice Policy, Session 1, Day Two.

50. Presentation by Ms Eileen Skinnider, Senior Associate, International Centre for Criminal Law Reform and Criminal Justice Policy, Session 1, Day Two.

In the same study, it was found that complaints lodged by sex workers were often discounted. One of the rape myths found in all countries was that some women deserve to be raped, including sex workers, women who dress provocatively, and women who are alone on a bus at night. The study found that in many cases, the focus was on the woman's sexual history, dress, and character, rather than on the behaviour of the perpetrator. There were numerous cases in which judges made decisions based on gender stereotyping, which reinforced sexual violence myths. Such myths include the idea that 'real rape' involves strangers, force, physical injury, and occurs in public with witnesses; sexual violence only happens to 'good' or 'innocent' women and girls; and some women deserve to be raped and therefore it is their own fault. Judges in the study said: "*A girl who is drunk or shows a lot of cleavage might be the cause of the offence*", and "*You were raped because of the way you dressed; if you had not been abused by this offender, you could have been abused by another.*"<sup>52</sup> In the same study it was found that judges, the police and prosecutors all often focused on mediation and settlement, rather than encouraging the victim to pursue formal court proceedings, thus hampering women's access to justice.

### 1.5.2. National-level experiences of ending impunity for VAWG in Asia and the Pacific

In recognition of VAWG as one of the most serious threats to the country's overall development and progress, the Bangladeshi Government has passed a number of laws specifically addressing VAWG in recent years, including National Plans of Action to address VAWG 2013, the Suppression of VAWG Act 2000, the Acid Crime Control Act 2002, the Domestic Violence Protection Act 2010, the Human Trafficking Act 2012, and the Pornography Control Act 2012. In her opening remarks, Hon. Begum Meher Afroze, Bangladesh State Minister for Women and Children's Affairs, emphasized that the Bangladeshi Government is fully committed to national and regional efforts to ensure all human rights to all citizens, and has also established many new institutions for victims of violence including DNA screening centres, one-stop service centres and shelters.<sup>54</sup> She explained: "Given the complexity of the issue of VAWG in the region, laws must at a minimum address the negative portrayal of women in the media and other social and economic factors."<sup>55</sup>

Participants at the Regional Consultation were divided into focus groups according to stakeholder category, and formed a total of six focus groups divided into judges, police and prosecutors, NHRIs and ombudsmen, lawyers and academics, and ministries.

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51. Presentation by Ms Eileen Skinnider, Senior Associate, International Centre for Criminal Law Reform and Criminal Justice Policy, Session 1, Day Two.

52. Opening remarks, Hon. Begum Meher Afroze, State Minister for Women and Children Affairs, People's Republic of Bangladesh.

53. Ibid.

54. Ibid.

55. Remarks by P G Rostaina Binti HJ Duraman, Chief Registrar, High Court of Brunei, Session Two, Day One.

The judges' focus group concluded that in many countries in the region, mediation and conciliation are routinely used, in particular in cases involving DV. A judge from India remarked that mediation is usually used where the marriage is long-term and it is the first or second incidence of violence, because the aim is to preserve the harmony of the family, which is considered sacrosanct. In Thailand, a judge also confirmed that mediation is also routinely used in DV cases in the country, and all cases involving sexual violence are heard by male judges because female judges are thought to be too biased. Judges from the Philippines were emphatic that mediation was never used in DV cases because violence was seen as the threshold beyond which the marriage is over, and the use of mediation was viewed as putting the women at further risk of abuse.

In Brunei, the High Court Chief Registrar explained that budget allocations were made for 'technology courts' to assist vulnerable witnesses where they do not need to see the offender. Also, the name of the victim is not made public to protect the girl or woman.<sup>56</sup> This was generally considered to be good practice by the stakeholders present at the Conference. Since marital rape is not defined in the national law, it was recommended that the law should be amended to include it.<sup>57</sup> In Thailand, special court-rooms and video-conferencing during the trial are also used to assist vulnerable victims to give evidence.<sup>58</sup>

In Indonesia, there are many by-laws that discriminate against women, such as laws that do not allow women to go out in a public area after 9pm, and laws that regulate how women should dress.<sup>59</sup> Indonesia passed the Elimination of Domestic Violence Act in 2004, and Komnas Perempuan is lobbying for a new law to address sexual violence.

Some countries in the region have challenging political and security situations that render the context for implementing human rights law highly complex. A participant explained that one of the issues in Indonesia is that during the peace negotiations, Aceh was given the right to draft their own laws according to Sharia law, which need not comply with the Indonesian Constitution.<sup>60</sup> In Afghanistan, large areas of the country are controlled by the Taliban, and are in effect acting beyond the rule of law. The same is also true for parts of Pakistan.

Many countries in Asia have plural legal systems characterized by several concurrent judicial institutions including formal legal systems that may incorporate international human rights standards, operating alongside Sharia legal systems that adhere to a different set of standards, as well as informal customary legal systems that often involve unwritten rules and tend to be male-dominated.

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56. Remarks by Ms Mariyani Abdul Wahab, Senior Investigating Officer, Brunei, Session Two, Day One.

57. Remarks by Judge Thiti Susaoraj, Office of the President of the Supreme Court, Thailand, Session Two, Day One.

58. See further Komnas Perempuan, 'The Institutionalisation of Discrimination in Indonesia', 2011, p.3. Available at: [www.komnasperempuan.or.id/en/wp-content/uploads/2011/11/otoda.pdf](http://www.komnasperempuan.or.id/en/wp-content/uploads/2011/11/otoda.pdf) [Accessed 10 September 2015].

59. See further *ibid*, p.4.

60. Remarks by Hon Judge Mussarat Hilali, Peshawar High Court, Pakistan, Session Two, Day One.

In Pakistan, there are many issues involving traditional justice systems. In tribal areas, if a man comes to a family and declares that he will marry a specific girl, regardless of her age or her family's consent, then no one else can marry her. The family will not contest this action due to fear of violence and/or retaliation. Also, there are often early marriages in Pakistan. "*The problem is not that we should have good laws. The problem is their implementation.*"<sup>61</sup> In addition, in Pakistani tribal areas, women are used as currency to resolve criminal cases. In cases of murder, the accused's family will give a daughter to the deceased party's family.

A participant from Bangladesh explained that in Bangladesh, although there is scope for Sharia law to coexist with civil law, there are also policies stipulating that these should not be used to the extent that they interfere with or contradict human rights. In this context, it was noted by a participant from the Maldives that the law in the Maldives is exclusively Sharia-based, and any suggestion to ensure interpretation of Sharia law in line with international human rights standards would be seen as blasphemy.

## 1.6 IMPLEMENTATION

Even in countries where the national legal framework reflects most of the rights contained in CEDAW, there can still be challenges in terms of implementation of the law; without effective implementation, human rights laws are rendered meaningless.

In Bangladesh, Hon. Begum Meher Afroze, Bangladesh State Minister for Women and Children's Affairs, reported that there has been recent progress to strengthen legislation yet there are still challenges in terms of high levels of marginalization of women, insecurity and social stigma. Women may have knowledge about their rights, but often legal assistance is out of reach. There exists a culture of impunity for criminal acts especially for victims of violence within the family.<sup>62</sup> In Bangladesh it is important to provide a realistic economic alternative for women so that they can leave a violent home with their children. Children are also important stakeholders in the process who should not be forgotten. Schools can play a role in breaking the chain and cycle of violence.

One Pakistani court judge explained that in her view, Pakistani judges generally take crimes involving VAWG seriously when they are discovered and punish the perpetrators when they can, but it is complicated because the police do not follow the law; thus, there is a need for police training at all levels.<sup>63</sup>

Sensitization of the public on women's rights is essential for the effective implementation of the law, which would encourage victims to report crimes involving VAWG and men would clearly understand the implications of violence and that perpetrators will be held accountable. There is evidence of a growing awareness in the region of the issue of

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61. Ibid.

62. Remarks by Hon Judge Mussarat Hilali, Peshawar High Court, Pakistan, Session 2, Day One.

63. Remarks by Justice Elepano, Session 2, Day One.

VAWG and of social mobilization including youth-led campaigns and engagement of men and boys, especially using social media. Male activists are speaking out, which has a big impact on social consciousness of the issue. However, there remain real challenges in terms of public perception and awareness-raising on VAWG in all societies.

Justice Zenaida Elepano from the Supreme Court of the Philippines explained that in the Philippines, women do not report cases of DV because they are afraid that their husbands will become more violent and possibly even kill them. Women are also scared of the shame and embarrassment that they will suffer in the public eye because they believe that DV should be kept inside the house. They believe that if their husband is convicted, then no one will support them, and often the victim in fact loves her husband and believes that he will change. Often, the woman believes that even if her testimony is good, the case will end in acquittal because she is poor, which means she will never get justice: *“She will keep silent because it is a better alternative for everyone, the family, and the children. She has been brought up to be silent and submissive.”*<sup>64</sup> Victims often prefer to accept a monetary settlement rather than to go through the time, cost, stress and trauma involved in legal proceedings.

Mr Ahmed Tolhal, Vice President of the Maldives Human Rights Commission commented that in the Maldives, according to the findings of a survey carried out by the NHRI in 2005 on the human rights situation in the country, which was repeated in 2011 with the same questions, there are now more women who believe that their husbands have a right to beat them, while many believe that laws enacted to end VAWG are against Islamic law because it prevents men from exercising their religious duty to discipline their women. Women generally do not want to complain against their husbands because they love them, and their mindset is such that they feel they should be submissive to their husband and not make complaints.<sup>65</sup> Mr Ahmed Tolhal explained that there is a strong advocacy within society to show women that they are not equal to men:

**THIS PUTS WOMEN IN A SUBORDINATE POSITION WHERE THEY CAN BE VICTIMIZED. THIS CREATES A SITUATION WHERE MEN ARE ABLE TO FORCE THEMSELVES ON THEIR WIVES AND THEY ARE ABLE TO PIN IT ON THE WOMAN AND SAY, “MAYBE YOU DESERVED THIS.” MORE OR LESS ALL THE REASONS ARE THE SAME IN ALL THE COUNTRIES I AM HEARING HERE - THE JUSTIFICATION IS THAT THEY DESERVE [RAPE] FOR WEARING A CERTAIN TYPE OF CLOTHING, OR GOING OUT AT NIGHT WITHOUT AN ELDER MALE.**<sup>66</sup>

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64. Presentation by Mr Ahmed Tolhal, Vice President of the Maldives Human Rights Commission, Day Two.

65. Remarks by Mr Ahmed Tolhal, Vice President of the Maldives Human Rights Commission, Day Two.

66. UN ESCAP, 'Asia-Pacific Countries Commit to Accelerating Action on Gender Equality & Women's Empowerment', [unescap.org](http://www.unescap.org/news/asia-pacific-countries-commit-accelerating-action-gender-equality-and-women's-empowerment), 20 Nov 2014, available at: <http://www.unescap.org/news/asia-pacific-countries-commit-accelerating-action-gender-equality-and-women's-empowerment> [accessed 10 September 2015]



Ms Anna-Karin Jatfors, Regional Programme Manager EVAW, affirmed that:

**NO MATTER WHERE THE VICTIM TURNS, WHETHER IT IS THE HOSPITAL, HER TEACHER, HER FAMILY, OR THE POLICE, THE MESSAGE SHOULD BE THE SAME. SHE IS MET WITH TRUST. SHE IS BELIEVED AND SUPPORTED. SHE IS NOT ASKED WHAT SHE WAS WEARING OR WHY SHE WAS OUT ALONE, OR WHAT SHE DID OR SAID TO PROVOKE HIM.**

## 1.7 DATA COLLECTION

Great progress has been made in the region in terms of data collection, covering prevalence, costs, and men's attitudes towards VAWG. At the Beijing +20 Conference, governments committed to setting targets and monitoring progress of targets, which require robust data collection systems. These commitments were revisited in November 2014 when ministers, policy makers and civil society representatives from across the Asia Pacific region came together at the Asian and Pacific Conference on Gender Equality and Women's Empowerment: Beijing +20 Review, organized by the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), in cooperation with UN Women. At the Conference, governments pledged to strengthen institutions, enhance accountability, increase resources, forge stronger partnerships and support regional cooperation in order to advance gender equality and women's empowerment.<sup>67</sup> The Civil Society Steering Committee stated:

**WHILE THERE ARE SPECIFIC COMMITMENTS CONTAINED IN THE DECLARATION THAT COULD ASSIST STATES AS DUTY BEARERS TO PROGRESS URGENT WORK ON GENDER INEQUALITY AND HUMAN RIGHTS VIOLATIONS, THEY LACK TIME BOUND, MEASURABLE COMMITMENTS AND EXPLICIT REFERENCE TO INSTITUTIONS TASKED WITH IMPLEMENTING COMMITMENTS. ASIA AND PACIFIC CIVIL SOCIETY AND SOCIAL MOVEMENTS LOOK FORWARD TO WORKING WITH ESCAP, UN WOMEN, REGIONAL DEVELOPMENT INSTITUTIONS, AND GOVERNMENTS TO PRODUCE TARGETS, INDICATORS AND ANNUAL REVIEW PROCESSES TO ENSURE THESE COMMITMENTS ARE MEANINGFUL AND HONOURED.<sup>68</sup>**

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67. Asia-Pacific Forum on Women, Law and Development, 'Civil Society Steering Committee Statement on the Asian and Pacific Ministerial Declaration on Advancing Gender equality and Women's Empowerment', 4 December 2014, available at: <http://apwld.org/civil-society-steering-committee-statement-on-the-asian-and-pacific-ministerial-declaration-on-advancing-gender-equality-and-womens-empowerment/> [accessed 10 September 2015]

68. Remarks by Ms Niknik Rahayu, Commissioner, Komanas Perempuan, Day Two.



In Indonesia, the National Commission on Violence against Women, Komnas Perempuan (KP), plays a key role in data collection. KP monitors and documents cases involving VAW, and advocates for data-driven legal and policy reform. KP monitors VAW in different contexts, such as in religion-based conflict, cultural practices, marriage, detention, and particularly among poor women.<sup>69</sup> According to KP, 3,169 cases involving VAW were recorded in Indonesia in 2001, and 279,688 were recorded in 2013. Out of these cases, the majority involved domestic violence as opposed to state violence or violence in the community. KP also recorded 1,299 cases of violence in dating and 600 cases involving female child victims of violence. It is important to note that the number of reported cases is not the same as prevalence; in order to capture more realistic figures regarding the prevalence of VAWG in any given region, it is necessary to carry out field research and national surveys.

