

BACKGROUND PAPER

For

Asia Pacific Roundtable: International and Regional Standard setting to eliminate Violence Against Women 2013

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I. Introduction

This paper provides background information on the international legal and policy framework on violence against women, plural legal systems and women's movements for the participants attending the Asia Pacific Roundtable: International and Regional Standard setting to eliminate Violence Against Women 2013, set to be held on 7 and 8 Dec, in Bali, Indonesia.

II. The Legal and Policy Framework on Violence against Women

A. Overview of Legal Landscape on Violence against Women

Treaty	Language
CEDAW Convention adopted in 1979 and entered into force in 1981	The CEDAW Convention did not expressly define the term "violence against women." It only mentioned traffic in women and exploitation of prostitution in women.
CEDAW Committee General Recommendation 12 on Violence against Women	The CEDAW Committee recommends states parties to include in their periodic reports to the CEDAW Committee information about legislation on violence against women, among others.
CEDAW Gen. Rec. 19 on Violence Against Women issued in 1992	Gender-based violence was recognized as a form of gender-based discrimination and defined as "violence which is directed against a woman because she is a woman or which affects women disproportionately" including "acts which inflict physical, mental or sexual harm or suffering, threats of such as acts, coercion, and other deprivation of liberty."
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) (November 15, 2000; Entry into force December 25, 2003)	The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplements the United Nations Convention against Transnational Organized Crime stating obligations to criminalize trafficking in persons, providing assistance, protection and repatriation of trafficked persons, and prevent trafficking in persons, among others.

<p>Optional Protocol to CEDAW (adopted on Oct. 6, 1999 and entry into force on December 22, 2000)</p>	<p>The OP to CEDAW provides for communications and inquiry procedures.</p>
<p>The Rome Statute of the International Criminal Court, Article 7.1 Par. G, July 17, 1998 (entered into force July 1, 2002)</p>	<p>Rape as a “crime against humanity”:</p> <p>“rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”</p>
<p>International Policy Instruments</p>	<p>Language</p>
<p>Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna in June 1993¹</p> <p>Women’s human rights Part I, paragraph 18</p>	<p>“The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights.”</p> <p>“The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.”</p> <p>“Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated.”</p>
<p>Declaration on the Elimination of Violence Against Women (DEVAW), Gen. Ass. 48th Sess. Res. 48/104, Dec. 20, 1993</p>	<p>Article 1</p> <p>...“violence against women” means “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”</p> <p>Article 2</p> <p>Violence against women encompass “physical, sexual and psychological violence occurring within the general community, including rape [and] sexual abuse” and “physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”</p> <p>Article 3</p> <p>Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political,</p>

¹ 171 representatives of States adopted by consensus the [Vienna Declaration and Programme of Action](#) of the World Conference on Human Rights

	<p>economic, social, cultural, civil or any other field. These rights include, inter alia :</p> <p>(a) The right to life; (b) The right to equality; (c) The right to liberty and security of person; (d) The right to equal protection under the law; (e) The right to be free from all forms of discrimination; (f) The right to the highest standard attainable of physical and mental health; (g) The right to just and favourable conditions of work; (h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.</p> <p>Article 4</p> <p>“States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.”</p>
Beijing Platform for Action adopted at the Fourth World Conference on Women (1995)	Identified critical areas of concern. Calls on governments to enact penal, civil, labor and administrative sanctions to punish perpetrators and urges to adopt, implement and review legislation to effectively eliminate violence against women, emphasizing the prevention of violence and the prosecution of offenders.
Resolutions	Language
Economic and Social Council review of the Nairobi Forward-looking Strategies, Annex to Resolution 1990/15 issued on May 24, 1990	"[v]iolence against women in the family and society is pervasive and cuts across lines of income, class and culture must be matched by urgent and effective steps to eliminate its incidence. Violence against women derives from their unequal status in society."
Extension of mandate of U.N. Special Rapporteur on Violence against Women (UNSRVAW) by the Commission on Human Rights in 2003, 59th sess., Res. 2003/45	The state is mandated to refrain from engaging in gender-based violence, exercise due diligence to prevent, investigate and, punish acts of gender-based violence, to provide access to just and effective remedies including medical assistance to victims and compensation; to take appropriate and effective action whether those acts are perpetrated by the State, by private persons or by armed groups or warring factions.
UN Security Council Resolutions on 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010) on women, peace and security; 1674 (2006) and all relevant resolutions on children and armed conflict including 1882 (2009), 1998 (2011)	These UN Security Council Resolutions on peace, security, and violence in conflict address women’s role in peace-building and include language on sexual violence in conflict.

<p>UN General Assembly Resolutions 61/143 (December 2006); 63/155 (October 2008); 64/137 (December 18, 2009); Resolution 65/187 (2010); Resolution 65/228 (2011)</p>	<p>These UNGASS resolutions were passed to intensify efforts to eliminate violence against women. Resolution 61/143 stresses the need to criminalize all forms of violence against women, and urges States to revise or abolish all laws and regulations that discriminate against women or have a discriminatory impact on women and ensure that provisions of multiple legal systems comply with international human rights obligations. Resolution 63/155 urges States to use best practices to end impunity and a culture of tolerance towards violence against women, including by evaluating and assessing the impact of legislation, rules and procedures regarding violence against women; reinforcing criminal law and procedure relating to all forms of violence against women; and incorporating into law measures aimed at preventing violence against women. Resolution 65/228 underscores strengthening crime prevention and criminal justice responses to violence against women.</p>
<p>Human Rights Council Resolutions 7/24 (March 28, 2008); 11/2 (June 17, 2009); 14/12 (June 18, 2010); 16/7 (March 24, 2011); 17/11 (June 17, 2011); 20/12 (July 5, 2012); 23/25 (June 14, 2013)</p>	<p>Accelerating efforts to eliminate all forms of violence against women by “ensuring diligence in prevention” (14/12); “ensuring due diligence in protection” (17/11); “preventing and responding to rape and other forms of sexual violence” (23/25)</p>
<p>UN Secretary General Studies</p>	<p>Language/Content</p>
<p>Secretary-General’s in-depth study on all forms of violence against women (A/61/122/Add.1 and Corr.1) (October 2006)</p>	<p>Secretary-General’s in-depth study on all forms of violence against women (available online in all United Nations official languages: http://www.un.org/womenwatch/daw/vaw/v-sg-study.htm)</p>
<p>Launch of the Secretary-General’s Campaign “UNiTE to End Violence against Women”, 2008-2015 (March 2008)</p>	<p>One of the five key goals of the Campaign, to be achieved in all countries by 2015, is the adoption of legislation on violence against women in accordance with international human rights standards (see http://endviolence.un.org)</p>
<p>Launch of the Secretary-General’s database on violence against women, which provides the first global “one-stop shop” for information on measures undertaken by Member States of the United Nations to address violence against women, including legislation (March 2009)</p>	<p>Launch of the Secretary-General’s database on violence against women providing the first global “one-stop shop” for information on measures undertaken by Member States of the United Nations to address violence against women, including legislation (see http://www.un.org/esa/vawdatabase)</p>

