



LAW AND SOCIETY TRUST

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OBJECTIVES

The Law and Society Trust Fortnightly Review keeps the wider Law and Society community informed about the activities of the Trust, and about important events and legal personalities associated with the Trust. Our publication is aimed at raising public awareness on all issues concerning the legal rights of citizens, and at gaining wider recognition of law as society's instrument for peaceful change.

The Asian and Pacific Symposium of NGO's on Women in Development was held in Manila late in 1993 in preparation for the forthcoming Beijing Conference in 1995. We bring our readers some of the issues raised and recommendations made at the Symposium.

"WOMEN HOLD UP HALF THE SKY"

- Chinese Proverb -

The Empowerment of Women

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WHERE DO FEMINISTS GO?

by

Ratna Kapur

Recently, representatives from more than 600 NGO's participated in the Asia Pacific Regional meeting in Manila, to prepare for the Fourth U.N. World Conference on Women that is to take place in Beijing in 1995. The Manila meeting was organised by U.N. ESCAP in association with the National Commission on the Role of Filipino women. Although some of the recommendations that emerged were very progressive and challenging, the non-participatory processes and objectives of this meeting need to be seriously reviewed and questioned by feminists who were present in Manila.

The main activities in Manila consisted of 12 workshops covering a wide spectrum of issues, and a sub-regional workshop. The recommendations that emerged are to be sent to Jakarta where the Asia-Pacific governments will convene an official meeting in June. Some extremely important positions need to be highlighted.

In particular, the workshop on health strongly criticised the focus on family planning throughout the region. This recommendation was supported by the workshop on Violence Against Women, which specifically called for an end to the "exclusive promotion of invasive and high-tech controlled contraceptive methods" and recommended that "a wider range of safe and appropriate methods should be made available". Governments were further urged to develop a national policy on women's health that did not focus exclusively on family planning, but on improving women's general health status and their gynaecological condition.

There was a suggestion that women's health care needs be met by reducing spending on defence and the military. The participants in the health workshop were extremely critical of the political misuse of sterilisation and abortion to "oppress nationalities or minorities within nation states for reasons of political control". Another important recommendation emphasised the need to promote research and document traditional remedies and practices that are often more relevant and accessible to women, in particular, poor women.

The two workshops on labour rights and economic empowerment emphasised the lack of recognition of women's unpaid labour and the discriminatory practices that have confined women to low paid jobs and insecure employment in the waged labour market. There was also an important recommendation concerning the recognition of sexual harassment in the workplace as a violation of women's human rights and the need for legal recognition of this wrong. Both workshops recognised the gender impact of structural adjustment programmes that increased the number of women who made up flexible labour which was vulnerable to exploitation and offered little economic security. A number of recommendations were also directed to Trade Unions that have often remained male dominated and failed to recognise the gender discrimination that women workers experience in terms of wages they are paid and the work they are allotted.

Perhaps one of the most significant workshops concerned women's political empowerment. The participants in this session addressed the need to operate both within mainstream structures while at the same time continuing the "politics of protest" which is designed to change the very notion of what is considered mainstream. Thus the recommendations supported affirmative action programmes for women while stressing the need for feminist groups to ensure that the structures of power remained accountable.

The session on Violence Against Women focussed primarily on promoting the demands that have emerged from the global campaign on women's human rights. The workshop urged that a feminist activist be appointed as the U.N. Special Rapporteur on Violence Against Women, and that the issue of violence against women be made integral to the agenda of the U.N. Commission on Human Rights. The workshop also demanded that the U.N. "reconsider the declaration of 1994 as the International Year of the Family (IYF) given the underlying assumptions of family ideology it conveys". This recommendation recognised the implicit assumption of the normative family on which the IYF is based and the lack of recognition of the family as a site of women's oppression. The workshop further recommended the implementation of the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) and the formulation of national laws in conformity with the provisions of CEDAW.

There was a specific demand for the establishment of an International Penal Court to prosecute and punish perpetrators of war crimes against women. In connection with the issue of war crimes, the workshop called upon Japan to officially apologise for and investigate the war crimes committed against women in the Second World War, particularly the comfort women. The participants further recommended that the U.N. Commission on Human Rights "conduct fact-finding missions on the status of human rights violations against women in Kashmir and Bangladesh".

Perhaps the most problematic recommendations from the workshop on Violence Against Women concerned the issue of pornography. The recommendations urged governments to declare pornography a criminal offence against women. Whenever the power to censor is placed in the hands of the State, in particular the legislators and judges, it will inevitably be used to protect the speech of the dominant culture and curtail the speech of marginalised groups, which include feminists. There is a need to debate this issue more broadly before we begin making recommendations that will increase the State's encroachment on our basic rights, in particular the right to freedom of expression.

The recommendations of the workshop on Violence Against Women were substantially reinforced in the workshop on Human Rights. It recommended that apart from pressuring governments to ratify CEDAW, there was a need to "strengthen the implementation mechanisms of "CEDAW" and "to enhance women's capacity to create spaces for negotiating with the state and to command state accountability towards themselves". The specific recommendations for strengthening CEDAW included expanding the term "refugee" to include "economic refugee, displaced persons, and refugees persecuted on grounds of their gender"; giving women the right to participate in the implementation and evaluation of development; and stopping States from entering reservations on the principles of CEDAW. An investigation of the reasons for reservations by State parties to the article dealing with family and marriage relations also had to be undertaken. In order to strengthen women's capacity to use CEDAW, training in advocacy and education about CEDAW and its provisions was necessary.