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69. Presentation by Ms Eileen Skinnider, Senior Associate, International Centre for Criminal Law Reform and Criminal Justice Policy, Session 1, Day Two.

## II. THE ROLE OF STAKEHOLDERS IN ADDRESSING IMPUNITY

As illustrated by the above-referenced UN study on the policing and prosecution of sexual violence in India, Thailand and Viet Nam, ensuring access to justice for victims of VAWG requires involvement of all stakeholders at every stage of the process: from the reporting of the crime, to the investigation, and through to the trial and beyond. This entails engaging with the police, prosecutors, judiciary, social workers, health workers, and sometimes with other justice institutions such as NHRIs or ombudsmen. In countries with plural legal systems, it is also necessary to recognize Sharia law courts, legislative bodies or heads of state, religious authorities and law makers, and customary justice mechanisms as stakeholders with an important role to play in addressing impunity for violent crimes against women and girls, since they have powers over religious laws. A conference participant from Singapore noted that the country's admittedly discriminatory provisions relating to Muslim women within the family "were essential in order to preserve harmony of Singapore's multiracial, multireligious and multicultural society".

It is imperative to recall that women and girls are the primary stakeholders in ending VAWG, and that addressing impunity involves taking a victim-centred approach to gender-based violent crimes. Prosecutors also play a critical role in the criminal justice response to VAWG. While they face different duties and tasks depending on their State's legal system, more work needs to be done in sensitizing the public about the rights of women and girls to live free from violence, which means educating boys and men as well as girls and women. Reporting sexual violence such as physical assault, family violence, marital rape as well as other traditional practices harmful to women and exploitation has been found to be inextricably bound up with the concept of family honour, and the family often plays a significant role in the woman's decision to pursue a case.<sup>70</sup> Women must weigh up the benefits of reporting crimes involving VAWG against the costs they will incur in terms of stigmatization by their family and wider community as a result of identifying themselves as victims of sexual violence. Many participants from the region explained that due to the mindset of society, victims are subjected to a great deal of family pressure to withdraw the case.

Most importantly, addressing impunity for VAWG requires a multi-stakeholder approach. This involves effective cooperation, information sharing, and a shared commitment to a victim-centred approach.

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70. Remarks by Ms S. Pusphat, Deputy Public Prosecutor, Singapore, Day Two.

In order to share national-level experiences in ending impunity for VAWG, stakeholders at the Regional Consultation were divided into groups according to sector: police and prosecutors, lawyers, judiciary, NHRIs and ombudsman. Group participants discussed: the role of their institutions in ending impunity for VAWG; the main issues, gaps and challenges encountered in discharging their role; ways in which they cooperate with other stakeholders to end impunity; and recommendations they have to improve their work and cooperate with other stakeholders.

## 2.1 THE POLICE AND PROSECUTORS

Police and prosecutors attended the Regional Consultation from Afghanistan, Bangladesh, Brunei, the Maldives and Singapore. The participants noted that in order to initiate her legal case against the perpetrator, the victim must report the crime to the police, and it is crucial that the case be handled properly at this stage to ensure that the evidence is gathered in a timely and appropriate manner, and in a way that inspires confidence in the victim and encourages her to pursue the case to trial. Participants agreed that the role of the police is to ensure that the administration of justice is based on equality under the law, regardless of the identity or status of the perpetrator. The police must send files to the court once evidence has been collected. Prosecutors are one of the actors in the justice system and play a crucial part in ending impunity of VAWG. They need to present the seriousness of the case to the court, where victim-centred approaches are applied.

All forms of VAWG continue to be seriously underreported. Ms S Pusphat, Deputy Public Prosecutor for Singapore, explained that in Singapore, there are special desks where victim's cases are registered and recorded, victims are counselled and taken to the hospital for a medical test. If the perpetrator is arrested, he is placed in pre-trial detention for 48 hours and must be interviewed during that period. Where the police and prosecutor deem prosecution necessary (charges can be brought), their challenge is usually the family itself, due to family pressure that often causes victims to withdraw their complaint. In Singapore, although every case is documented by police, it does not end with the police. It will only end when the prosecution decides to close the file, or if the whole case has been handled and completed through the courts.<sup>71</sup>

In Brunei, Ms Mariyani Abdul Wahab, Senior Investigating Officer, noted that the prosecutor prepares women for trial, assesses whether or not they have a safe home, and determines whether the perpetrator may still be in touch with the women after they are sent to a shelter. After trial the prosecutor follows up with the victim. The prosecutor can also order children to be removed from the common home and placed in an institution. The Brunei prosecutor was involved in the drafting and implementation of national laws on VAW and in the recent passing of the penal law. If the woman withdraws her complaint or becomes a hostile witness, the prosecutor must drop the case because it is impossible to continue.<sup>72</sup>

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71. Remarks by Ms Siti Nurjainah Haji Kuala, Legal Officer from Brunei, Day Two.

72. Remarks by Mr Ahmed Tolhal, Vice President of the Maldives Human Rights Commission, Day Three.

Mr Abdul Jaleel Ibrahim, Investigation Officer, Maldives Police Service, explained that there are only 30 prosecutors in the Maldives. The prosecutor can ask the NHRI to monitor how the investigation has been conducted by the police. The collaboration between stakeholders can be difficult and time-consuming, and Mr Ahmed Tholal, Vice President, Maldives Human Rights Commission, commented that often *“victims get lost in the unfathomable void of bureaucracy”*.<sup>73</sup>

Police and prosecutors from the Asia Pacific region face a number of challenges in their work.<sup>74</sup> Some of the examples and issues raised during the consultation include the following:

- In **Brunei**, the police do not have designated/specialized doctors/examiners for victims of sexual and gender-based violence, so they rely mainly on the government doctors to collect evidence in cases of sexual and domestic violence. Under such circumstances, obtaining forensic medical evidence for such cases can be very lengthy.
- In **Pakistan**, there are varying standards of investigation under Sharia law, which only applies to Muslims, and civil law, which applies to non-Muslims. The police must be able to work with the mindset created by traditions and culture. Social practices are a challenge, and there are few female police investigators.
- In the **Maldives**, legislation prescribes that the victims should be put into a safe home by the police, and yet there is no safe home to take them to.
- In **Afghanistan**, some of the areas are highly insecure, and the Government does not have control over them, and therefore they do not have any police force.
- In **Brunei**, the girl victim has to confront the perpetrator in court if she is over 14 years of age. In one case, a 25-year-old woman escaped because she was too afraid to confront her rapist. The victim must confront the perpetrator and undergo cross-examination in order to assess her credibility and to see if she cries.
- In **Afghanistan**, they can only detain the perpetrator for 48 hours, which is often a problem because it takes much longer to gather evidence to prove the credibility of the witness and her statement.

## 2.2 LAWYERS

Lawyers attending the Regional Consultation from Bangladesh, China and Lao PDR explained that while legislation is necessary, implementation structures and human resources must also be in place in order to enhance access to justice. Lawyers play an

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73. Group discussions among stakeholders at the Regional Consultation on the Role of Key Stakeholders in Ending Impunity for Violence Against Women and Girls in Asia, 25 November 2014, Session 2, Day One.

74. Remarks by Ms Li Ying, China Women's University Lawyer, Session 2 Day One.

important role in assisting the prosecutor and the judiciary. They can engage in legal activism, conducting public interest litigation, and advocating for law reform. Lawyers also have a role to play in assisting the victim to make a claim for compensation during the criminal trial.

Ms. Li Ying, Vice-Director of the Domestic Violence Prevention Centre, China Women's College, said that in China, lawyers have an oversight role and represent victims when the criminal justice actors do not comply with their duty. Lawyers in China also carry out public interest litigation and produce reference books on the implementation of DV laws.<sup>75</sup>

In Bangladesh, Advocate Ms Fawzia Karim Firoze explained that legal NGOs such as the National Women's Association can apply to be a 'friend' of the prosecutor, which means that they can supply evidence and submit an investigation report in addition to the police report. They can also act as amicus curiae in the High Court. Activist lawyers also engage in public interest litigation.<sup>76</sup>

In Lao PDR, the lawyer for the Ministry of Justice, Ms Loathchana Khemthong, was called upon to give her opinion on the draft VAW law, as were lawyers in China on the draft DV legislation.<sup>77</sup> The Laos lawyer for the Ministry of Justice helps victims to find a lawyer to represent them in cases involving VAWG. Lawyers in Laos work with the Ministry of Justice, the Ministry of Security, and UN Women to draft laws and share ideas on how best to represent victims.

Lawyers at the Conference identified a number of challenges in their work:<sup>78</sup>

- The main challenges to lawyers are gaps in the laws and inadequate witness protection. Other challenges are the re-victimization of victims at trial and the insufficient numbers of experts and experienced lawyers and prosecutors. Often, there is also political influence exerted over investigations.
- In many jurisdictions, the court does not always permit the lawyer to present their case. At times the prosecutor does not want the lawyer to speak. There are challenges also concerning obtaining evidence from the victim. Since senior lawyers only work in the High Court, victims are often cross-examined by junior lawyers in the lower courts, who may re-victimize the client if they are not properly trained. It is a challenge to engage experienced lawyers for the victims in VAWG cases. There are also challenges due to political influence and to a lack of witness or victim protection.<sup>79</sup>

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75. Remarks by Ms Fawzia Karim Firozee, President Bangladeshi Women Lawyers' Association, Member NHRC Bangladesh, Session 2, Day One.

76. Remarks by Ms Loathchana Khemthong, Laos Ministry of Justice, and Li Ying, China Women's University Lawyer, Session 2, Day One.

77. Group discussions among stakeholders at the Regional Consultation on the Role of Key Stakeholders in Ending Impunity for Violence Against Women and Girls in Asia, 25 November 2014, Session 2, Day One.

78. Remarks by Ms Fawzia Karim Firozee, President Bangladesh Women Lawyer's Association, Session Two.

79. Group discussions among stakeholders at the Regional Consultation on the Role of Key Stakeholders in Ending Impunity for Violence Against Women and Girls in Asia, 25 November 2014, Session 2, Day One.

- In China, it is difficult to find well-qualified lawyers to work on VAWG cases. Evidence is also a challenge because it is difficult to preserve the evidence for trial. There are no video-conferencing provisions in China.
- In both China and Bangladesh, lawyers working on cases involving victims of VAWG usually have to work on a *pro bono* basis. In China, every law firm has to do a certain percentage of *pro bono* work.

### 2.3 THE JUDICIARY

The Regional Consultation was well attended by eminent judges from many countries in the region, including Afghanistan, Brunei, India, Pakistan, Philippines, Sri Lanka and Thailand, who all took the opportunity to share valuable insights from their work.

It was agreed by the judges participating in the consultation that the role of the judiciary was to implement the law, interpreting the law consistently with both domestic law and international obligations. The judge must control the court proceedings, carefully establish the factual situation of the case, and then make a decision regarding culpability and sentencing.

The main obstacle is the lack of adequate laws to address VAWG, and the very slow speed at which the courts generally operate. There is generally inadequate infrastructure to safeguard witnesses and ensure their security. Judges from Brunei, Pakistan, the Philippines and Sri Lanka identified the weakest link as being a lack of coordination in police investigations. Judges from Afghanistan and Bangladesh highlighted a lack of reliable forensic facilities. In addition, there was agreement among judges from the region that there is often a lack of understanding of the victim's point of view by the judiciary.<sup>80</sup>

Judges participating in the consultation identified a need for more judicial activism from the higher courts, more introspection and self-criticism among judges, and for in-house discussion between male judges about patriarchal values. In most Asia-Pacific countries, it was proposed that more female judges are needed at all levels of the judiciary.

Justice Zenaldo N Elepano of the Supreme Court of the Philippines explained that, currently in the Philippines, judges are veering towards a rights-based approach in deciding cases, i.e. more than a simple literal interpretation of the national law. Under the Philippines Constitution, international laws are made part of the law of the land, which means that they are directly applicable to cases involving VAWG.<sup>81</sup> The Committee on Gender-Responsiveness was created within the Philippines judiciary especially to address cases of GBV, to promote better access to justice for victims and to enhance

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80. Remarks by Ms Zenaida N. Elepano, Supreme Court of the Philippines, Day One.

81. Remarks by Judge Thiti Susaoraj, Office of the President of the Supreme Court, Thailand, Session 2, Day One.

accountability of perpetrators. The Committee adopted a principle of restorative justice. As an example of cases in which the judge must play an extended role, Judge Indermeet Kaur, Delhi High Court judge, cited a case in which a woman was raped by a man she knew as a friend. After the man was convicted, he married his victim and they had a child, and the couple returned in front of the judge to ask to have the conviction quashed. The judge must decide whether this is a sham marriage, which involves monitoring the case for the next year and playing an active role.

Ms Mussarat Hilali, Hon. Judge of the Peshawar High Court explained that there is a move towards judicial activism in Pakistan. The Justice of the Supreme Court can choose any dispute and make a decision that opposes human rights, even if the case has not been reported. Thus, the Supreme Court judges have jurisdiction to initiate an investigation on a human rights issue that is drawn to their attention, rather than waiting for a matter to be brought before the court.