Regional Legal and Policy Instruments	Language
The Council of Europe Convention on preventing and combating violence against women and domestic violence or Istanbul Convention	The Council of Europe Convention on preventing and combating violence against women and domestic violence or Istanbul Convention provides for the implementation in Europe of legally binding standards to prevent violence against women and domestic violence, protect its victims and punish the perpetrators.
Council of Europe Convention on Action against Trafficking in Human Beings (February 2008)	The Council of Europe Convention on Action against Trafficking in Human Beings obligates State parties to criminalize trafficking in human beings and related offences ² and for the legislation to ensure that the offences are punishable by “effective, proportionate, and dissuasive sanctions” ³ and to adopt legislative or other measures to assist victims in their recovery, and provide compensation for them. ⁴
The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belém do Pará”) Adoption: June 9, 1994. Entry into force: March 5, 1995	The OAS General Assembly adopted this treaty in Belém do Pará, Brazil. This instrument defines the forms of violence against women, including physical, sexual, and psychological violence, based on gender, whether in the public or private sphere, and establishes that all women have the right to a life free from violence, in addition to all the human rights enshrined by the regional and international instruments. The Convention of Belém do Pará establishes that the right of women to be free from violence includes, among others, their right to be free from all forms of discrimination. The State parties agree to condemn all forms of violence against women and to investigate, prosecute, and punish such acts of violence with due diligence and adopt policies and take specific measures aimed at preventing, punishing, and eradicating such violence against women. ⁵
Maputo Protocol	The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa of Maputo Protocol addresses violence against women and establishes obligations related to legal reform.
Addis Ababa Declaration of Africa ministerial preparatory meeting for the 57th session of the Commission on the status of women on priority theme elimination and prevention of all forms of violence against women and girls	The Addis Ababa Declaration declared that in Africa ending violence against women IS NOT AN OPTION but a priority for development, peace and security, human rights, economic and social cohesion. It also declared that there is ZERO TOLERANCE to all forms of violence against women and girls in Africa.

2 Council of Europe Convention on Action against Trafficking in Human Beings, Articles 18-20.

3 Ibid., articles 23(1).

4 Ibid., articles 12(1) and 15.

5 <http://www.oas.org/en/iachr/mandate/what.asp>.

<p>Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution</p>	<p>The South Asian Association for Regional Cooperation (SAARC) adopted the Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution which obligates States parties to take effective measures to ensure that trafficking is an offence under their respective criminal laws and punishable by appropriate penalties.</p>
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B. CEDAW on Violence against Women

1. What are the CEDAW Convention provisions on violence against women?

The Convention on the Elimination of Discrimination against Women (CEDAW Convention),⁶ which was adopted by the UN General Assembly in 1979 and entered into force in 1981, did not expressly define the term “violence against women.” It only mentioned traffic in women and exploitation of prostitution in women.⁷

2. How has the CEDAW Committee interpreted state obligations on violence against women under its General Recommendations?

a) General Recommendation 12 on Violence against Women

In its General Recommendation 12 on_Violence against Women, the CEDAW Committee recommends states parties to include in their periodic reports to the CEDAW Committee information about: “1. The legislation in force to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, sexual harassment at the workplace, etc.); 2. Other measures adopted to eradicate this violence; 3. The existence of support services for women; 4. Statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence.”⁸

b) General Recommendation 19 on Violence against Women

In General Recommendation 19, the CEDAW Committee recognized gender-based violence as a “form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”⁹ Gender-based violence is defined as “violence which is directed against a woman because she is a woman or which affects women disproportionately” including “acts which inflict physical, mental or sexual harm or suffering, threats of such as acts, coercion, and other deprivation of liberty.”¹⁰

⁶ Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sep. 3, 1981 [hereinafter CEDAW].

⁷ CEDAW, Article 6, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sep. 3, 1981; CEDAW Gen. Rec. No. 19, para. 13; Under Article 6 of CEDAW, states are obligated to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution in women.”

⁸ CEDAW Gen. Rec. 12, para 1,2,3,4.

⁹ *Report of the Committee on the Elimination of Discrimination Against Women: Eleventh Session, General Recommendation 19*, para, 1 Violence against Women, U.N.Doc. No. A/47/38 (1992), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> [hereinafter CEDAW, Gen. Rec. 19].

¹⁰ *Id.*, at para. 6.

The CEDAW Committee urged states to “take positive measures to eliminate all forms of violence against women.”¹¹ The CEDAW Committee stressed that States should not only eliminate discrimination by or on behalf of Governments but also by any person, organization or enterprise.¹²

The CEDAW Committee stated that traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision;¹³ such prejudices and practices may justify gender-based violence as a form of protection or control of women;¹⁴ that rural women are at risk of gender-based violence because of traditional attitudes regarding the subordinate role of women that persist in many rural communities and that girls from rural communities are at special risk of violence and sexual exploitation when they leave the rural community to seek employment in towns.¹⁵

The CEDAW Committee also stated that within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes;¹⁶ lack of economic independence forces many women to stay in violent relationships;¹⁷ the abrogation of their family responsibilities by men can be a form of violence, and coercion¹⁸ and that these forms of violence impair their ability to participate in family life and public life on a basis of equality.¹⁹

The CEDAW Committee correlates the low economic situation of women put women at risk of violence and abuse by stating that poverty and unemployment increase opportunities for trafficking in women²⁰ and that there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labor from developing countries to work in developed countries, and organized marriages between women from developing countries and foreign nationals;²¹ poverty and unemployment force many women, including young girls, into prostitution and that they are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them and that they need the equal protection of laws against rape and other forms of violence.²²

The CEDAW Committee also stated that wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures.²³

The CEDAW Committee further stated that equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the

11 CEDAW, Gen. Rec. No. 19, para. 4.

12 *Id.*, at para. 9.

13 CEDAW, Gen. Rec. No. 19, para. 11.

14 CEDAW, Gen. Rec. No. 19, para. 11.

15 CEDAW, Gen. Rec. No. 19, para. 21.

16 CEDAW, Gen. Rec. No. 19, para. 23.

17 CEDAW, Gen. Rec. No. 19, para. 23.

18 CEDAW, Gen. Rec. No. 19, para. 23.

19 CEDAW, Gen. Rec. No. 19, para. 23.

20 CEDAW, Gen. Rec. No. 19, para. 14.

21 CEDAW, Gen. Rec. No. 19, para. 14.

22 CEDAW, Gen. Rec. No. 19, para. 15.

23 CEDAW, Gen. Rec. No. 19, para. 16.

workplace²⁴ and that such conduct can be humiliating and may constitute a health and safety problem.²⁵

The CEDAW Committee made it clear in paragraph 24 (b), that “States parties should ensure that laws against ... rape, sexual assault... give adequate protection to all women, and respect their integrity and dignity.”

c) General Recommendation 24 on Women and Health

The CEDAW Committee further stated that violence against women puts their health and lives at risk.²⁶

The CEDAW Committee added that “As a consequence of unequal power relations based on gender, women and adolescent girls are often unable to refuse sex or insist on safe and responsible sex practices...marital rape may expose girls and women to the risk of contracting HIV/AIDS and other sexually transmitted diseases”.²⁷

The CEDAW Committee stressed the importance of confidentiality of patients since, in the case of women, it may deter them from seeking advice and treatment and thereby adversely affect their health and well-being. With lack of confidentiality, women will be less willing to seek medical care for diseases of the genital tract, for contraception or for incomplete abortion and in cases where they have suffered sexual or physical violence²⁸

The CEDAW Committee stated that states should ensure the “enactment and effective enforcement of laws and the formulation of policies, including health care protocols and hospital procedures to address VAW and sexual abuse of girl children and the provision of appropriate health services”²⁹ and “gender-sensitive training to enable health care workers to detect and manage the health consequences of gender-based violence;”³⁰ that the “training curricula of health workers includes comprehensive, mandatory, gender-sensitive courses on women’s health and human rights, in particular gender-based violence.”³¹

3. What provisions of the CEDAW Convention refer to access to justice?

The following provisions of CEDAW refer to access to justice:

Article 2, and in particular:

- Article 2 (b) providing that States parties undertake to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- Article 2 (c) providing that States parties undertake to establish legal protection of the rights of women on an equal basis with men and ensure through competent

24 CEDAW, Gen. Rec. No. 19, para. 17.

25 CEDAW, Gen. Rec. No. 19, para. 18.

26 CEDAW, Gen. Rec. No. 19, para. 19.

27 CEDAW, Gen. Rec. 24, para. 18.

28 CEDAW, Gen. Rec. 24, para. 12(d).

29 CEDAW, Gen. Rec. 24, para. 15(a).

30 CEDAW, Gen. Rec. 24, para. 15(b).

31 CEDAW, Gen. Rec. 24.

national tribunals and other public institutions the effective protection of women against any act of discrimination;

- Article 2(f) providing that States parties “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”

Article 15 (1) providing that States Parties shall accord to women equality with men before the law; and

Article 15 (2) providing that States parties shall accord to women in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

4. What does the CEDAW Convention say about national action plans?

The CEDAW Convention also requires states to set up an agenda for its national action to end discrimination against women. The development and implementation of the National Action Plans issued by the states, however, differ on the states’ political will to effectively eliminate violence against women.³² The national action plan must be comprehensive, providing for a budget to ensure its implementation, the adoption of rules and regulations, and the creation of specialized institutions, including police, prosecutors and courts and the creation of a specific institutional mechanism and the collection of statistical data, including through involvement of the national statistical office³³

5. What are examples of CEDAW Committee Views on communications filed before it?

a) A.T. v Hungary, CEDAW Communication No. 2/2003, UN Doc. CEDAW/C/32/D/2/2003 (26 January 2005) (Views adopted on 26 January 2005, thirty-second session)

In the CEDAW Committee case of A.T. v. Hungary,³⁴ it was alleged in the communication that Hungary failed to provide effective protection from domestic violence from L.F. amounting to a breach of articles 2 and 5 (a) in conjunction with article 16 of CEDAW.³⁵

The CEDAW Committee cited the Concluding Comments in 2002 and General Recommendation 19 “...discrimination under the Convention is not restricted to action by or on behalf of Governments ...” and “[U]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”

Regarding remedies, the CEDAW Committee urged Hungary to take immediate and effective measures; “to guarantee the physical and mental integrity of A.T. and her family”; to ensure that A.T. was provided with a safe home, appropriate child support, and legal assistance; for A.T. to receive reparation proportionate to the harm undergone and to the gravity of the violations.³⁶

32 Background Paper for the Expert Group Meeting on Good Practices in National Action Plans on Violence Against Women: International and Regional Legal and Policy Framework, UN Division for the Advancement of Women now part of UN Women, August 31, 2010.

33 Division for the Advancement of Women, Legislation against Violence against women: A Handbook, powerpoint presentation.

34. A.T. v. Hungary, Communication No. 2/2003, UN Doc. CEDAW/C/32/D/ 2/2003 (2005).

35. *Id.* ¶ 1.1.

The CEDAW Committee recommended for Hungary to ensure women's rights, including the right to be free from all forms of domestic violence; take all necessary measures to implement and evaluate its national strategy on family violence; provide regular training on CEDAW and its Protocol to judges, lawyers and law enforcement officials; implement the Committee's Concluding Observations; effectively investigate and prosecute allegations of domestic violence; provide access to justice for victims; provide offender rehabilitation programs.

b) Şahide Goekce (deceased) v. Austria (Domestic violence; initial submission: 21 July 2004; Adopted: 6 August 2007)

This communication was filed on behalf of Sahide Goekce (deceased), an Austrian woman of Turkish origin, who died from repeated abuse at the hands of her husband, despite persistent requests for intervention by the police.

The alleged violations are Articles 1,2,3,5 and General Recommendations 12, 19, and 21 of the CEDAW Convention.

The CEDAW Committee found violations of 2(a), (c) - (f), and 3 read in conjunction with Article 1 and General Recommendation no. 19. The CEDAW Committee's recommendations were: Strengthen implementation of domestic DV law; vigilantly and in a speedy manner prosecute perpetrators of DV; enhance coordination between law enforcement and judicial officers, among others.

c) Fatma Yildirim (deceased) v. Austria (2007; domestic violence)

In the cases of Fatma Yildirim, the CEDAW Committee reminded Austria of its obligation to act with due diligence to prevent and respond to violence against women and adequately provide for sanctions for the failure to do so. The CEDAW Committee recalled that prosecuting perpetrators of domestic violence and ensuring effective and timely criminal and civil remedies was part of Austria's obligations and that the drawn-out constitutional procedure was not an effective remedy for a "woman whose life was under a dangerous criminal threat." The CEDAW Committee also recommended that enhanced coordination of all relevant justice institutions and agencies be ensured and training programmes on domestic violence institutionalised.³⁷

d) Karen Tayag Vertido vs. Philippines (Communication No. 18/2008) adopted by the CEDAW Committee on July 16, 2010

In the views on the Karen Tayag Vertido vs. Philippines (Communication No. 18/2008) adopted by the CEDAW Committee on July 16, 2010,³⁸ "the crux of the author's complaints related to the alleged gender-based myths and stereotypes about rape and rape victims, which had been relied upon in the judgement of the trial court and which had led, apart from the acquittal of the accused, to her revictimization." The CEDAW Committee stressed that "stereotyping affects women's right to a fair and just trial and that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of

36. *Id.* ¶ 9.6 (I) (i).

37 Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol in respect of communication No. 6/2005 adopted on 6 August 2007, para. 12.3.

38. Communication under the Optional Protocol to the Convention on the Elimination of Discrimination Against Women, Letter from CEDAW views on Karen Vertido Communication Vertido to CEDAW Committee (Nov. 29, 2007).

rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general.”