Judge Thiti Susaoraj of the Supreme Court of Thailand said that, in Thailand, there is no real judicial activism. The role of judges in common law is just to review evidence put forward by the parties.<sup>82</sup>

## 2.4 MINISTRIES

Participants in the Regional Consultation from ministries in Bangladesh, the Maldives and Timor-Leste agreed that the role of the ministries is to sign commitments and pledges to implement international law, promote political will and inter-agency cooperation, and increase accountability of the different state actors.

Dr. Abul Hossain commented that the Ministry of Women and Children's Affairs in Bangladesh makes suggestions to other ministries and actors, and provides training, lobbying and capacity building on women's rights issues.<sup>83</sup> He identified the biggest challenges in Bangladesh as the lack of mention of GBV in the current training curricula, and of information for the public on what is available in terms of services. Also, the ministers cannot make recommendations to judges.

In the Maldives, Ms Mahufooza Waheed noted that the Ministry of Law and Gender makes recommendations, provides technical support, and coordinates stakeholders on the issue.<sup>84</sup> She said that there is a lack of tools and techniques to deal with cases, which makes it difficult for the Ministry to give its due psychosocial support.

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82. Remarks by Dr Abul Hossain, Project Director, Multisectoral Programme on Violence Against Women, Bangladesh, Session 2, Day One.

83. Remarks by Dr Mahufooza Waheed, Ministry of Law and Gender, Maldives, Session 2, Day One.

84. Impunity and the Rule of Law, OHCHR Report (2011).

## 2.5 NATIONAL HUMAN RIGHTS INSTITUTIONS

Representatives attended the Regional Consultation from NHRIs in Afghanistan, Bangladesh, India, Indonesia, Lao PDR, Malaysia, the Maldives, the Philippines, Sri Lanka and Timor-Leste.

The NHRIs and ombudsmen's offices are among the mechanisms that ensure the compliance of States with their human rights obligations. Their work can have a direct role in combating impunity and promoting the rule of law.<sup>85</sup> NHRIs play varied roles and functions throughout the region, depending on their national mandate. At a minimum, most NHRIs monitor government implementation of laws on VAWG and other human rights issues. They also carry out human rights education and awareness-raising on VAWG. Professor Mahfuza Khanam gave the example of the Bangladesh Human Rights Commission, which initiated the Brave Men Campaign in schools and colleges to sensitize boys on VAWG. It is carrying out advocacy to end child marriage, providing advice to the government in relation to changes in legislation in this regard.<sup>86</sup> NHRIs frequently carry out training for stakeholders including the police, the army, teachers, and government officials on human rights and implementation of the law in relation to VAWG.

Some NHRIs are empowered to carry out investigations and to intervene in cases relating to VAWG. For example, Ms Maria Andrade Xavier explained that the Timor-Leste NHRI is currently intervening in a case of domestic violence involving an army officer.<sup>87</sup> Mr Jaudeep Singh Kochher noted that in India, the judiciary itself often requests the NHRI to contribute to cases,<sup>88</sup> while Mr Roshini Hettige commented that the Sri Lankan NHRI can visit police stations and detention centres. It can also engage in mediation and make recommendations. If the Sri Lankan NHRI suspects widespread violations of human rights, it can initiate its own inquiries. Participants discussed how the Sri Lankan and Indian NHRIs can also take action against the police and other institutions if they fail to investigate cases on VAWG. They can also take action against public institutions in instances of sexual harassment at work. Mr Tholal commented that the Maldives NHRI investigates complaints and also proactively starts investigations without complaints. Mr Ameer Izyanif Hamzah explained that the Human Rights Commission in Malaysia (SUHAKAM) cannot interfere with a case while it is in court, so they have adopted a practice of holding watching briefs on key cases, convening stakeholders and remaining seized of the matter.

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85. Remarks by Prof Mahfuza Khanam, Honourable Member and Chair of the Committee on Women's Rights of the National Human Rights Commission of Bangladesh, Session 2, Day One.

86. Remarks by Ms Maria Andrade Xavier, National Human Rights Commission of Timor-Leste, Session 2, Day One.

87. Remarks by Mr Jaudeep Singh Kochher, Joint Secretary, Training & Research, National Human Rights Commission, Session 2, Day One.

88. Remarks by Mr Jaudeep Singh Kochher, Joint Secretary, Training & Research, National Human Rights Commission, Session 2, Day One.



NHRIs play an important role in advocacy for policy reform. Mr Jaudfeep Singh Kochher gave the example of the Indian NHRI, which is currently advocating for broadening the scope of the section relating to rape in the Indian Penal Code to redefine it more inclusively. It made recommendations related to broadening the definition of sexual harassment to include stalking, and other offences. It initiated consultations with a number of stakeholders including government departments to reduce sexual harassment in the work place, particularly, in the public sector, through the establishment of complaints committees in various government offices. It contributed to the development of the Anti-Trafficking Act and initiated research on trafficking, which recommended the creation of a number of measures to address trafficking.<sup>89</sup> Mr Phetvanxay Khouasakoun commented that in Lao PDR, the NHRI has been working with legislators on a new law currently being introduced to include marital rape within the definition of rape through an amendment of the Penal Code.<sup>90</sup> Following the attention that VAWG has been given in India recently, the Indian NHRI organized a National Conference to bring all stakeholders together and take their views. The Conference resulted in a set of recommendations for the relevant committee in Government that is looking at legislative change. SUHAKAM in Malaysia recently managed to persuade the Government to include psychological abuse in the definition of torture.

Komnas Perempuan (National Commission on Violence against Women), one of three NHRIs in Indonesia, focuses solely on violence against women. Ms Niknik Rahayu explained that the NHRI is primarily engaged in collecting data on VAW, which are used to open dialogue and influence policy. The NHRI can take complaints but they have a limited budget and staff, and therefore usually refer cases to other agencies and organizations that can help.

Ms Latifa Sultani noted that the Afghan NHRI has conducted national inquiry research on honour killings and rape because they are the most common forms of VAW in the country. They carried out this research through the use of focus group discussions and public hearings to which they invited judges, prosecutors, the police and victims to give inputs.

Stakeholders from the Asia Pacific region identified challenges and areas that need to be improved for NHRIs as follows:

- The **Afghanistan** NHRI needs greater protection because there is a lot of danger involved in investigating VAW and the handling of these cases.

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89. Remarks by Mr Phetvanxay Khouasakoun, Lao PDR's National Steering Committee on Human Rights Coordination of the Lao PDR.

90. Remarks by Mr Ahmed Tholal, Vice President, Maldives Human Rights Commission, Session 2, Day One.

- The **Maldives** NHRI needs more capacity and a legal remit to go beyond just making recommendations. One of the biggest challenges is the public's perception of VAW. Religious extremism and ideology impedes women's access to sexual and reproductive health and contributes to marital rape. When the NHRI tries to discuss these issues, it is labelled as anti-Islamic, which is used to delegitimize its work.<sup>91</sup>
- In **Indonesia**, there are similar problems to the Maldives, i.e. many religious beliefs and traditions that impede women's rights. Also, it is very difficult for the NHRI to positively influence the legislative process.
- In **Timor-Leste**, the main challenge the NHRI encounters is a lack of awareness of the law relating to VAWG among the community and of the rights to which women are entitled.
- In **Sri Lanka**, the persistence of gender stereotyping and cultural attitudes condoning VAWG is a challenge for the Commission and society at large.
- The challenges that SUHAKAM in **Malaysia** faces in working on VAWG relate to reservations that Malaysia has entered to CEDAW. These relate to cultural and religious exceptions, and conflicts between common law and Sharia' law applied to cases of VAWG, for example in regard to marital rape. In its 2006 appearance before the CEDAW Committee a Malaysian parliamentary representative stated that the Malaysian Parliamentary Select Committee "*had concluded that marital rape could not be made an offence, as that would be inconsistent with sharia law*"<sup>92</sup>
- In **China**, one of the main challenges is the lack of relevant data and lack of evidence to advocate for and underpin legislative change. Challenges also remain in terms of the inclusion of sexual violence in the definition of domestic violence. The All-China Women's Federation has collected evidence on domestic violence to make the case for the inclusion of sexual violence in the definition. It now plans to lobby the National People's Congress that will review the draft law that has just been published.
- In **Lao PDR**, one of the main issues pertains to the fact that the National Commission for the Advancement of Women is not independent, which impedes its work; it is also under-resourced and still undervalued as a public institution. Moreover, the Commission does not have powers to receive complaints. Information and data sharing among stakeholders trying to protect human rights of women and provide redress for violence against women is a real challenge. Coordination needs to be improved. There is also much distrust between government agencies and civil society, which makes coordination challenging.

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91. Women's Aid Organisation, CEDAW & Malaysia, Malaysia Non-Government Organisations Alternative Report, Assessing the Government's progress in implementing the CEDAW, April 2012, at p.200.

92. Presentation by Ms Arlene Brock, Former Board Member of International Ombudsman Institute, at the Regional Consultation on the Role of Key Stakeholders in Ending Impunity for Violence Against Women and Girls in Asia, 25 November 2014.

## 2.6 OMBUDSMEN

Ms Arlene Brock, former ombudsman of Bermuda, gave a presentation on the role of ombudsman in addressing VAW. She noted that there were approximately 140 ombudsmen around the world. The office of the ombudsman is created either by a country's constitution or statute, and its mandate is to investigate complaints against government authorities, including the police. An ombudsman is an independent body which reports to both the legislature and the public, and it can initiate an investigation in the public interest on its own motion. Key to the role of the ombudsman is neutrality, which means that they cannot advocate for either complainant or authority.<sup>93</sup>

Ombudsmen differ substantially from the judicial process in several ways. The ombudsman is free, fast and flexible, and is not bound by the rules of evidence. They can also investigate allegations that do not necessarily constitute a legal cause of action. However, the ombudsman can only make recommendations, which are not binding, the impact of which depends on the ability of the particular ombudsman to formulate effective recommendations and to name and shame government officials. Recent UN resolutions have encouraged ombudsman to be a part of NHRIs, and some of these ombudsmen have now been designated as national preventative mechanisms by their governments.

Ms Sue O' Sullivan, current Canadian Ombudsman for Victims of Crime, attended the Regional Consultation via video-link to share her experiences in addressing cases involving VAWG in her capacity as ombudsman. She explained that in Canada, the Federal Ombudsman for Victims of Crime is an independent body that makes recommendations to the Government on how laws would better suit the needs of the victim. The ombudsman emphasizes the victim's voices and sensitizes actors of the justice system such as judges, the police and prosecutors on how to handle cases of VAW and highlights the issues involved. Ms Sue O'Sullivan is also Special Adviser to the Minister of Justice for Canada, which means that in her role as ombudsman she can make recommendations to the Government of Canada as to how to enhance the laws to meet the needs of victims of crime. She presents on many parliamentary committees and amplifies the voices of victims to push for policy changes. The Canadian ombudsman is also mandated to sensitize the participants in the criminal justice system about the priorities for victims, which consists in speaking to crown attorneys and victim advocates across the country to identify key issues and promote principles on justice for victims of crime.<sup>94</sup>

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93. Presentation by Ms Sue O'Sullivan, Federal Ombudsman for Victims of Crime, Canada, Session 3: 'Enhancing state accountability for protection, investigation and prosecution of VAWG, good practices and lessons learned', Day Two.

94. Remarks by Justice Yasmin Abbasey, Office of the Ombudsman - Anti Sexual Harassment Act, Pakistan, Session 2, Day One.

Ombudsmen from Pakistan and Thailand also attended the Regional Consultation. Justice Yasmin Abbasey, Office of the Ombudsman – Anti Sexual Harassment Act, explained that in Pakistan there is a Federal Ombudsman for protection against harassment of women at the workplace, further to the 2010 Protection against Harassment of Women in the Workplace Act. Complaints can be made by anyone in person, in writing or online. The employer is bound to implement recommendations made by the ombudsman. She noted that, in Pakistan, the ombudsman must deal with challenges related to social norms, because women and girls are encouraged to be silent, so it is critical to create awareness about their rights. The role of NGOs is to take their case to the ombudsman.<sup>95</sup>

In Thailand, the ombudsman oversees policies and can further bring the issues to Parliament. The ombudsman has 30 days to review each case and can refer to other agencies if the issue is not within their purview. Speaking on behalf of the Chief Ombudsman of Thailand, the Deputy Secretary General of the Office of the Ombudsman of Thailand explained that the ombudsman's underlying principle is that "justice delayed is justice denied". The Thailand ombudsman can investigate delayed actions or negligence of duties of police institutions in cases involving vulnerable female victims. The ombudsman is authorized to: conduct a fact-finding investigation and request prompt action or clarification from the responsible entities; refer the complainant to relevant stakeholders for further action; or collaborate with the media to encourage social sanction. The ombudsman oversees a phone number (1676) throughout Thailand that people can call toll-free to get help with dealing with public officials. It is also possible to bring a complaint through the ombudsman's website. The Thai ombudsman prefers not to point out who is right or wrong, but rather what is right or wrong and how they can work together to solve the problem. Rather than writing a report the ombudsman tries to convince the organization to solve the problem.<sup>96</sup>

Ms Brock noted that few offices of ombudsmen focus on women's rights or on VAW. Most human rights ombudsmen will be sensitive to women's human rights, but when there is a dual responsibility usually either the human rights concern or the maladministration will take precedence, not both.

Ms Brock gave several examples of cases in which ombudsmen have been used to investigate cases of VAWG in several different contexts, as shown below.

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95. Presentation on behalf of Ms Panit Nitithanprapas, Chief Ombudsman, Ombudsman of Thailand/Asian Ombudsman Association, Session 4, Day Two.