The CEDAW Committee recommended that the Philippine definition in the anti-rape law should center on the lack of consent as the core of the definition of rape. The Committee made the following recommendations to the Philippines as a State party, to wit:

- (a) Provide appropriate compensation commensurate with the gravity of the violations of her rights
- (b) Take effective measures to ensure that rape proceedings are fast tracked
- (c) Ensure impartiality and fairness in legal procedures for rape cases which should not be affected by prejudices and stereotypes. Develop wide range of measures targeted at the legal system to improve the judicial handling of rape cases, including conduct of training and education to change discriminatory attitudes towards women.
- (d) Review definition of rape law to place lack of consent at its center**
- (e) Remove the requirement in the rape law that sexual assault be committed by force or violence and any requirement of the proof of penetration**
- (f) Consider redefining sexual assault that either require the existence of “unequivocal and voluntary agreement” and requiring proof by the accused of steps taken to ascertain whether the complainant was consenting; or requires that the act take place in “coercive circumstances” and includes a broad range of said circumstances.**
- (g) Conduct training on the CEDAW and its Optional Protocols and in general recommendations for judges, prosecutors, lawyers and law enforcement officers
- (h) Conduct training for judges, prosecutors, lawyers, law enforcement officers and medical personnel in understanding the crimes of rape and other sexual offenses in a gender-sensitive manner to avoid further victimization of women.

e) LC v Peru (Communication No. 22/2009; Date of the communication:18 June 2009; Date of adoption decision:17 October2011)

L.C., born April 2, 1993, was 13 years old when J.C.R., a 34-year old man, started sexually abusing her in 2006. She became pregnant as a result of the rape and, in a state of depression, attempted suicide on March 31 2007 by jumping from a building. She was taken to a public hospital where she was diagnosed with “vertebromedullar cervical trauma, cervical luxation and complete medullarsection”, with “a risk of permanent disability” and “risk of deterioration of cutaneous integrity resulting from physical immobility”.

Despite her serious and deteriorating condition, her doctors refused to operate on her spinal injuries because she was pregnant. She requested the doctors to perform therapeutic abortion but was denied 42 days after having submitted her request. L.C. miscarried spontaneously.

The author, L.C.’s mother, claims that her daughter has been a victim of violation by Peru of articles 1, 2 (c) and (f),3, 5, 12 and 16 (e) of the CEDAW Convention. According to the author, there is no appropriate judicial mechanism allowing access to the courts to request termination of a pregnancy for therapeutic reasons, nor to provide full redress for a violation of this type. No remedy exists that operates with sufficient speed and effectiveness so that a woman can demand from the authorities the guarantee of her right to a legal abortion within the limited time period that circumstances require.

The remedy of amparo under the Constitution does not meet the necessary time frame to ensure effective action.

The author also cites the decision of the European Court of Human Rights of 20 March 2007, in *Tysiacy v. Poland*.⁷ The Court determined that there had been a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms in arriving at the decision concerning a therapeutic abortion and noted that, once the legislature had decided to allow abortion, it must not structure its legal framework in such a way as to limit the use of that possibility. The Court added that disputes should be settled by an independent body, respecting guarantees of the right to be heard, and it should issue prompt and written grounds for its decision, since the time factor is crucial.

The CEDAW Committee made the following recommendations to the State party:

(a) Concerning L. C.: provide reparation that include adequate compensation for material and moral damages and measures of rehabilitation, commensurate with the gravity of the violation of her rights and the condition of her health, in order to ensure that she enjoys the best possible quality of life;

(b) General:

(i) Review its laws with a view to establish a mechanism for effective access to therapeutic abortion under conditions that protect women's physical and mental health and prevent further occurrences in the future of violations similar to the ones in the present case;

(ii) Take measures to ensure that the relevant provisions of the Convention and the Committee's general recommendation No. 24 with regard to reproductive rights are known and observed in all health-care facilities. Such measures should include education and training programmes to encourage health providers to change their attitudes and behaviour in relation to adolescent women seeking reproductive health services and respond to specific health needs related to sexual violence. They should also include guidelines or protocols to ensure health services are available and accessible in public facilities.

(iii) The State party should also review its legislation with a view to decriminalizing abortion when the pregnancy results from rape or sexual abuse;

(iv) The Committee reiterates the recommendation it made to the State party during the consideration of its sixth periodic report (CEDAW/C/PER/CO/6, para. 25), urging it to review its restrictive interpretation of therapeutic abortion in line with the Committee's general recommendation No. 24 and the Beijing Declaration and Platform for Action.

f) VK v. Bulgaria (Communication No. 20/2008; Domestic violence; initial submission: 15 Oct 2008; Adopted: 27 September 2011)

In the case of V.K, a domestic violence victim, the CEDAW Committee concluded that the refusal of the courts to issue a permanent protection order against the author's husband "was based on stereotyped, preconceived and thus discriminatory notions of what constitutes domestic violence".³⁹ The CEDAW Committee recommended that the Law on Protection against Domestic Violence be amended to ease the burden of proof in favour of the victim, and "to provide mandatory training for judges, lawyers and law enforcement personnel on the application of the Law on Protection against Domestic Violence, including on the definition of domestic violence and on gender stereotypes, as well as appropriate training on the Convention, its Optional Protocol and the Committee's general recommendations, in particular general recommendation No. 19."⁴⁰

³⁹Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol in respect of communication No. 20/2008 adopted on 25 July 2011, para. 9.12.

⁴⁰Ibid, para. 9.16.

C. The Obligation of Due Diligence

According to CEDAW General Recommendation 19, states have the obligation of due diligence, as follows: “Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights, or to investigate and punish acts of violence, and for providing compensation.”⁴¹

In 1999, the first Special Rapporteur on Violence against Women recommended the following questions needed to be asked:

“(a) Has the State party ratified all the international human rights instruments including the Convention on the Elimination of All Forms of Discrimination against Women?

(b) Is there constitutional authority guaranteeing equality for women or the prohibition of violence against women?

(c) Is there national legislation and/or administrative sanctions providing adequate redress for women victims of violence?

(d) Are there executive policies or plans of action that attempt to deal with the question of violence against women?

(e) Is the criminal justice system sensitive to the issues of violence against women?

In this regard, what is police practice? How many cases are investigated by the police? How are victims dealt with by the police? How many cases are prosecuted? What types of judgements are given in such cases? Are the health professionals who assist the prosecution sensitive to issues of violence against women?

(f) Do women who are victims of violence have support services such as shelters, legal and psychological counselling, specialized assistance and rehabilitation provided either by the Government or by non-governmental organizations?

(g) Have appropriate measures been taken in the field of education and the media to raise awareness of violence against women as a human rights violation and to modify practices that discriminate against women?