96. Presentation on behalf of Ms Panit Nitithanprapas, Chief Ombudsman, Ombudsman of Thailand/Asian Ombudsman Association, Session 4, Day Two.

### 2.6.1 Investigations

- Minnesota Ombudsman for Victims of Crime (1998)

A 14-year-old girl was gang-raped. She was known to the police and was in breach of her curfew at the time. When the police arrived on the scene, they allowed all but two of the men to leave the apartment, and cited the victim for breach of curfew, and suspicion of prostitution. The two perpetrators were eventually convicted of raping the girl. The ombudsman launched an investigation into the case, which resulted in recommendations for police training. As a result of this decision, the police commissioner was outraged by the ombudsman report and brought bills into the Minnesota legislation in 2002 to reduce the ombudsman's powers.

- Queensland, Australia Ombudsman (2014)

In a Queensland prison, several women were on psychiatric medication. The prison officers were concerned that the women were holding the drugs and distributing them to others as currency, although they had no evidence of this. Consequently, they had a policy of strip searching the women before and after taking their medication. Since women prisoners are often victims of abuse from childhood, these strip searches re-traumatized them and were counter-productive to the situations for which they required medication in the first place. As soon as the ombudsman began an investigation, the prison officers stopped the practice. However, the ombudsman continued the investigation and stated that the practice was not authorized and was unreasonable because other less invasive methods were not considered.

### 2.6.2 Beyond investigations

- Sindh, Pakistan Ombudsman (2014)

The Pakistani Ombudsman initiated a seminar on the role of the ombudsman in dealing with abuses against women and children. He engaged with NGOs with a focus on honour killings and invited the President of Pakistan to address the meeting. The meeting resulted in the Governor of Sindh expressing commitments to address honour killings in the community.

- Ombudsman for Spain (2012)

The Ombudsman for Spain instigated a survey on trafficking of women and children. On the basis of the survey results, he recommended training and highlighted the need for coordination among police, Ministries of Interior and Employment and international agencies.

- Thailand Ombudsman

The Deputy Secretary General of the Office of the Ombudsman of Thailand explained that the Thailand Ombudsman has run an awareness-raising campaign involving posters and outreach in schools and universities, which also tries to reach women in remote areas.

The Thai ombudsman recommended the Constitutional Court to change the law related to unfair income tax collection, which was discriminatory to women. Previously, the woman's income was deemed to be part of the husband's, and only the husband could file the tax return on behalf of both husband and wife. The Constitutional Court agreed and now married women can pay their income tax separately. The ombudsman also referred the issue of change of name at the time of marriage to the Constitutional Court, and achieved another change in the law whereby it is now no longer necessary for women to change their surname when they marry.

The Thai ombudsman refers cases involving human rights abuses to the NHRI. At times, the ombudsman has a case conference with the police. Normally, the bureaucratic procedure to contact the police involves contacting them with an official letter, which can cause a delay, so the ombudsman formulated MOUs with the police, the Ministry of Interior, the Water Works, and the Electricity Commission, which are the seven public organizations that their office holds accountable. Every year the ombudsman organizes three or four regional seminars to reach the rural areas. They get other organizations to join them to meet with 500-600 people in civil society, public administrators, the private sector, to sensitize them about what is going on in the country and their right to make a complaint. The ombudsman investigator also attends these seminars and receives complaints. The Thai ombudsman and the NHRI generally have separate mandates, but linkages can be made whereby they can refer cases.<sup>97</sup>

Participants at the Regional Consultation explained that a key issue for ombudsmen in the Asia Pacific region is a lack of public awareness about their role.

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97. Remarks by Mr Ahmed Tolhal, Vice President of the Maldives Human Rights Commission, Session 3, Day Two.

### III. GOOD PRACTICES AND LESSONS LEARNED

Despite all of the challenges, there are examples of good practice from the region in terms of strengthening state accountability, judges making good decisions, and methods being adopted to effectively render justice. Participants in the Regional Consultation were asked to provide examples of good practices and lessons learned in this regard. They noted that it was imperative that coordination be improved between all of the stakeholders to ensure that the victim's case is handled effectively and justice can be achieved. In many countries, the judiciary, NHRIs and ombudsman have been instrumental in actively promoting access to justice in cases involving VAWG by insisting on implementing the law in spite of pressure to do otherwise and sometimes by initiating their own enquiries. NGOs and judges have been active in lobbying for changes in the law where they are not working for women and girls. In some countries, efforts have been made to increase the accountability of public officials, including police and the judiciary.

Raising public awareness about VAWG and the law has been a priority throughout the region and has resulted in better implementation of the law in several countries. In addition to helping victims to understanding their rights, it has been essential to introduce effective victim protection and support measures to enable them to access justice.

Many countries in the Asia Pacific region have plural legal systems, and in reality large sections of the population do not access the formal court system. Working with informal justice systems has proven effective in providing access to justice for victims of VAWG.

Examples of good practices and lessons learned from the region are given below.

#### Enhancing coordination

- In **Afghanistan**, a taskforce meets on a monthly basis for a multisectoral rule of law meeting, run by United Nations Assistance Mission in Afghanistan (UNAMA) with invited participants. The prosecutors come to the meeting and can ask for assistance if they have a problem with a case. People who run shelters also come, and everyone shares strategies and helps each other if they are facing a problem. Many best practices evolve from this.
- In **Indonesia**, networking with stakeholders, especially religious and cultural leaders, has been key to integrating laws to end VAWG into the plural legal system. For accountability to trickle down to the community level, a supplementary role must be played by religious and community leaders to change mindsets.

- In the **Maldives**, multi-stakeholder cooperation has been important in ensuring state accountability. The Office for the Protection of Equality works with NGOs to intervene in cases of VAW. The contact with NGOs also allows for advocacy and awareness-raising in communities and for concerns to be referred to the ministry.
- In **India**, a standard operating procedure (SOP) was developed consisting of mandatory guidelines for police to report cases of rape in women and children's refuges to the NHRI, within 24 hours. Once a case is reported, the NHRI start an enquiry, which is quicker than a police investigation.
- In **the Philippines**, the NHRI faces a lack of resources, which it overcame by converging with different sectors to share resources at a multisectoral level and referring victims to other organizations when the NHRI does not have the resources to assist itself.

### Judicial activism

- In the **Maldives**, the NHRI received a report that two underage girls were being detained and that this was an enforced disappearance. NHRI talked to the relevant authorities to verify facts and were led to understand that this was incorrect information. The NHRI officer made an unannounced visit to the prison, and the guards took them to see the girls. The NHRI immediately asked the State to release the girls because they had no legal grounds to detain them and this was a gross human rights violation. The Government did not pay any attention to this. The matter went to Parliament and then to the President. The President then asked for the girls to be transferred to a shelter.

THE NHRI IS GIVEN LEGAL AUTHORITY TO ACT, SO WE NEED TO USE THAT AUTHORITY TO STRENGTHEN STATE ACCOUNTABILITY THROUGH THE USE OF MEDIA. SHAMING GOVERNMENTS WILL BE THE ONLY MEANS THAT WILL RESONATE WITH THEM TO ENSURE JUSTICE FOR VICTIMS WHO ARE WOMEN THAT GET RE-VICTIMIZED OVER AND OVER AGAIN BY THE SYSTEM. WE SHOULD NEVER COMPROMISE THEIR RIGHTS FOR DIPLOMACY.<sup>98</sup>

- In the Supreme Court of **Pakistan**, there is a human rights cell that is directly accessible to the public. Victims can write a letter to the human rights cell, and all letters are read by the cell's 30 staff. Serious human rights complaints are referred to the Chief Justice of the Supreme Court. The cell receives 300-400 letters per day, most of which are either frivolous or minor offences that are disposed of by the director. However, the director recommends that 8-10 cases per day go for review by the Chief Justice, who will make a decision as to whether the case should be pursued in the public interest.

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98. Remarks by Ms S. Pushpa, Deputy Public Prosecutor, Singapore, Session 4, Day Two.



- In both **India** and **Pakistan**, *suo moto* rulings allow individuals to come to court and complain about non-investigation of cases. The court can then start a legal process on its own.
- In **Pakistan**, the Ombudsman on Sexual Harassment has successfully taken up matters involving VAW in the workplace. For example, a university professor was sexually harassing a student who complained to the ombudsman and he was ordered to be removed following the ombudsman's inquiry process.
- In the **Maldives**, the NHRI intervened in a case involving a 15-year-old girl who was found to have had sex with men and had also been raped. The court convicted her and sent her to jail, but the NHRI intervened to say that it should be taken into consideration that she had been abused in the past, and the High Court commuted her sentence.

### Advocacy to change the law

- In **China** in 1996, there was a case in which a woman was killed by her husband, who threw her from the top of a building. She had reported abuse by her husband to the police for many years, but nothing was done. This case of DV came into the public view and precipitated a challenge to the view that DV is a private family affair. In response, the regulators of the province where the woman was from elected to draft a regulation on DV, and four years later the DV regulation was enacted. The All-China Women's Federation has been lobbying for national legislation since 2008, and a draft law on DV was published on DV in November 2014.
- In **India**, in 1997, following the Vishakra case, which involved sexual abuse in the workplace, the Supreme Court laid out guidelines in their judgement for dealing with such cases. This led to the adoption of a sexual harassment law.

### Accountability of judicial mechanisms

- Participants identified a general need in the region for monitoring and oversight of independence of the judiciary, and for a disciplinary process for judges.
- In **Indonesia**, due to the need to raise the integrity of public officials, judges, the police, and public administrators must now take an oath saying that they will not personally engage in violence.
- In many countries in the region, there are gaps in investigations, which sometimes are deliberate due to corruption and lack of police willingness to investigate. In India, this has been overcome by prosecuting police officers who have participated in corruption.
- In **Afghanistan**, working with women in parliament has helped to reduce political interference in cases of VAWG.

- In **Lao PDR**, it has been important to have a dedicated institution to strengthen accountability. The National Commission for the Advancement of Women adopted a National Action Plan on VAW 2014-2020.

### Public awareness-raising

- In order to hold states accountable when they sign international treaties, an awareness-raising campaign is valuable to enable the public to understand the commitments being made and what they mean for the country. In India, a famous Bollywood actress, Madhuri Dixit, was brought in to promote the rights of women and girls to be protected from violence. Because she is a well-known figure in the Indian public, Madhuri was able to take the message further than traditional public policy campaigns.
- In cases where the lack of investigation is due to political influence by the perpetrator, international pressure and civil society engagement have helped to address this.
- In **Brunei**, awareness-raising through social media has increased reporting of VAWG. Also, when criminal laws and prescribed punishments are applied consistently, the law works as an effective deterrent. In the past, perpetrators of DV got away with fines, but now the public knows that this is not the case anymore, which makes a difference.

### Victim protection and support

- In **Bangladesh**, the establishment of a one-stop crisis centre has been effective in addressing impunity in cases of VAW. Established by the Ministry of Women and Children, the centre provides trauma support, medical and psychosocial assistance, and legal support to victims of violence. What makes it successful is the integrative approach, which makes it timely, effective and affordable for victims.
- Often, when victims have financial problems, they cannot afford to pay the transport fares to come to court, or to lose a day or more of wages to take time off work to appear in court. In **Brunei**, there is a witness allowance given by the court, and the employer can be called upon to pay lost wages. Transport and food costs are also paid for through a police budget in **Bangladesh**.
- In **Singapore**, there is an issue of victim participation because victims do not want to come forward. In one case, a mother did not want her daughter to report molestation by her father. The judge went ahead with the prosecution without the victim's support and the father pleaded guilty; "*It is important to be prepared to fail, but to go ahead with the case anyway.*"<sup>99</sup>

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99. Available at [www.un.org/womenwatch/daw/vaw/handbook-for-nap-on-vaw.pdf](http://www.un.org/womenwatch/daw/vaw/handbook-for-nap-on-vaw.pdf)

- In **Bangladesh**, the problem of lengthy legal processes is addressed by separate courts to deal with women and children, which require investigations to be completed within sixty working days. India also has fast track courts for rape cases.

### Alternative justice systems

- In **Lao PDR**, the participant mentioned that there is a promising practice that is currently being piloted, involving mediation by village elders. The Village Mediation Unit Decree now mandates all mediation units to have a Laos Women's Union member represented. Moreover, each village mediation unit receives 3-6 months' training on VAWG issues, such as how to investigate cases, how to take evidence from victims and how to handle sensitivities to ensure that victims can access a remedy and have their rights respected. The project is being piloted in three main provinces and will be rolled out as part of the action plan for 2014-2020. The evaluation from the pilots has yet to be published, but to date, there have been positive results in terms of the representative of the Lao Women's Union increasing gender sensitivities and mediation that is focused on the victim's rights.
- In **Timor-Leste**, in recognition that informal justice systems constitute the main remedy available for women in rural communities, the Commission has been training community leaders on the human rights of women and children and VAWG. Training community leaders includes a multi-stakeholder component, ensuring that community leaders work together with the police special units functioning at the level to investigate cases of sexual abuse and domestic violence. The Commission is also working with the police to ensure they integrate human rights and VAWG components in police training.
- In **Bangladesh, India, Indonesia, Pakistan** and the **Philippines**, mobile courts bring justice to remote areas where there is no court system. This helps people in remote areas to access justice, but these courts do not currently cover cases of VAW.
- In countries with plural legal systems, it has been helpful for NHRIs to engage with the tribal courts, giving them resources to allow them to meet national human rights standards. This has been successful in the **Philippines** and **Pakistan**.

## IV. TOOLS

There are several tools that have been developed based on international norms and standards, the due diligence obligation and specifically to provide further details that can assist stakeholders in ending impunity for VAWG. There are also a number of tools currently in development, including a Bench Book for judges in Asia on cases involving VAWG. Ms Eileen Skinnider, International Centre for Law Reform and Criminal Justice Policy, gave an overview of the available tools, with particular detailed reference to the two UNODC publications detailed below, which are: the ‘Handbook on Effective Prosecution Responses to Violence against Women and Girls’ and the ‘Blueprint for Action: an implementation plan for criminal justice systems to prevent and respond to violence against women and girls’.

### UN Women Handbook for National Action Plans on Violence against Women

The Handbook brings together current knowledge on effective policy for the prevention of, and response to, violence against women, and concretely demonstrates how States have developed and implemented such policy in their own contexts.<sup>100</sup> The document is not a model plan itself, but sets out guidelines to help policy makers and advocates formulate effective plans. It is based on good practices in States’ plans and the advice of experts from different countries and regions. The principles it encapsulates have been designed to be applied regardless of the context, size or resource base of any individual State, though the method of implementation may vary.

The Handbook first outlines the international and regional legal and policy framework that mandates States to adopt and implement National Action Plans to address violence against women. It then presents a model framework for National Action Plans on violence against women, which sets out recommendations, accompanied by explanatory commentaries and good practice examples.<sup>101</sup>

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<sup>100</sup>.Ibid, p.2.

<sup>101</sup>. Available at [www.unodc.org](http://www.unodc.org)

## Handbook on Effective Prosecution Responses to Violence against Women and Girls, UNODC

The purpose of the Handbook is to assist prosecutors to uphold their duty in implementing the rule of law, particularly on the criminal justice response.<sup>102</sup> The Handbook is divided into three parts: (i) part one covers such topics as the international and regional human rights framework and summarizes some of the research on how criminal justice systems have responded to VAWG; (ii) part two covers the role of the prosecutor in effective responses in cases involving VAWG and ensuring a victim-centered criminal justice response; and (iii) part three focuses on effective institutional practices and approaches to address VAWG for the prosecution agency.

Prosecutors handling cases have the difficult task of balancing the imperative of victim safety with the traditional role of presenting the case to the state. The role of the prosecutor is one of the most diverse roles in the criminal justice system around the world. This publication contains examples of good practices in terms of what women and girls need from the criminal justice system, and what matters to women. There is a section in the handbook that demystifies common misconceptions among criminal justice officers to do with gender stereotyping. Part two of the handbook focuses on the tasks of individual frontline prosecutors and contains a lengthy section dealing with victims and the importance of a victim-centred response. There is also a shorter section focusing on how the prosecutorial agency as an institution can more effectively address VAW.

Some of the studies cited in the Handbook look at victim satisfaction as they go through the criminal justice system. They also reported that if a victim feels listened to, empowered and supported through the criminal justice system, even if there is an acquittal, her satisfaction is greater than a victim who has received a conviction but has been treated poorly throughout and made to feel like she was somehow to blame. Success occurs when a prosecutor makes the woman feel that the criminal justice system is available to her so that if she needs it again she will feel it is accessible to her.<sup>103</sup>

## Blueprint for Action: An Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence against Women and Girls, UNODC

This is a soft legal document adopted by the UN General Assembly in 2010, to assist countries in implementing standards and norms.<sup>104</sup> The Blueprint for Action provides a framework for developing national implementation plans for the criminal justice system to respond to VAW, focusing on a multisectoral approach. It addresses some of the

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102. Remarks by Ms Eileen Skinnider, International Centre for Law Reform and Criminal Justice Policy, Session 6, Day Three.

103. UNODC 2014b, available at [www.unodc.org](http://www.unodc.org)

104. The silo effect refers to the lack of information exchange between database systems within an entity or with outside entities.

challenges faced by the criminal justice system. While the Blueprint for Action focuses on improving the coordination and working relationship among different justice agencies, ensuring an effective crime prevention and criminal justice response requires close cooperation between the criminal justice agencies and other stakeholders. It minimizes the silo effect<sup>105</sup> of each agency's mandate by articulating a shared understanding of how to respond to VAWG and complement each other.

Implementation requires a coordinated and systemic approach, promoting involvement and participation of all stakeholders, and committed and sustained resources. Differing needs of women and girls subject to violence must be taken into account, and the burden must shift from the victim to the criminal justice system to the extent possible so that the case can proceed without coercing the victim towards a certain course of action. The Blueprint reviews the key criminal justice agencies and their need to appreciate each other's mandate, procedures and limitations, and looks at how these processes and agencies can be coordinated. Coordination contributes to better communication and linkages between different agencies, and enables them to complement rather than undermine each other. From the perspective of the victim, he or she will be met with the same understanding of her rights and her situation, and receive the same quality response from all justice officials through the process.

The Blueprint also looks at data collection and analysis, monitoring and evaluation.

### UN Women Virtual Knowledge Centre to End Violence against Women and Girls

The Virtual Knowledge Centre to End Violence against Women and Girls is an online resource designed to serve the needs of policy makers, programme implementers and other practitioners dedicated to addressing VAWG.<sup>106</sup> The primary aim of the Global Virtual Knowledge Centre is to encourage and support evidence-based programming to more efficiently and effectively design, implement, monitor and evaluate initiatives to prevent and respond to VAWG. The site is a 'one-stop' source containing several expert modules on VAW and aims to build on and complement many other efforts undertaken by different stakeholders of the justice systems to provide guidance on ending impunity on VAW. It provides: step-by-step guidance on how to work with specific sectors, groups and areas of intervention; case studies of proven and promising intervention; recommended tools for implementation; and a roster of specialized organizations, other leading initiatives and sources.

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105. Global Virtual Knowledge Center, <http://www.endvawnow.org/en/leading-initiatives>. For more information, contact [evaw.helpdesk@unwomen.org](mailto:evaw.helpdesk@unwomen.org)

106. Remarks by Mr Mohammed Murtaza Mohammed Aman, EVAW Prosecution Unit of the Attorney General's Office, Session 6, Day Three.

## **CEDAW Bench Book, Ministry of Law, Justice and Parliament Affairs – Bangladesh**

The CEDAW Bench Book was produced on behalf of the Ministry of Law, Justice and Parliamentary Affairs under the Implementation of CEDAW for Reducing Violence against Women (ICRVAW) Project, with support from UN Women.

The Bench Book focuses on cases of VAW in the criminal courts and is divided into five sections. Section 1 provides information about the scope and extent of the right to gender equality and the state's obligations in this regard. Section 2 looks at myths and stereotypes about women. Section 3 discusses specific offences of violence against women, and issues for the possible consideration of judges. Section 4 provides information on women and girls who are especially vulnerable, such as children and women with disabilities. Finally, Section 5 outlines procedural matters, including the provision of legal aid to unrepresented parties, and obtaining access to information about court proceedings.

### **4.1 OTHER TRAINING RESOURCES CURRENTLY AVAILABLE IN THE REGION**

In Bangladesh, Brunei, India, Malaysia, Pakistan, Sri Lanka and Timor-Leste, judicial training is available for judges at a national judicial training institute, sometimes including some human rights elements. However there is no specific focus on VAWG.

In Singapore, with the exception of the requirement for judges to sit in with another judge for the first year of their appointment, there is no formal training for judges. In Brunei, there is a training school for Sharia Law judges, but civil lawyers have to attend training overseas, and hence there are few civil lawyers in the country. There are only six judges in Brunei and they have too much work. In the Maldives, the national training institute for judges is still in the development stage, and although training for judges is mandatory, there has been no training to date. There is some resistance from the judges to learning about new laws, and there is a tension between Sharia and civil law. In China, UN Women is already providing training to lower court judges who ask for it.

In Bangladesh, the National Women's Lawyer Association attends the judicial training to share milestones and issues for half a day during each 15-day training, which is provided seven to eight times per year. During the judicial training, the law and applicable court cases on VAW are always discussed, but the training is only for judges of the subordinate courts. The UNDP Judicial Strengthening Project, known as JUST, is offering more training to judges of the superior courts to fill this gap, and the superior judges will be trained as trainers. In Pakistan, training is only for the lower court judges, and there is a presumption that high court judges already have sufficient knowledge.

There is a lack of training in Bangladesh and Pakistan on gender sensitivity, for which a curriculum needs to be developed for all stakeholders.

In Bangladesh, the Government made a summary of the judgment in *Bangladesh Women Association v. Govt of Bangladesh* and distributed it to all relevant ministries as guidance on sexual harassment at school and work. All ministries are bound by this judgment.

In Timor-Leste, guidance exists on adoption of international law into the national legal system.

## 4.2 CHALLENGES IN THE REGION IN TRAINING NEEDS

- There can be a brain drain of judges into other fields due to low salaries. There is also often a low capacity of trainers to train judges.
- In **Timor-Leste**, the challenge is language. There are differences between common and civil law and between the English and Portuguese language. There is also a lack of human resources. There are only four regional courts and 20 judges in the whole country.
- In **Afghanistan**, judicial training is run by international NGOs. Due to the problem with security in Afghanistan, in some areas there is no access to university or school because it is too dangerous. Judges have mostly studied Sharia law and have not had access to university training in civil law. As a result, even judges in the civil courts often rely on their Sharia training. In 62 out of the 374 districts, there are no courts or judges, and it is too dangerous for judges to travel there. Judges often refer cases to local mediation in family issues including DV cases, and there is no accountability. There is no national training institute in Afghanistan and the gap is currently being filled by the international community: “*If they (international NGOs) leave, then we will have nothing.*”<sup>107</sup>
- In the **Maldives**, magistrates court judges mostly have diploma-level university training, and since 2010, superior court judges must now also have a degree; the magistrates court is currently better equipped academically.

## 4.3 TOOLS IN DEVELOPMENT

### 4.3.1 Essential Justice Services and Quality Standards, UN Women, UNFPA, UNODC and UNDP

This publication is still currently in draft format. The booklet aims to define which services are essential or extremely important for victims in responding to women who have experienced violence or who access the justice system due to the fear of violence. The section on quality standards describes how services should be implemented to ensure that the essential services are of sufficient quality or merit to effectively address a woman’s justice needs.

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107. Presented by Ms Evalyn, Ursua, Attorney-at-law, Philippines, Session 6, Day Three.



### 4.3.2 Booklet on Gender Stereotypes and Other Forms of Indirect Discrimination

This Booklet is a training resource manual focusing on eight countries in South-East Asia and is still in the preliminary stages.<sup>108</sup> It will include laws and court decisions from all levels of courts from Cambodia, Indonesia, Lao PDR, Myanmar, Philippines, Thailand, Timor-Leste and Viet Nam. Court decisions discussed will be those that are illustrative of harmful gender stereotypes or wrongful gender stereotyping in adjudication, as well as those illustrative of good practices in this regard.

#### The objectives of the Booklet are:

- Develop an understanding among judges and other justice actors of: harmful gender stereotypes; how harmful gender stereotypes manifest in laws and court decisions; how they impact on women litigants and the exercise of their human rights; and how they affect broader human rights questions and efforts to protect, promote and fulfil women's human rights in South-East Asia.
- Develop an understanding of how harmful gender stereotypes and wrongful gender stereotyping in laws and court decisions can be addressed and avoided.
- Provide judicial training institutions with a training resource tool that can be used to train judges in addressing harmful gender stereotypes or avoiding wrongful gender stereotyping in adjudication.

The Booklet poses the questions on where 'harmful gender stereotypes' or 'wrongful gender stereotyping' can be found in justice delivery, and why there is a need to understand these concepts and why they constitute gender discrimination.

The Booklet focuses on CEDAW and the obligation of States parties to banish harmful gender stereotypes and wrongful gender stereotyping (Articles 2, 5, 10), as well as the Convention on the Rights of Persons with Disabilities (Article 8), relevant CEDAW Committee jurisprudence, and relevant decisions of international tribunals such as the International Criminal Court (ICC), International Criminal Tribunal for Rwanda (ICTR) and International Criminal Tribunal for the former Yugoslavia (ICTY).

The Booklet identifies two main gender stereotypes, which are the 'virtuous or good woman' stereotype and the 'bad woman' or 'slut' stereotype. These stereotypes are illustrated in judicial approaches to witnesses, which become norms of evidentiary interpretation. The Booklet illustrates some of these norms that have developed in South-East Asian court decisions, such as: the prompt reporting requirement; the cautionary rule, which requires judges to exercise great caution in believing the testimonies of complaints in sexual assault cases, on the grounds that their testimonies are 'inherently potentially unreliable'; the corroboration rule; the rule on the relevance of the victim's sexual experience, sexual history or sexual reputation; the belief that women file

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<sup>108</sup> Caribbean Ombudsman Association & UN Women, Protocol of Partnership Caribbean 2011.

complaints out of ill motives; the notion that a 'sexy outfit' evidences sexual invitation or sexual availability; the 'standard' or 'normal reaction' requirement, which is based on the belief that women always physically fight back when assaulted or violated, and the belief that women leave or stay away from their abuser; the belief that women say 'no' when they mean 'yes'; and the idea that rape can really be avoided by strong, competent, educated women, and that only stupid, uneducated and weak women get raped.

The Booklet also looks at gender stereotypes in marriage and family, which lead to the idea that women have a duty to have sex with their husbands, and the 'no marital rape rule'. Gender stereotypes also exist in relation to property and other economic rights, and lead to the idea that men are better decision makers in property and other matters. The Booklet will focus on laws, legal rules and court decisions that break gender stereotypes in South-East Asia.

The Booklet will make a number of recommendations regarding how to address gender stereotyping in the court system, including: the need for law reform to eliminate harmful gender stereotypes in existing laws or legislation; the need to remove rules and procedures in investigation and adjudication that are based on harmful gender-based stereotypes; the adoption of an interdisciplinary approach to adjudication; the elimination of procedures or trial practices that lead to re-victimization; confidentiality of some proceedings; the elimination of the practice of concluding 'consent' as a consequence of lack of evidence; and the adoption of protective measures.