(h) Are data and statistics being collected in a manner that ensures that the problem of violence against women is not invisible?”⁴²

The obligation of due diligence has been further explained as the governments’ “duty...to refrain from engaging in VAW and to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of VAW and to take appropriate and effective action concerning acts of VAW, whether those acts are perpetrated by the State, by private persons or by armed groups or warring factions, to provide access to just and effective remedies and specialized, including medical assistance to victims.”⁴³

The State responsibility to act with due diligence was further examined by the second Special Rapporteur on violence against women in a 2006 report,⁴⁴ she argued that principles of non-discrimination require States “to use the same level of commitment in relation to prevention, investigation, punishment and provision of remedies for violence against women as they do with regards to other forms of violence”⁴⁵ and noted that due diligence had until then “tended to be

41 CEDAW, Gen. Rec 19, Para. 9.

42 E/CN.4/1999/68, para. 25.

43 Extension of mandate of U.N. Special Rapporteur on Violence against Women (UNSRVAW) by the Commission on Human Rights in 2003, 59th sess., Res. 2003/45.

44 E/CN.4/2006/61, para. 19 ff.

45 Ibid., para. 35.

limited to responding to violence against women when it occurs and in this context it has concentrated on legislative reform, access to justice and the provision of services. There has been relatively little work done on the more general obligation of prevention, including the duty to transform patriarchal gender structures and values that perpetuate and entrench violence against women”.⁴⁶

In the UNGASS Resolution 65/228 on strengthening crime prevention and criminal justice responses to violence against women, Assembly reaffirmed the 1997 Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice and adopted the updated Model Strategies and Practical Measures. The Model Strategies and Practical Measures underscore the State responsibility to act with due diligence, and Member States are urged to be guided by the overall principle that effective crime prevention and criminal justice responses to violence against women are human rights-based, manage risk and promote victim safety and empowerment while ensuring offender accountability.⁴⁷

In the 2011 report of current UN Special Rapporteur on Violence against Women on multiple and intersecting forms of discrimination that contribute to and exacerbate violence against women (A/HRC/17/26), the Special Rapporteur argues that while laws, policies and resources are crucial to address effectively violence against women and girls, efforts must be coupled with renewed will and actions to combat the structural and systemic challenges which are a cause and consequence of such violence. She added that State responsibility to act with due diligence is both a systemic-level responsibility, i.e. the responsibility of States to create good and effective systems and structures that address the root causes and consequences of violence against women; and also an individual-level responsibility, i.e., the responsibility of States to provide each victim with effective measures of prevention, protection, punishment and reparation.

D. International and Regional Mechanisms

Convention	Mechanisms	Binding or Not Binding
OP CEDAW	Communication and Inquiry procedures	Views are not binding but authoritative and persuasive
European Court of Human Rights	Individual Application	Judgments are binding
Inter-American Commission on Human Rights	Individual Petition	Views and recommendations are not binding
Inter-American Court of Human Rights	Petition ; only the Inter-American Commission and the States parties to the American Convention that have recognized the jurisdiction of the Inter-American Court are authorized to submit a case regarding the interpretation or application of the American Convention for its decision.	Binding
African Court on Human and	Communication; Entities	Binding

⁴⁶ Ibid., para. 15.

⁴⁷ Para. 13 (a).

Peoples' Rights	competent to submit communications to the Court are the African Commission, state parties to the Court's Protocol, African Inter-governmental Organisations, NGOs with observer status before the Commission and individuals.	
ASEAN Intergovernmental Commission on Human Rights	There is no mechanism for individual complaints. Part of AICHR's mandate is to conduct thematic studies and capacity building activities.	Not Applicable

1. European Court of Human Rights

The Convention for the Protection of Human Rights and Fundamental Freedoms or "European Convention on Human Rights" (hereafter "European Convention") was opened for signature on November 4, 1950 and it entered into force on September 3, 1953. The European Convention gave effect to certain rights in the Universal Declaration of Human Rights and established an international judicial organ, the European Court of Human Rights (ECHR), with jurisdiction to find against States that do not fulfil their undertakings.⁴⁸

The European Convention is applicable at national level and it has been incorporated into the legislation of the States Parties, which have undertaken to protect the rights defined in the European Convention. Domestic courts have to apply the European Convention, otherwise, the ECHR would find against the State in the event of complaints by individuals on failure to protect their rights.⁴⁹

The judgments finding violations are binding on the States concerned and they are obliged to execute them. The Committee of Ministers of the Council of Europe monitors the execution of judgments to ensure payment of the amounts awarded by the ECHR to the applicants in compensation for the damage they have sustained.⁵⁰

2. Inter-American Commission on Human Rights and Inter-American Court of Human Rights

The international instruments of the Inter-American system for the protection of human rights include the American Declaration of the Rights and Duties of Man⁵¹ and the American Convention on Human Rights⁵². These instruments spell out the mandates of the organs of the system which are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, as well as the obligations of the Member States of the Organization of American States in the field of human rights.

⁴⁸ European Court of Human Rights, The ECHR in 50 Questions available at www.echr.coe.int.

⁴⁹ European Court of Human Rights, The ECHR in 50 Questions available at www.echr.coe.int.

⁵⁰ European Court of Human Rights, The ECHR in 50 Questions available at www.echr.coe.int.

⁵¹ May 2, 1948

⁵² Adoption: November 22, 1969. Entry into force: July 18, 1978

The Inter-American Commission receives, analyzes and investigates individual petitions. It may call on states to adopt precautionary measures to avoid serious and irreparable harm to human life and personal integrity. It publishes reports on the situation of human rights in the member States of the OAS and conducts on-site visits to monitor the situation of human rights in different countries. Upon a finding of violation, the Inter-American Commission may consider submitting the case to the Inter-American Court (if the State concerned has accepted the adjudicatory competence of the Court) for judgment and litigation.

Only the Inter-American Commission and the States parties to the American Convention that have recognized the jurisdiction of the Inter-American Court are authorized to submit a case regarding the interpretation or application of the American Convention for its decision. The decisions of the Inter-American Court are binding.

3. African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights (African Court), established through a Protocol⁵³ to the African Charter, complements the protective mandate of the Commission. Its decisions are final and binding on state parties to the Protocol.⁵⁴

Cases brought directly before the Court by individuals and NGOs are admissible only when the state against which the complaint is brought has made a declaration under article 5(3) of the Court's Protocol accepting the competence of the court to receive such complaints. As at October 21, 2011, only five countries have made the declaration, namely Ghana, Tanzania, Mali, Malawi and Burkina Faso.

4. ASEAN Intergovernmental Commission on Human Rights

In October 2009, the ASEAN established the ASEAN Intergovernmental Commission on Human Rights (AICHR). AICHR is a consultative body established to promote and protect human rights and fundamental freedoms of the peoples of ASEAN. There is no mechanism for individual complaints under the ASEAN Inter-Governmental Commission on Human Rights (AICHR). Part of AICHR's mandate is to conduct thematic studies and capacity building activities. The AICHR references human rights in the ASEAN Charter (Articles 1.7, 2.2.i and 14) and other key ASEAN documents.