#### 4.3.3 Bench Book on building a jurisprudence of equality

The Commonwealth Secretariat is developing a Judicial Resource Manual and Bench Book as a tool relevant for judges in Commonwealth Asian countries. The Bench Book is designed to assist judges in ensuring women's equality with men before the law in cases of VAWG. This is not a training manual, but rather it is hoped that it will become a reference manual for judges on suggested steps to follow to handle cases of VAWG. The Bench Book will include the following elements:

- on overview of State's obligations in addressing violence against women under international law;
- the role of the judge in ensuring women's equality before the law;
- how to avoid stereotypes and bias – concrete examples of how bias can affect the judicial decision-making process;
- the perception of the court and the criminal justice process by victims of gender-based violence;
- statistics on violence against women in Commonwealth Asian countries;
- information on the psychological effects of domestic violence, sexual violence and how it can affect a victim's conduct in judicial proceedings;

- the role of the judge in making the court a more gender-sensitive environment;
- how to handle vulnerable victims/witnesses;
- best practices in interpreting the law in a gender-sensitive way;
- how to use and cite international instruments;
- the benefits of a multisectoral approach - how to collaborate with other stakeholders.

### **Recommendations for the Bench Book by stakeholders from the Asia Pacific region**

- Guidance should be included on the use of gender-sensitive language, as well as sensitization on gender stereotypes. The Bench Book could also highlight what could be sensitive and effective.
- Judges should be encouraged to write full written decisions so that decisions can be reviewed for gender sensitivity.
- In order to ensure the dignity of victims, the Bench Book needs to highlight how fighting impunity is a holistic process, which involves a number of phases: the violation, the reporting, the investigation, the prosecution, the trial, and the post-conviction or acquittal stage. Some of these phases are critical to the justice system and should be referred to in the Bench Book, but it is important to highlight how the process is important, and how other stakeholders need to cooperate with the criminal justice system to ensure those issues are tackled.
- The one-stop crisis centre model could be used as a case study and an example of good practice. Judges should visit one-stop crisis and acid-throwing control cells, to see and understand the impact of VAWG.
- The Bench Book should indicate which obstacles are likely to have to be overcome, such as disappearing witnesses, issues of admissibility of evidence and weighting. Reference to judicial practice to deal with these situations should be included.
- Judges should be obliged to ensure that the dignity of victims of crime is maintained. Victims of crime should be shielded from the offender by the use of video-conferencing. The victim should be identified by a number rather than by their name, and in camera trials in cases of alleged rape should be mandatory.
- Guidelines should be provided on how to deal with vulnerable witnesses, and how to assess the evidence and apply the procedure.
- Guidelines should be provided on recording evidence and taking witness statements in rape cases.
- Guidelines should be provided on victim compensation.
- There is a need to translate the Bench Book into local languages (Tamil, Sinhalese, etc.). This is extremely important because otherwise, common people do not understand what is being said in court or how to make arguments for their case.

- The differences between religious and Supreme Court rules should be explained to judges.
- Action indicators should be created for law enforcement officers with access control, participation and benefits.
- Judges should be required to take ownership of the finalization of the Bench Book.
- SOPs for lawyers and judges should be included to deal with VAWG.
- A national judicial training institute should be set up.
- There should be guidance on international law relating to victims who are intellectually disabled and how to handle them (CEDAW) and also how to handle children (CRC).

Participants at the Conference also stressed that a judge will not read a book unless there is a follow-up, so there is a need for an implementation plan. UN Women and the Commonwealth could support judicial training in Sri Lanka. Stakeholders in China would also like to see more training, including one on implementation of the new DV law. There is also a need for training for judges of religious courts on DV.

#### 4.4 PARTNERSHIPS

The importance of partnerships between different stakeholders and mechanisms was highlighted repeatedly throughout the Consultation as being key to providing effective justice to victims of VAWG. As an example of good practice in this regard, Ms Arlene Block, Former Board Member of the International Ombudsman Institute, presented the example of a Protocol of Partnership that was signed between stakeholders in the region.

The Caribbean Ombudsman Association convened a meeting with UN Women in collaboration with the Association of Caribbean Commissioners of Police on 'Strengthening the Response of Administration of Justice for Victims of Gender-based Violence'. The meeting resulted in a Protocol of Partnership to strengthen functional cooperation between the offices of the ombudsman, victim support services and the police in responding to reports of gender-based violence.<sup>109</sup>

One of the conference participants from Pakistan suggested that UN Women could formulate a similar protocol of partnership in Pakistan to help to prevent the harassment of women in the workplace.

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<sup>109</sup>.Remarks by Prof Mahfuza Khanam, Honourable Member and Chair of the Committee on Women's Rights of the National Human Rights Commission of Bangladesh, Session 5, Day Two.

## V. PROCESSES OF COLLABORATION

It was agreed by all participants that multi-stakeholder collaboration was crucial to ensuring access to justice for women and girls in cases involving VAWG.

Stakeholders from the Asia Pacific agreed that key stakeholders are the community and the police, and the victims themselves. Throughout the whole process, the victim needs to be protected by all stakeholders, because there are concerns that the perpetrator is able to manipulate certain stakeholders in order to access the victims. Most cooperation mechanisms with other bodies are informal, although in some cases, for example in Sri Lanka, there is a MOU with the Legal Aid Commission for case referral.

Many significant examples of good practices in terms of stakeholder collaboration were presented at the Consultation:

- In **Bangladesh**, there are two multi-stakeholder meetings at the local and national levels. At the local level, civil society organizations (CSOs), the police and individual citizens meet and make recommendations to the national level stakeholders. At the national level, meetings are held by a steering committee, which consists in senior officials who have the power and influence to make changes. The passing of the DV Act in Bangladesh is a good example of a model multi-stakeholder approach involving cooperation with the judiciary playing a key role.<sup>110</sup>
- In the **Maldives**, there is a Gender Advocacy Working Group consisting of men working on ending VAWG. They collaborate with NGOs and run campaigns, including one for the 16 Days of Activism. There is an NGO network to monitor and flag VAW cases for the NHRI
- In **Timor-Leste**, the NHRI works with policy makers (parliamentarians, local and central government agencies), the police, army officials and communities, including community leaders.<sup>111</sup>

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110. Remarks by Ms Maria de Andrade Xavier, National Human Rights Commission of Tumor-Leste, Session 5, Day Two.

111. Remarks by Mr Roshani Hettige, Legal officer, National Human Rights Commission of Sri Lanka, Session 5, Day Two.

- In **Sri Lanka**, Human Rights Commission of Sri Lanka (HRCSL) works with other institutions and NGOs primarily in terms of referring cases. The Commission provides guidance and recommendations to private and public sector organizations in regard to harassment and other VAWG issues. They have an oversight function in regard to public institutions. The HRCSL will appoint a focal point for women's rights to coordinate and lead on strategic work next year as it commences its new strategic plan.<sup>112</sup>
- The NRHI in **India** exercises oversight and cooperates extensively with other actors in the criminal justice system including the police, legislators, public authorities (e.g. in relation to sexual harassment at work), lawyers and NGOs.<sup>113</sup>
- In the **Philippines**, there is a grassroots advocacy network on ending VAWG, which has an MOU with the NHRI.<sup>114</sup>
- In **Singapore**, there is inter-ministerial collaboration between the Ministry of Law and the Family Unit. Prosecution is part of an entire framework that focuses first on victim identification, which requires collaboration. The first point of contact for children is usually through schools. The child confides in a friend, or the teacher finds out about abuse when she sees the child cry. The prosecutor needs to consult with teachers who will generally know the family of the child, and to review school reports about the child to check for any records regarding physical injuries or emotional problems. The prosecutor collaborates with Komnas Perempuan to organize awareness-raising campaigns in schools and clinics about VAWG, with the theme 'love doesn't hurt'. The prosecutor also collaborates with hospitals because injured victims will often first go to medical services, and medical officers have the power to report the case. Even if the victim denies that anything is wrong in order to protect the perpetrator, the doctor can recur to police officers and subtly ask them to look into a case. Singapore has a special desk in every hospital where victims are registered and counselled. It is crucial to work with the police, as well as religious organizations, since they know the social and family context. It may take as long as 24 months before prosecutors take action and decide to go ahead with a case while they monitor whether the family unit can be restored.<sup>115</sup>

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112. Remarks by Mr Jaideep Singh Kochher, National Human Rights Commission of India, Session 5, Day Two.

113. Remarks by Mr Alikhan O. Abuat, Commission Chairperson, Regional Human Rights Commission, Session 5, Day Two.

114. Presentation by Ms S. Pushpa, Deputy Public Prosecutor, Singapore, Day 2, Session 3.

115. Group discussions among stakeholders at the Regional Consultation on the Role of Key Stakeholders in Ending Impunity for Violence against Women and Girls in Asia, 25 November 2014, Session 2, Day One.

## VI. INSTITUTIONAL STRATEGIES AND MECHANISMS

In order to gain a greater understanding of possible strategies and mechanisms that can be used to address impunity at the national and regional levels, participants at the Regional Consultation were divided into focus groups led by technical experts, to discuss: (i) gender-sensitive investigation techniques; (ii) ensuring gender-sensitive courts; (iii) research and monitoring; (iv) protocols of partnerships; and (v) oversight, accountability and coordination mechanisms.

### 6.1 GENDER-SENSITIVE INVESTIGATION TECHNIQUES

The technical clinic related to gender-sensitive investigation techniques was led by Ms Anne Eyrignoux, Human Rights Specialist, UN Women Regional Office for Asia and the Pacific (ROAP). Participants noted that there is a widespread problem of re-victimization of the complainant when the victim has to retell her story several times. Victims feel like they are the accused because they are interrogated and sometimes in a non-gender-sensitive manner. There is often a lack of privacy, for example if the victim is interviewed in the presence of family members this may prevent her from telling her story due to fear, shame, or embarrassment.

There is a general lack of awareness among victims about the law, which the investigator needs to be aware of. It can take years for a victim to understand that she has been raped, and reporting of cases years later can decrease her credibility because she may not remember details clearly and also because of the trauma she may still be experiencing. Victims are also often unaware of the meaning of 'rape' due to cultural and religious factors.

In the Maldives and in Afghanistan, there is a conflict between religious and civil law. Under Sharia law, if a woman has sex outside of marriage then she is guilty of 'fornication', and rape victims in the Maldives and Afghanistan are admitting to 'fornication' in Sharia courts because they believe this will bring them religious redemption. Under Sharia law in the Maldives, the penalty for 'fornication' is flogging, and in Afghanistan, the penalty is stoning. In the Maldives, the NHRI can only intervene in Sharia courts at the appeal stage. However, a participant from Bangladesh mentioned that combining Sharia law with common law is possible if the political will exists.

Witness protection programmes, shelters, and victim support units are some of the successful strategies being used in the region to overcome these challenges. Participants highlighted the need to properly train investigators, including women investigators, to ensure that victims are not re-victimized. They also called for increased accountability of the media to ensure confidentiality for the victim, and better provision of forensic facilities to enhance evidence collection.

Participants in the technical clinic identified the following key issues, promising strategies, and recommendations related to gender-sensitive investigation techniques:

### 6.1.1 Key issues in the region

- Evidence in rape cases is difficult to gather.
- In the **Philippines**, if the *barangay* investigator decides that the case should be referred to the police, the victim will have to retell her story, which leads to re-victimization. Victims have to recount their story several times – first to the *barangay*, then the police, the hospital, and the court. Victims feel like they become the accused and that they are being interrogated.
- Courts sometimes ‘transplant’ parts of the victims’ testimonies into their judgement, and then when the case is published after adjudication, the victim is re-victimized again.
- There is a lack of coordination between law enforcers and prosecutors, thus the prosecutors may not be able to find any probable cause.
- In **Pakistan**, male investigators often enjoy the story of a victim and ask for more details.
- Some questions from investigators are offensive and use gender stereotypes. The behaviour of investigators can be a barrier to continuing with the complaint.
- Lack of awareness of the law by the victim. A victim can understand years later that she has been raped and then her credibility decreases because she cannot remember the details of the crime.
- The media sometimes publishes photos of victims, even though in countries like **Bangladesh** there is a law against this.
- Protection of victims can be difficult. In **Brunei**, in camera trials only apply to under 16-year-olds, and adults have to confront the rapist in court.
- Evidence by police at the crime scene may be contaminated.
- In **Afghanistan**, there is a lack of forensic labs for victims of violence.
- In the **Philippines**, the Anti-VAW and Children Act also criminalizes the revealing of the victim’s identity.



- In **India**, a witness protection programme protects victims of VAW.
- In **India**, shelters for adult and child victims of VAWG provide economic empowerment to help the victim build her professional skills. Women are protected in a shelter until they can be rehabilitated without further risk of re-victimization.
- In the **Maldives**, there is a separate Victim's Support Unit inside the police station, which handles the complaint, including forensics in rape and sexual harassment cases.
- In **Singapore**, investigators have a template detailing the preferred language to explain to the victim that they have the right to an interpreter and about the trial. If the victim shows signs of potential suicide, she is taken to an institution that can take care of her and assess her situation.

### 6.1.2 Recommendations and way forward

- Trust is very important at the investigation stage. There is a need to build trust between investigators and other actors, including the victim, before and during the investigation.
- Female doctors should conduct forensic examinations on victims, and collaboration is needed between investigators and the health personnel.
- There is a need for both female and male investigators, who must be trained on legal and gender issues relating to VAW.
- It is important to avoid repetition in story-telling for the victim. For example, a rape victim in the Philippines was made to recount her story five times; first to the *barangay* community leaders, then at the police station, then to the medical legal officer, then to the prosecutor, and finally again in court. Repeating the story can re-traumatize the victim and also raises the risks of inconsistency, which can be used against the victim to undermine her credibility.
- Victims should be interviewed in a place where they feel safe, which may be outside the police station, and a social worker should be present where the victim is a minor.
- Investigators, judges and prosecutors need to be fully aware of the context in which the victim lives including religious and cultural beliefs.
- The behaviour and language of the investigator are very important and can make the difference between the victim feeling she is being helped or further victimized.
- There is a need for investigative techniques that are sensitive to female victims who also have a disability. For example, a participant from the Philippines explained that taking evidence from deaf victims can be challenging, because there are no facilities or guidelines on how to do so.
- Investigators should be mindful that women may not report their husband as a perpetrator of violence even when they show injuries and should investigate these cases even when the women do not want to go ahead.