The AICHR drafted the ASEAN Human Rights Declaration which was adopted unanimously by ASEAN members in November 2012. Concerns have been raised on the Declaration since it contains clauses that could be used to undermine human rights, such as "the realization of human rights must be considered in the regional and national context" (Art. 7), or that human rights might be limited to preserve "national security" or a narrowly defined "public morality" (Art. 8), the use of the concept of "cultural relativism" and the suggestion that that access to human rights was contingent on "the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives". The UN High Commissioner for Human Rights welcomed the renewed commitment by leaders of the ASEAN to universal human rights norms noting that "Other regions have shown how regional human rights systems can evolve and improve over time" and pointing out that "it is essential that ASEAN ensures that any language inconsistent with international human rights standards does not become a part of any binding regional human rights convention."⁵⁵

⁵³ The Protocol on the Establishment of an African Court on Human and Peoples' Rights was adopted in Ouagadougou, Burkina Faso, on June 9, 1998 and entered into force on January 25, 2004

⁵⁴ <http://www.achpr.org/about/afchpr>.

5. Why is there a need to have international and regional conventions that issue binding decisions upon states?

The CEDAW Convention is a treaty that guarantees specific rights to individuals, establishes states obligations related to the rights and is legally binding on the states that have ratified the convention. The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP CEDAW), which entered into force in 2000, provides mechanisms where individuals or groups of individuals can seek redress for violations of their rights through the communication and inquiry procedures and provides for interim measures to prevent further violations.

While the CEDAW Convention is legally binding on the states that have ratified the convention, the views from communications and recommendations from inquiries filed under the CEDAW are not binding. The views and recommendations, however, offer authoritative views and are persuasive since these have been issued by recognized experts.

In comparison, the decisions of the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court on Human and Peoples' Rights are binding on all the states that have ratified them.

During the 57th Session of the Commission on the Status of Women in March 2013, the proposal for a new instrument to establish clear standards to hold states accountable to prevent and eliminate violence against women was discussed. It was argued that General Recommendation 19 is not as legally binding as the provisions within the text of the CEDAW Convention.⁵⁶

6. What are examples of cases decided under the Regional Human Rights Mechanisms?

a) ECHR cases

In *X and Y v. the Netherlands*,⁵⁷ the ECHR found that the Netherlands breached its human rights responsibilities under the European Convention (article 8) by failing to create appropriate criminal legislation applicable to the rape of a young woman who was mentally challenged.

In *M.C. v. Bulgaria*,⁵⁸ the ECHR highlighted the importance of monitoring the enforcement of legislation. The case found that although Bulgaria's penal code provision on rape did not mention any requirement of physical resistance by the victim, physical resistance appeared to be required in practice to pursue a charge of rape.

b) Inter-American Commission on Human Rights

55 UN High Commissioner for Human Rights. "UN official welcomes ASEAN commitment to human rights, but concerned over declaration wording".

56 See FOKUS (Norway) Statement for UN CSW 57: Violent intersections: the need for a binding international legal framework on violence against women.

57 *X and Y v. the Netherlands*, European Court of Human Rights 8978/80, 1985. See <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=x%20%7C%20y%20%7C%20netherlands&sessionid=21406792&skin=hudoc-en>.

58 *M.C. v. Bulgaria*, European Court of Human Rights 39272/98, 4 December 2003. See <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Bevacqua%20%7C%20bulgaria&sessionid=21408082&skin=hudoc-en>.

In the case of *Maria Mamerita Mestanza Chávez v. Peru*⁵⁹ on forced sterilization, the Inter-American Commission stressed the need to review and revise existing laws and policy to eliminate discrimination against women.

In the case of *Maria da Penha v. Brazil*,⁶⁰ the Inter-American Commission found the Brazilian Government in breach of its human rights obligations due to significant judicial delay and incompetence in the investigation of domestic violence.

In the Inter-American Commission case of *Paulina Ramírez v. Mexico*,⁶¹ the Mexican government agreed to pay by friendly settlement agreement legal reparations to Paulina Ramirez who was prevented by government officials from having an abortion after being raped. Mexican state and federal officials also agreed to take measures to end violations of women's right to the legal termination of a pregnancy.⁶²

E. UN Charter-based Mechanisms⁶³

Compared to the OP CEDAW mechanisms which are treaty-based mechanisms, there are the UN charter-based mechanisms under the Human Rights Council such as the Council Complaint Procedure and the Universal Periodic Review, the Commission on the Status of Women (on global trends and patterns concerning women's rights) and the Special Procedures where there are Special Rapporteurs on Country and Thematic issues. Under the Thematic Special Rapporteurs, individual complaints can be accepted, country visits can be made and annual reports are issued by the Special Rapporteurs. The recommendations from these mechanisms are not binding on the states.

1. What are examples of the reports of the UN Special Rapporteur on Violence against Women ?

a) Preliminary Report of the UN Special Rapporteur on VAW E/CN.4/1995/42, 22 November 1994 (par. 6)

According to the UN Special Rapporteur on VAW, “[t]he different forms of violence against women include ...all violations of the human rights of women in situations of armed conflict, and in particular, murder, systematic rape, sexual slavery and forced pregnancy, as well as all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of the harmful effects of certain traditional or customary practices, cultural prejudice and religious extremism.”

b) VAW in the Family Report of the UN Special Rapporteur on VAW E/CN.4/1996/53

The UN Special Rapporteur on VAW makes specific reference to acts of violence such as forced sterilization and forced abortion, coercive/forced use of contraceptives, female infanticide and

⁵⁹ *Maria Mamerita Mestanza Chavez v. Peru*, Inter-American Commission on Human Rights, Petition 12.191, Report No. 71/03, 2003. See <http://www.cidh.oas.org/annualrep/2003eng/Peru.12191.htm>.

⁶⁰ *Maria da Penha v. Brazil*, Case 12.051, Report No. 54/01,OEA/Ser.L/V/II.111 Doc. 20 rev. at 704 (2000). See <http://www.cidh.oas.org/women/Brazil12.051.htm>.

⁶¹ *Paulina Ramírez v. Mexico* (2007), Report No. 21/07, Petition No. 161-02, Inter-American Commission on Human Rights.

⁶² <http://www.cidh.org/annualrep/2007eng/Mexico16102eng.htm>

⁶³ Revised version of the International Service for Human Rights “Advanced Geneva Training Course” 2006 Training Material

prenatal sex selection. She adds in her report the particular vulnerability to violence of, among others, women belonging to minority groups, indigenous women, refugee women, women migrants and women in detention is emphasized.

c) VAW in the Family Report of the UN Special Rapporteur on VAW E/CN.4/1999/68 (par. 17)

In this report, the UN Special Rapporteur on VAW explained that “[v]iolence within the family comprises, inter alia, woman-battering, marital rape, incest, forced prostitution, violence against domestic workers, violence against girls, sex-selective abortions and female infanticide, traditional violent practices against women including forced marriage, son preference, female genital mutilation and honour crimes.”

d) UN Special Rapporteur on VAW (VAW in the family E/CN.4/1999/68)

In this report, the UN Special Rapporteur on VAW cites three doctrines in dealing with VAW by private actors, as follows:

- 1) States have a due diligence duty to prevent, investigate and punish international law violations and pay just compensation.
- 2) equality and equal protection. If it can be shown that law enforcement discriminates against the victims in cases involving VAW, then States may be held liable for violating international human rights standards of equality.
- 3) domestic violence is a form of torture and should be dealt with accordingly.