- Privacy is very important. The victim should not have to tell their story while the family or the suspect is present. The name of the victim should also be made anonymous. It is also important to ensure that any published court decision does not contain sufficient details about the incident to identify the victim, even without using their name. For example, in the Philippines, the lower courts often transplant blocks of the victim's testimony into their decision, and when the case reaches the Supreme, the decision is published, so that even if there are mechanisms to hide the name, it is possible to identify the woman from the decision itself.
- There is a need for accountability of the media in maintaining the privacy of victims. In Bangladesh, the media often print a photo of the victim in the paper when she brings a claim. This is illegal, but the media seem to always get away with it. In Afghanistan and the Philippines, disclosing the identity of a female victim of violence is considered a crime and an act of violence.
- There is a need for more forensic laboratories in many countries in the region, because forensic evidence greatly helps the prosecutor to ensure a conviction of the perpetrator. However, it was also noted that there can also be an over-reliance on forensic evidence in the region due to misinterpretation of the law on the part of judges. This illustrates the importance for the application of the law to focus on the credibility of the victim and her statement, since lack of consent does not need to be proven using forensic evidence.

## 6.2 ENSURING GENDER-SENSITIVE COURTS

Ms Evalyn Ursua, Attorney-at-law from the Philippines and Ms Marie-Pierre Oliver, Legal Adviser and Acting Head, Law Development Section, Rule of Law Division, Commonwealth Office, Commonwealth Secretariat led the technical clinic related to ensuring gender-sensitive courts.

It was agreed by participants that the set-up of the court infrastructure is generally not gender-friendly, and often judges do not have adequate legal or gender-awareness training. The problem is particularly acute in DV cases, because there is still widespread belief, even among judges, that DV is a private matter.

Effective strategies in the region have involved increasing the number of women judges, fast-tracking cases, and improving victim protection throughout the trial. Participants recommended training for judges, law enforcement officials, prosecutors and health professionals, as well as community information campaigns aimed at the public.

Participants in the technical clinic identified the following key issues, promising strategies and recommendations related to ensuring gender-sensitive courts.

### 6.2.1 Key issues in the region

- Family members cannot be witnesses in court, which is an issue in cases of DV.
- The set-up of the court (infrastructure) is not gender-friendly (facilities, lack of information).
- There is gender stereotyping in assessing the evidence.
- Security of judges and lawyers can be threatened in sensitive cases
- There is a lack of gender awareness among judges.
- There is case overload, and judges must deal with a high number of cases quickly.
- The insistence on prosecuting cases of fornication overshadows the issue of rape.
- Victims do not know their rights.
- There is a lack of access to legal aid and counselling.
- Judges having no legal training.
- There is gender stereotyping in judicial decisions and the myth of the ‘perfect victim’.
- Prosecutors do not always inform the victim with her rights and court proceedings.
- Family courts are often not presided over by female judges.
- Audio recording facilities are not adequately used in court proceedings.
- Courts are not child-friendly.
- A comprehensive law on sexual harassment does not exist in many countries.
- There should be specialized family courts in place.
- The use of mobile courts is not as widespread as possible to increase access to justice.
- Cases of sexual violence are not fast-tracked.
- Adequate confidentiality is not ensured by using screens for victims and witnesses.
- Laws making it an offence to disclose names and identify information of the victim in cases of sexual violence are not in place or are not implemented.

### 6.2.2 Recommendations and way forward

- Judges need to be trained to raise gender awareness, and this training should be imparted by experts in the field.
- Judges should be made aware that part of their role is to disallow questions that are demeaning to the witness. Consequently, judges who ask offensive questions and make offensive comments to victims should be held accountable.

- There is a need for training of law enforcement officials, prosecutors, and health professionals in receiving and handling complaints of sexual violence.
- In camera trials should be made mandatory in sexual violence cases, and victim support officers should be present in court.
- There is a need for victim rehabilitation programmes as well as better access to counselling, legal aid and legal representation, when possible, in the country's criminal justice system.
- Community information campaigns to raise awareness among women and men, involving different forms of media, are needed to address the culture underpinning GBV.
- There is a need to find a way to reconcile Sharia law and statutory law in a way that respects human rights in cases involving VAWG.

### 6.3 RESEARCH AND MONITORING

The technical clinic on research and monitoring was led by Ms Diana Copper, Human Rights Adviser, Human Rights Unit, Commonwealth Secretariat.

Participants discussed the significant capacity gaps identified throughout the region in terms of collecting and analysing data. In general, the quality, integrity and reliability of data are still a challenge. Data are often hard to access, and attitudes of criminal justice actors render sharing of data with other departments a challenge.

Best practices identified by the participants include integrated protocols, MOUs and monitoring networks. It was agreed that there was a need for adequate funding for gender-sensitive policy and research to inform the evidence base and the development of indicators is a critical priority.

Participants in the technical clinic identified the following key issues, promising strategies and recommendations related to research and monitoring.

#### 6.3.1 Key issues, promising strategies related to research and monitoring in the region

- There is a lack of coordination – different data systems do not speak to each other.
- There are data challenges in accessing marginalized groups, e.g. trafficking victims, internally displaced persons (IDPs).
- There are capacity gaps.
- Accessibility of data: attitudes of criminal justice actors make the sharing of data with other departments a challenge.
- There is a lack of monitoring systems to measure the impact of programmes that can inform future programmes.

- There is a need for gender-sensitive methodologies and research design, both quantitative and qualitative.
- There is need to fill research gaps: good practice in higher education; survivors' experience of police; psychology of violence.
- There is inadequate funding for gender-sensitive policy and research to inform the evidence base.
- Indicators should be developed as a critical priority.
- The quality, integrity and reliability of data are still a challenge.
- Integrated case management best practice need to be explored and used
- Consultation as a method of data gathering, has been used successfully in the Philippines.
- The Sri Lankan NHRI sends investigation teams to carry out data collection to prepare reports to CEDAW and acts as a coordinating body for the research.
- A joint enquiry by the NHRI and the Muslim Human Rights Commission on the aring of the *hijab* in Filipino schools.
- In Sri Lanka, following the 2004 tsunami, research was mandated to include VAW.
- Gender budgeting for research and training: In the Philippines, the law mandates that 5 percent of the budget should be earmarked for research and training, to which the NHRI monitors compliance.

### 6.3.2 Promising strategies / mechanisms in the region related to research and monitoring

- Integrated case management best practice.
- Consultation as a method of data gathering has been used successfully in the Philippines.
- Sri Lanka National Preventative Mechanism can make unannounced visits to an institution and may become aware of VAWG.
- In Canada protocols or MOUs with academics or civil society to have them do analysis and assist them with research.
- Monitoring networks with NGOs.
- Use of stories and case studies respecting confidentiality. Qualitative data needed in addition to case files.
- Sri Lanka NHRI sends investigation teams to carry out data collection to prepare reports to CEDAW, and acts as a coordinating body for the research.
- Independence and neutrality of researchers.

- Participatory and feminist research approach, including broad stakeholder engagement to validate findings.
- Monitoring and follow up to measure how research findings and recommendations are implemented.
- NHRI and Muslim Human Rights Commission did a joint enquiry into wearing of the hijab in Filipino schools.
- In Sri Lanka following the 2004 tsunami, research was mandated to include VAW.
- Gender budgeting for research and training. In the Philippines the law mandates that 5% of the budget should go towards research and training, and the NHRI monitors compliance with this.
- National observatory (Spain) to do gender analysis.

### 6.3.3 Recommendations and ways forward

- Gender-sensitive methodologies and the South Asian Association for Regional Cooperation (SARC) Human Rights mechanism to coordinate research and monitoring should be used.
- Capacities of key stakeholders on data collection and monitoring should be developed while research gaps needs to be filled. A good example that could be replicated is the Philippines NHRI, which strengthens the network of stakeholders to access the data and to give voice to the research product.
- Performance should be tracked and systematically recorded to ensure the quality of the criminal justice response.
- Policies and their impact to further strengthen the available resources should be carefully studied.
- Data systems in institutions should be strengthened and training provided for national statistical offices on gender indicators.
- Common indicators should be developed to enable data to be monitored over time and comparable between different contexts. Data need to be coordinated between regions and offices.
- More resources are needed for quality and reliable research. Specific budgetary allocations should be made for monitoring which are non-negotiable.
- A prevalence study should be carried out using UN technical assistance to coordinate funding from governments for VAW studies.
- A mechanism should be created for information sharing across the countries.

## 6.4 PROTOCOLS OF PARTNERSHIPS, OVERSIGHT, ACCOUNTABILITY AND COORDINATION MECHANISMS

Ms Deepa Bharathi, Regional Programme Manager for the Regional Programme on Improving Women's Human Rights in South East Asia (CEDAW SEAP), UN Women ROAP, and Ms. Kemi Ogunsanya, Interim Head of Gender Section, Secretary General Office, Commonwealth Secretariate, led the technical group related to protocols of partnerships, oversight, accountability and coordination mechanisms.

Oversight, accountability and coordination mechanisms for cases involving VAWG were found by the participants to be lacking in the Asia Pacific region. It is often difficult to get victims to court, to prove incidents of VAWG and seek justice. There are low levels of reporting in remote areas and on islands; verification of reports is difficult, and it is difficult to get witnesses to court. In terms of coordination, it was felt that the stakeholders did not have equal power, whether between government departments, or between government and civil society.

Promising strategies identified in the region include: MOUs between stakeholders which clearly indicate lines of accountability at a local level; imposing a legal duty on hospitals to report abuse to the police; and sharing of resources between stakeholders. It was recommended that stakeholder policies on VAWG be coordinated and reporting duties defined in law to protect conflicts of interest. Referral systems, national action plans and inter-ministerial working groups were also proposed as ways to promote, and if necessary enforce, partnerships.

Participants in the technical clinic identified the following key issues, promising strategies, and recommendations related to protocols of partnership, oversight, accountability and coordination mechanisms.

### 6.4.1 Key issues, promising strategies in the region

- Coordination is not among equal partners within the government hierarchy.
- NHRI decisions are persuasive but not binding.
- The backlog of cases makes it difficult to prove incidents of VAWG and get justice.
- It is difficult to get witnesses to court.
- There is a weak implementation of laws.
- The preventive measures to address VAWG are weak, which feeds the vicious circle of child marriages and trafficking
- There is a high drop-out rate of girls in schools and low levels of education.
- There is lack of service for victims/survivors.
- There is poor reporting in remote islands.

- Verification of reports is difficult.
- Security in rural areas is an issue.
- There is weak participation and engagement of NGOs in Brunei.
- Despite internationally recognized human rights institutions, power and authority can be very weak in Indonesia.
- Coordination mechanisms are very weak in Pakistan.
- Many cases fail to reach the courts in Afghanistan.
- Laws on elimination of VAWG are yet to be ratified.
- Honour killing is not criminalized.
- Economic dependence on spouses causes women's lack of financial independence.
- In some countries, police cadets undergo virginity testing.
- Penalties are harsher for women than men in the Penal Code in some countries.

#### 6.4.2 Recommendations and ways forward

- Judicial and political policies on VAWG should be coordinated to protect conflicts of interest.
- All institutions should cooperate by law with NHRIs and observe their recommendations.
- Institutional mechanisms should address VAWG at the local, provincial, and national council could be headed by the head of state.
- The auditor general could have the power to audit VAWG.
- Partnerships with the judiciary should be developed because they can trickle down to all levels, and the judiciary can serve as observer at government coordination meetings for engagement on policy.
- There is a need for referral systems and for an inter-ministerial working group.
- National action plans specifically on VAWG are very important.
- Protocols of partnership involving ombudsman, police, UN Women and NGOs can be very effective
- It is important to involve traditional authorities in coordination mechanisms in order to change cultural mindsets.
- One-stop crisis centres can promote coordination among stakeholders through the referral process.
- A legal obligation should be imposed on hospitals to report violence to police for cases involving VAWG.



## VII. RECOMMENDATIONS AND ACTION PLAN

Participants in the Regional Consultation were invited to make recommendations regarding possible ways forward to improve access to justice in cases involving VAWG. The participants were divided into groups according to stakeholders, and their recommendations are set out below:

Recommendations from the police and prosecutors in the Asia Pacific region included:<sup>116</sup>

- One statement from the victim, not several, should be taken.
- Video testimony should be facilitated.
- SOPs should be provided for better cooperation between stakeholders as well as meetings between stakeholders.

A number of recommendations were made by lawyers from the Asia Pacific region, as follows:<sup>117</sup>

- More awareness-raising campaigns on VAW should be created, specifically on how to lodge a complaint and on providing information about the legal system.
- Counselling centres should be set up within court premises.
- Amendments should be made to evidence law.
- Consultations should be held between regions to share good practices and research studies.
- Compulsory training must be provided for lawyers on DV issues.
- More knowledge exchange is needed.
- An expert lawyers' panel on VAWG cases should be formed.

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116. Group discussions among stakeholders at the Regional Consultation on the Role of Key Stakeholders in Ending Impunity for Violence against Women and Girls in Asia, 25 November 2014, Session 2, Day One.

117. Group discussions among stakeholders at the Regional Consultation on the Role of Key Stakeholders in Ending Impunity for Violence against Women and Girls in Asia, 25 November 2014, Session 2, Day One.