F. ASEAN

1. What is the “Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN”?

The Heads of State of the Member States of the Association of Southeast Asian Nations (hereinafter referred to as “ASEAN”)⁶⁴ signed the Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN on October 9, 2013 reaffirming the commitments of ASEAN to eliminate violence against women and monitor their progress as reflected in the Declaration on the Elimination of Violence Against Women in the ASEAN Region adopted in 2004.

The Declaration It recognizes that violence against women and violence against children can occur “in public or private (including cyber space”. It recognized that “discriminatory and harmful traditional practices must be eliminated as they impair human rights and fundamental freedoms of women and children.”

The Declaration acknowledged the “importance of intensifying efforts of ASEAN Member States to promote the rights of women and children, as well as to prevent and protect them from and respond to all forms of violence, abuse and exploitation of women and children particularly for those who are in vulnerable situations, including domestic violence, women and children who are

⁶⁴ Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People’s Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam,

sexually exploited, women and children with disabilities, women and children living with and affected by HIV and AIDS, women and children in conflict with laws, cyber pornography and cyber prostitution, trafficking in women and children, women and children in disasters, women and children in armed conflict, women and children in refugee camps, women and children on the move, stateless women and children, migrant women and children, women and children belonging to ethnic and/or indigenous groups, children in early marriage, physical abuse of children, bullying, discrimination against women and children in mass and social media, and others.”

The ASEAN Member States resolved to eliminate violence against women and violence against children in the region through the following measures:

1. Strengthen and, where necessary, enact or amend national legislations for the elimination of violence against women and violence against children, and to enhance the protection, services, rehabilitation, education and training, recovery and reintegration of victims/survivors;

2. Integrate legislations, policies and measures to prevent and eliminate violence against women and violence against children and to protect and assist the victims/survivors in the national development plans and programmes with time-bound targets, adequate resources, and gender responsive planning and budgeting;

3. Strengthen a holistic, multi-disciplinary approach to promote the rights of women and children and adopt a gender responsive, child sensitive, and age-responsive approach to eliminate violence against women and violence against children in the region which includes effective laws, legislations, policies and measures to:

- Investigate, prosecute, punish and, where appropriate, rehabilitate perpetrators;
- Protect women and children victims/survivors and witnesses;
- Provide victims/survivors with access to justice, legal assistance, protection, social welfare services, education, and health services, including counseling and peer-to-peer support mechanisms, rehabilitation, recovery, and reintegration into the community, and consider provision of programme for families to properly give support to victims/survivors;
- Instill awareness to prevent re-victimization of women and children from any form of violence and ensure it does not occur anywhere through various programmes, such as provision and promotion of vocational training and employment opportunities of women who are victims/survivors, access to reproductive health services, education and other basic social services;
- Promote family support services, parenting education, education and public awareness on the rights of women and children and the nature and causes of violence against women and violence against children to encourage active public participation in the prevention and elimination of violence;
- Create an enabling environment for the participation of women and children, including victims/survivors, in the prevention and elimination of violence against women and violence against children;
- Develop effective strategies to eliminate harmful practices which perpetuate gender stereotyping, violence against women and violence against children;

4. Strengthen the existing national mechanisms, with the assistance, where necessary, of the ACWC and other related stakeholders, in implementing, monitoring and reporting the implementation of the Concluding Observations and Recommendations of CEDAW, CRC and other Treaty Bodies as well as the accepted recommendations under the Universal

Periodic Review Process of the United Nations Human Rights Council related to the elimination of all forms of violence against women and violence against children;

5.Strengthen the capacity of law enforcement officers, policy makers, social workers, health personnel, and other stakeholders to develop, implement, monitor and evaluate gender responsive and child friendly legislations, policies and measures for women and children victims of violence;

6.Encourage research and data collection and analysis in confidential concerning all forms of violence against women and violence against children to support the formulation and effective implementation of laws, policies and programmes to eliminate violence against women and violence against children for better protection of the victims/survivors in the region;

7.Strengthen the provision of support social welfare services to women and children victims/survivors of violence and their families in ASEAN through the establishment of an ACWC network of social services to facilitate the promotion of good practices, sharing of information, exchange of experts, social workers and service providers, including NGOs;

8.Strengthen partnerships with external parties at international, regional, national and local levels, including ASEAN Dialogue Partners, UN Agencies, civil society, community-based organisations, academia, philanthropists and private entities, in the work for the elimination of violence against women and violence against children in ASEAN and to mobilise resources to assist the victims/survivors;

The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) was tasked to promote the implementation of the Declaration and review its progress through appropriate instruments and actions with the support of ASEAN Member States.

2. What are the other declarations and bodies in the ASEAN?

In the past, ASEAN Member States committed to fight trafficking in the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children adopted on November 29, 2004.

The ACWC was inaugurated on April 7, 2010 in Ha Noi, Viet Nam. The ACWC is an intergovernmental consultative body mandated to develop policies, programmes, and innovative strategies to promote and protect the rights of women and children. The Terms of Reference and Work Plan (2012-2016) of the ACWC was adopted to promote and protect the human rights and fundamental freedoms of women and children.

3. What is the status of ratifications of the CEDAW Convention in ASEAN?

All ten members of the ASEAN have acceded to or ratified the CEDAW Convention and three countries have ratified the Optional Protocol to CEDAW,⁶⁵ namely Thailand, Philippines, and

⁶⁵ Brunei acceded to CEDAW on May 24, 2006, but did not sign the Optional Protocol to CEDAW; Cambodia ratified CEDAW in October 1992 and ratified the OP on October 13, 2010; Indonesia ratified CEDAW in 1984 and signed the OP on February 28, 2000, but has yet to ratify it; Lao PDR ratified CEDAW on August 14, 1981, but has not signed the OP. It took almost twenty-five years before the first country report was submitted to the CEDAW Committee for review; Malaysia acceded to CEDAW on July 5, 1995, but has yet to sign the OP; Myanmar acceded to CEDAW on July 22, 1997, but has yet to sign the OP; Philippines was the

Cambodia and several ASEAN members made reservations on the substantive provisions of the convention.⁶⁶

Although there has been regional progress in applying the CEDAW Convention in the development of laws and policies, obstacles still remain such as the patriarchal attitudes and deep-rooted traditional beliefs of gender stereotypes within the region.⁶⁷

G. Ad hoc War Crimes Tribunals

1. What are examples of cases decided by the International Criminal Tribunal for Rwanda (ICTR) pertaining to sexual assault?

a) Prosecutor v. Akayesu, issued on 2 September 1998

The ICTR decision recognized for the first time that acts of sexual violence can be prosecuted as constituent elements of a genocidal campaign. Jean-Paul Akayesu, then Mayor of Taba commune, was charged with genocide, crimes against humanity, and war crimes and with having known that acts of sexual violence were being committed and having facilitated the omission of such acts by permitting them to be carried out on commune premises and being present during the commission of crimes of sexual violence and thus of encouraging these crimes.