Judges from the Asia Pacific region made the following recommendations:<sup>118</sup>

- Better feedback mechanisms are needed to ensure that courses for judges are meeting education requirements and concepts are understood and implemented by judges.
- There is need for regular meetings/coordination with heads of stakeholders: the police, magistrates, social welfare officers, human rights officers. Also, training of all of these stakeholders should be provided by judicial officers.
- The Court of Criminal Procedure in Bangladesh allows magistrates to oversee police investigations and call for records, which should be emulated in other jurisdictions.
- There is a need for special legislation on VAWG and children.
- As a rule, multisectoral cooperation and oversight should be allowed by the judiciary, and specifically, there should be oversight over processes of investigation.
- In addition to the need for more funding to systematized training programmes on an annual basis, there is also need for more competent and skilled-trainers.
- There is need to address the language barrier – Judicial Bench Book and Booklets should be translated into all local languages where needs are identified.

Stakeholders from the Asia Pacific region made the following recommendations related to the Ombudsman:<sup>119</sup>

- The International Coordinating Committee of NHRIs and the International Ombudsman Institute should advocate for the accreditation of the ombudsman as an NHRI.
- Other actors such as the police should be educated and courses provided for government departments on VAWG, focusing on departments from which many complaints originate.
- There is need for more funds to be allocated by government and development agencies and for training.
- Create commitment among stakeholders and increase political will
- Make suggestions and recommendations and give technical support to other stakeholders
- Training, capacity-building and lobbying are needed.
- Inter-agency coordination is important.
- More training on GBV should be provided to duty-bearers as well as tools on dealing with cases.

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118. Group discussions among stakeholders at the Regional Consultation on the Role of Key Stakeholders in Ending Impunity for Violence Against Women and Girls in Asia, 25 November 2014, Session 2, Day One.

119. Group discussions among stakeholders at the Regional Consultation on the Role of Key Stakeholders in Ending Impunity for Violence Against Women and Girl

Stakeholders from the Asia Pacific region recommended that there should be gender focal points in each ministry who will play a stronger role in information coordination and sharing.<sup>120</sup>

Participants from the 17 participating countries drafted with a one-year (2015) Action Plan to plan the way forward, at both the national and regional levels:

## 7.1 SUB-NATIONAL AND NATIONAL LEVEL

### Afghanistan

- By the end of 2015, Afghanistan will advocate for the prevention of local mediation in criminal cases. They will also advocate for a follow-up mechanism for commitments made to the international community, arrange capacity-building for the judicial system and advocate for rule of law through civil society and key stakeholders. Furthermore, strengthening of coordination mechanism among key stakeholders and within the donor community will be emphasized, and strengthening their monitoring role in a gender-sensitive law reform process.

### Bangladesh

- By February 2015, Bangladesh will strengthen multisectoral cooperation between human rights organizations and the National Human Rights Commission (NHRC). This will involve establishing channels of communication with the Supreme Judiciary to formalize and expand on existing multisectoral linkages.
- Within the first quarter of 2015, Bangladesh will have an initial meeting to formalize and expand on existing multisectoral linkages and to chart a plan of action, under the aegis of the Bar Council, UN Women, the Commonwealth Secretariat and UNDP.
- By June 2015, the Bangladesh Judicial Administration Training Institute will develop a training module incorporating municipal law and international legal standards and issues of enquiry.

### Brunei

- The Brunei, stakeholders will hold regular periodic dialogues among stakeholders to discuss how to improve the implementation process of laws to end VAWG and where new legislation may be needed. Protection of the victim beyond investigation, prosecution and the courtroom will be ensured while social workers will be involved in all processes from the very beginning.

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120. Group discussions among stakeholders at the Regional Consultation on the Role of Key Stakeholders in Ending Impunity for Violence Against Women and Girls in Asia, 25 November 2014, Session 2, Day One.

### China

- Within the first quarter of 2015, China will utilize multisectoral mechanisms on protection of women and children's rights and interests; they will hold a national campaign and advocate for the new law on sexual violence; and they will provide training on gender equality and ending impunity for VAWG for members of mechanisms.

### India

- By June 2015, India will provide information to the public through print and electronic media, cautioning the possible perpetrators about the serious repercussions of VAWG, as a deterrent measure.
- By the end of 2015, India will develop a common gender-sensitive training for all relevant stakeholders including the investigating agency, prosecutors and judges, for interactive sessions within one year. They will also develop an awareness programme through the legal aid service at the school level on gender justice, within one year.

### Indonesia

- In Indonesia, Komnas Perempuan will push the prosecutor, police, judges and lawyers who handle VAW cases to pursue a course/certificate in gender and human rights training.
- By June 2015, the Indonesian government officials shall commit to sign an integrity pact, which stipulates that government officials should not be perpetrators of VAW, and commit to anti-corruption.
- In the first half of 2015, Indonesia will work towards changing the culture of VAWG by: (i) campaigning on knowing how to handle sexual violence; (ii) gathering the media regularly; and (iii) strengthening the religious and indigenous people's leaders. They will also involve multi-stakeholders in the collection of administrative data in VAW annually, and will create indicators for action by law enforcement to measure their success in handling VAW cases.
- By the end of 2015, Indonesia will work on mainstreaming the protection of women and children in the criminal justice system by working closely with police institution in establishing a special unit for women and children at the sub-district level in the 33 provinces of Indonesia. They will also strengthen the substance in legislation, especially the Sexual Violence Bill, and ensure that the Gender Equality and Justice Bill is passed. They will review the Marriage Act and the Criminal Code and will formalize the Supreme Court Circular Letter.

### **Lao PDR**

- By the end of 2015, Lao PDR will mediate at a grassroots level to enhance the access of the Village Mediation Units (VMU) to women. All cases will be on a voluntary basis; although the VMU can make recommendations, it cannot produce binding judgements. In addition, juvenile cases will not include police personnel in the VMU panel. The VMU panel must include Lao Women's Union of Youth.

### **Malaysia**

- By the end of 2015, Malaysia will hold a judicial colloquium to raise awareness among judges of the superior courts, and run training programmes for lower court judges, prosecutors, and investigators. They will conduct regular periodic dialogues among all stakeholders to discuss issues relating to VAWG and will educate/encourage tribal leaders presiding in native courts to advise complainants to bring VAWG cases to the civil legal system.

### **Maldives**

- By mid-2015, the Maldives will develop a multisectoral SOP to better define and streamline the procedures to ensure justice to victims of VAW. They will also develop a sexual offender registry with multisectoral accessibility and strengthen the synergy between prosecutors and police in witness support.

### **Philippines**

- By June 2015, the Philippines will propose to the Philippines Judicial Academy that they include VAWG courses in all training programmes for judges and court professionals and will propose to the Legal Education Board (LEB) that VAWG subjects should be included in model law curricula for all law schools. They will also seek support from the Philippines Justice association for funding and from the LEB for endorsement by the Supreme Court and by the Philippines Association of Law Schools.
- By mid-2015, the Philippines will include the protection of women and human rights provisions in the upcoming Bangsamoro Basic Law (BBL). They will also enhance the jurisdiction of the Sharia courts in the Autonomous Region in Muslim Mindanao (ARMM) and recognize the role of tribal customs in settling disputes. They will strengthen the network of women human rights in ARMM through training and provision of technical support on monitoring, research and properly handling women's issues. They will also encourage female participation in governance.

### **Sri Lanka**

- By June 2015, Sri Lanka will give wide publicity to education regarding impunity for VAW in all three languages (Sinhala, English and Tamil). They will educate young girls and women in all sectors about their rights and empowerment, and about the complaints procedure to the police in cases involving VAWG. They will also educate young and old men about how they can change their attitudes towards women and girls regarding non-violence and will educate both men and women about the biological changes in women and girls.

### Timor Leste

- By the end of 2015, Timor-Leste will host a stakeholder meeting where monitoring, training and investigations on VAWG will be highlighted, as well as promulgation of the law on human trafficking. They will also establish shelters in 13 districts and complete the National Plan of Action on UN Security Resolution 1325. A participant from Timor-Leste explained that it is important to understand that each country in the region has its own development challenges. In Timor-Leste, the priority is currently peace building and national security, and addressing VAWG needs to be integrated into this context.

## 7.2 REGIONAL

- Afghan stakeholders would like to have a platform for judges to exchange experiences, as well as scholarships for Afghan students in the field of law. They would like regional cooperation in equipping their forensic laboratories and in the establishment of a judicial institute. They would also like internship opportunities in other countries.
- Bangladesh would like the issue of impunity for VAWG to be tabled at the next South Asian Association for Regional Cooperation (SAARC) Forum to engage in the regional exchange of experiences. SAARC efforts in this regard will have to be supplemented by working relationships established with the appropriate South-East Asian forum. This can occur anytime within the next year.
- Brunei will explore combining training that initiates multisectoral discussion as well as training on how to carry out good data collection.
- China will contribute to a regular regional networking mechanism for information exchange. They will continuously work to develop tools for gender evaluation in the legal system and complete case studies regarding best practices.
- Indonesia suggested that there should be a South-East Asian NHRI as a coordination forum for NHRI in the region to monitor and report on human rights abuses. They also suggested a dialogue to establish a regional-level complaints and handling system, especially in migrant cases.
- Lao PDR suggested that the AICHR should be engaged to bring the issues concerning VAWG to centre stage and to promote better coordination and cooperation among NHRIs in the Association of Southeast Asian Nations. There should be activities that bring together national as well as regional stakeholders to discuss and create concrete solutions to ending VAWG.
- Sri Lanka will immediately begin networking with other countries in the region, sharing information about relevant court judgements and other developments towards ending VAWG.
- By June 2015, Timor-Leste will host a South-East Asia National Human Rights Annual Forum on VAWG. This will include discussions and planning on training and comparative studies. They would also like to see an Asia Pacific Forum that can deliver support and training at the regional level.

- The Maldives suggested a regional rotation of judges on deciding on cases related to VAW; a regional MOU to support the prosecution of cases relating to human trafficking; and the development of a regional court of gender justice.
- Singapore and Malaysia would like regional assistance in the form of technical experts to conduct training especially for superior court judges. They would also like support in terms of materials on VAWG including publications and research papers.

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## ANNEX: LIST OF PARTICIPANTS

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	Arlene Brock	Former Ombudsman of Bermuda/UK
	Eileen Skinnider	International Centre of Law Reform and Criminal Justice Policy
	Zenaida N. Elepano	Member, Legal Education Board of the Philippines; Retire Court Administrator, Supreme Court of the Philippines
	Evalyn Ursua	Attorney and Counselor-at-Law
AFGHANISTAN	Mohammad Murtaza Mohammad Aman	EVAW Prosecution Unit of the Attorney General’s Office
	Latifa Sultani	Women’s Right Unit, Afghanistan Independent Human Rights Commission
	Sayedmerza Hussains Sayed Abdul Hussain	Rule of Law Program Associate, UN Women
BANGLADESH	Justice Syed Refaat Ahmed	High Court Justice, High Court Division, Supreme Court of Bangladesh
	Advocate Fawzia Karim Firoze	Member, National Human Rights Commission, Bangladesh
	Advocate Ainunnahar Siddiqua	Lawyer, Bangladesh Supreme Court
	MD. Golam Sarwar	Chief Judicial Magistrate
	Saif Ullah	ASP Special Crime and Prosecution, Bangladesh Police, Police HQ
	Mohammad Fazlur Rahman Khan	Deputy Attorney-General for Bangladesh
	Prof. Mahfuza Khanam	Honorable Member and Chair of the Committee on Women’s Rights of the National Human Rights Commission of Bangladesh (JAMAKON)

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	Siti Nurjauinah Haji Kula	Legal Officer
	Mariyani Abdul Wahab	Senior Investigating Officer
CAMBODIA	Judge Khiev Phanna	Provincial court at Kampot
CHINA	Dr. Zhao Ming	Deputy Division Director, Women's Rights and Interests Dep., All-China Women's Federation
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INDIA	Dr. Shashikala Mudi Anandappa Uronkar	Director, Bangalor Mediation Centre
	Jaideep Singh Kochher	Joint Secretary, Training and Research, National Human Rights Commission of India
INDONESIA	Niknik Rahayu	Commissioner, Komnas Perempuan
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MALAYSIA	Datuk Zainun Ali	Federal Court Judge, Federal Court of Malaysia
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MALDIVES	Justice Hameed Abdulla	Justice
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	Justice (R) Yasmin Abbasey	Office of the Ombudsman - Anti Sexual Harrassment Act
PHILIPPINES	Atty. Algamar A. Latiph	Comission Chairperson, Regional Human Rights Commission (AHRC)
	Alikhan O. Abuat	Commission Chairperson, Regional Human Rights Commission (AHRC)
SINGAPORE	S Puspha	Deputy Public Prosecutor, Singapore
SRI LANKA	Hon. Eva Wanasundera, J. P.C.	Judge of Supreme Court, Superior Courts Complex, Sri Lanka
	Justice Deepali Wijesundera	Judge of the Court of Appeal
	Lanka Rajani Amarasena Herath Mudiyansele	Deputy Director, The Bureau for the Prevention of Abuse of Children and Women
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TIMOR-LESTE	Maria Andrade	Provedor /Provedoria dos Direitos Humanos e Justica or National Human Rights of Timor Leste
	Anacleto Da Costa Ribeiro	Secretary of State for Security, Office of Secretary of State for Security
THAILAND	Judge Thiti Susaoraj	Judge of the Office of the President of the Supreme Court
	Acgcharawan Bunnag	Director, Director, Office of Royal Projects and Initiatives of Her Royal Highness Bajrakitiyabha, Office of the Attorney General
	Saroj Nakbet	Senior Expert Senior Expert Public Prosecutor
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