Akayesu was convicted of the crime of genocide finding beyond a reasonable doubt that the Accused had reason to know and in fact knew that sexual violence was taking place on or near the premises of the bureau communal and that women were being taken away from the bureau communal and sexually violated. The Trial Chamber found that there is no evidence that the Akayesu took any measures to prevent acts of sexual violence. Evidence shows that Akayesu ordered, instigated and otherwise aided and abetted sexual violence.

2. What are examples of cases decided by the International Criminal Tribunal for Yugoslavia (ICTY) pertaining to sexual assault?

The ICTY has charged a number of alleged war criminals for crimes of sexual assault under article 7 (3) of the ICTY Statute under the doctrine of command responsibility holding those in positions of superior authority liable for the acts of their subordinates.

a) Prosecutor v. Blaskic, No. IT-95-14, Judgement, 3 March 2000

Tihomir Blaskic, a colonel in the armed forces of the Croatian Defence Council and Chief of the Central Bosnia Operative Zone of the armed forces, was charged with both direct criminal responsibility and command responsibility for crimes against humanity, including rapes committed at detention centres. On March 3, 2000, Blaskic was convicted for humanitarian law violations including war crimes and crimes against humanity against the Bosnian Muslim

first ASEAN member country to ratify CEDAW, on August 5, 1981. It ratified the OP on November 12, 2003; Singapore acceded to CEDAW on October 5, 1995 with reservations on Articles 2 and 16. It has yet to sign the OP; Thailand acceded to CEDAW on August 9, 1985 with reservations on several articles. It ratified the OP on June 14, 2000; Vietnam ratified CEDAW on February 17, 1982, but has yet to sign the OP.

66 Malaysia: Articles 5a, 7b, 9(2), 16(1[a] [c][d]), (2) with a declaration that accession is "subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Shariah law and the Federal Constitution of Malaysia"; Singapore: Articles, 2, 9, and 16; Thailand: Article 16.

67 CEDAW in Action.

population of central Bosnia. He convicted on the basis that he “ordered, planned, instigated or otherwise aided and abetted in the planning, preparation, or execution of those crimes.”

III. Discussion on the Movement to Pass Laws Related to Women

Feminist movements have been crucial in successfully passing violence against women laws and policies and in contributing to progressive jurisprudence on violence against women.⁶⁸

A. Philippine Experience

Laws on prohibiting sexual harassment, rape, trafficking in persons, and domestic violence and laws promoting the rights of women to reproductive health care and the Magna Carta of Women have been passed in the past 18 years. ⁶⁹ Women’s groups, feminists, and government agencies all collaborated to carefully draft the proposed legislation and constantly advocate for these bills to be passed in Congress.⁷⁰

IV. Plural Legal Systems

The plurality of legal mechanisms and systems poses obstacles for women to access justice. The diverse legal mechanisms and systems encompass local and national civil and criminal court systems, other judicial and quasi-judicial systems, and informal justice systems such as traditional, customary, tribal or religious systems and mechanisms, whether or not they are recognised by the State.⁷¹ In informal justice systems, women are under-represented which may cause impediments for women⁷² and such informal or customary systems may not be CEDAW compliant or may result in discriminatory remedies, unfair sanctions or absence of compensation or reparation. ⁷³ Women seeking redress through mediation are at risk of being discriminated against due to the imbalance of power and the absence of judicial safeguards especially in domestic violence cases where women often are not able to obtain reparation.⁷⁴

* * *

Additional Resources:

EnGendeRights, OP CEDAW presentation, July 28, 2008

EnGendeRights, CEDAW Inquiry presentation, Jan 26, 2008

⁶⁸ Mala Htun and S. Laurel Weldon, *The Civic Origins of Progressive Policy Change: Combating Violence against Women in Global Perspective, 1975-2005*, page 552.

⁶⁹ Philippine National Report to the Human Rights Council for the Universal Periodic Review, 2008, par. 73

⁷⁰ See also Philippines, Combined fifth and sixth periodic reports to the CEDAW Committee, 2 August 2004, para. 223 [Phil. Report].

⁷¹ Access to Justice – Concept Note for Half Day General Discussion, endorsed by the Committee on the Elimination of Discrimination against Women at its 53rd Session, page 10.

⁷² Access to Justice – Concept Note for Half Day General Discussion, endorsed by the Committee on the Elimination of Discrimination against Women at its 53rd Session, page 11.

⁷³ Access to Justice – Concept Note for Half Day General Discussion, endorsed by the Committee on the Elimination of Discrimination against Women at its 53rd Session, page 13.

⁷⁴ Access to Justice – Concept Note for Half Day General Discussion, endorsed by the Committee on the Elimination of Discrimination against Women at its 53rd Session, page 10.

Anne Bayefsky, How to Complain to the UN Human Rights System, 2002

International Service for Human Rights (ISHR), Advanced Geneva Training Course, Geneva 2006

Andrew Byrnes, The CEDAW Optional Protocol - Jurisdictional and admissibility issues in filing communications, IWRAW Asia Pacific OP-CEDAW Meeting, 5-7 December 2007, Nepal

Anne Bayefsky, How to Complain to the UN Human Rights System, 2002.

Simone Cusack, State obligations under CEDAW to eliminate the social barriers that undermine women's access to justice

IWRAW-AP Occasional Papers Series No. 10, Addressing Rape as a Human Rights Violation: The Role of International Human Rights Norms and Instruments"

The Working Group to Ban Violence Against Women and Girls Worldwide

Websites:

- www.ohchr.org
- <http://www2.ohchr.org/english/bodies/petitions/index.htm#inquiry>
- <http://www2.ohchr.org/english/bodies/cedaw/index.htm>
- <http://www.un.org/womenwatch/daw/cedaw/cedawreport-a5638-RulesOfProcedure.htm>

ANNEX 1 – Excerpts from CEDAW General Recommendation 19

75 General Recommendation 19, para. 24.

76 General Recommendation 19, para. 24.

77 General Recommendation 19, para. 24.

78 General Recommendation 19, para. 24.

79 General Recommendation 19, para. 24.

80 General Recommendation 19, para. 24.

81 General Recommendation 19, para. 24.

82 General Recommendation 19, para. 24.

83 General Recommendation 19, para. 24.

84 General Recommendation 19, para. 24.

85 General Recommendation 19, para. 24.

86 General Recommendation 19, para. 24.

87 General Recommendation 19, para. 24.

88 General Recommendation 19, para. 24.

89 General Recommendation 19, para. 24.

90 General Recommendation 19, para. 24.

91 General Recommendation 19, para. 24.

92 General Recommendation 19, para. 24.

93 General Recommendation 19, para. 24.

94 General Recommendation 19, para. 24.

95 General Recommendation 19, para. 24.

96 General Recommendation 19, para. 24.
97 General Recommendation 19, para. 24.
98 General Recommendation 19, para. 24.