The workshops on violence, and human rights recommended that States recognise the rights of women in prostitution and lesbians, who were legally and socially discriminated against because of the nature of their work or their sexual preference. Similarly, the exploitation and marginalisation of dalit women, indigenous women, displaced and migrant women, and of the urban poor and unorganised sectors as a result of destructive development was also highlighted.

The discussions in the workshop on family were amongst the most contentious and the lack of consensus was reflected in the report. Although there was agreement that the "family" was an exclusive term, there was no agreement on how it should be expanded and what should be included. There was considerable disagreement over whether the units constituted by single women, women in non-marital relationships, single mothers, sex workers and lesbians could be recognised as a "family". Nevertheless, there was agreement that state benefits and legal rights should not be conferred or denied on the basis of a woman's marital status.

There was also disagreement over the position that the workshop should take on the International Year of the Family. Many continued to view the family as a safe haven and sanctuary of love that needed to be celebrated over the course of 1994. Others referred to the feminist struggles over the last 15 years which had exposed the oppression and violence women had historically experienced within the family. They argued for the need to challenge and redress power imbalances within the family and to pressure the U.N. to declare a Decade of Non-Violence Against Women. Both positions were reflected in the workshop recommendations.

Some of the challenging recommendations that emerged from the workshop on family revolved around language. The participants suggested that we move away from using terms such as "mother" and "father" to using words such as "parenting". The term parenting was not ideologically loaded and enabled individuals to define the nature and content of their relationship with their children. Similarly, the workshop recommended that the term illegitimate be abolished together with all the legal discrimination that flowed from this term. There was also a strong recommendation that the mother and not the father be considered the natural guardian of her child.

For many feminists who have participated in a U.N. sponsored meeting for the first time, the experience of Manila was alienating and at times even oppressive. The energy and excitement that are so characteristic of such meetings was absent and the process was often exclusive, hierarchical, rigidly structured and non-participatory. In light of these limitations, we need to seriously question the usefulness of such meetings and our participation in them. The feminist movement will not flourish in such spaces and there is a very real danger that many of our voices will be coopted and cease to be challenging.

Moreover, the actual impact of the recommendations on governments is likely to be minimal. The objective of the Manila meeting was to enable women's groups and NGO's to influence the Platform for Action, which will be the main document to come out of Beijing. The recommendations from Manila will supposedly be taken into consideration by National Committees which have been set up in each country to prepare the official government position on issues of concern for women. The regional meeting for Asia-Pacific governments will take place in Jakarta. The outcome of this meeting will be sent to the U.N. Division on the Status of Women and thereafter to the Commission on the Status of Women which is the main body responsible for producing the Platform for Action. This document will be completed well in advance of the Beijing conference which will

formally endorse the Platform for Action during the official meeting scheduled to take place from September 4 to 15, 1995.

The entire process over the next two years will therefore be in the hands of governments and the U.N. system. Women's groups and NGO's will have no further input into the official document. NGO's will not be allowed to participate in the Jakarta meeting although this position is under review. The NGO Forum that will take place in Beijing will be a parallel event and will have no impact on the Official World Conference.

The Manila experience has left many feminists questioning their participation in meetings that leave us disempowered and discouraged, while legitimising the U.N. facade of consultation and participation. At the same time, we are well positioned to mobilise support around the most challenging recommendations that emerged from Manila, and lobby for their adoption at the national level. It is only when we are able to influence our domestic agendas, that regional and international meetings and processes become meaningful and can have an impact on women's lives.

WORKSHOP ON VIOLENCE AGAINST WOMEN

Violence against women is a gender based crime which occurs in all spheres of private and public life: in the family, the workplace, the community and international and national conflict situations. Gender based violence hurts, humiliates and perpetuates fear in women. It may be threatened or inflicted via physical, sexual acts, as well as through psychological abuse.

It has various manifestations, including sexual abuse, threats, and physical violence in the home and in public, intimidation and sexual harassment in the workplace, educational and other institutions, forced prostitution, and trafficking, torture, sexual slavery and maltreatment in situations of unrest and armed conflict.

Gender based violence also includes harms which are very frequently justified or condoned on the basis of tradition, religion or custom. Particular examples of these are female genital mutilation, female initiation and widowhood rites, dowry related violence and sati. Furthermore, gender based violence includes harms which are justified or condoned on the basis of relationship, like marital rape, wife battery or murder.

The family along with the state has sought to control women through the rigid definitions of sexuality. It has been seen as a systemic and systematic form of perpetuating control over women - their bodies, their spirit, their mind. The violation's of women's rights to equality in legislation and in the judicial process and the violation of women's fundamental rights everywhere challenge us to rethink our understanding of violence.

It is in this context that the workshops recommended that gender based violence against women is inextricably linked to inequality in social and cultural spheres. Hence it cannot be solved by isolated and fragmented strategies, but must be addressed in a coordinated and comprehensive way ensuring the resources of all levels of the national and international community.

VIOLENCE AGAINST WOMEN IN THE FAMILY

PREAMBLE

We recognize that the fundamental causes of violence against women stem from the subordinated status of women through male domination. Male privilege legitimizes gender hierarchy within the family and the use of violence against women. In fact, the family is a major site of oppression for women. It is through social, cultural and ideological values that the institutionalization of female subordination and male privileges has taken place. The internalization of such values legitimizes a gender identity which perpetuates male domination and female subordination. The effect of patriarchy is now not limited to male-female violence only, but has also implications for female-female relationships. Therefore, the consequent discrimination against and devaluation

of women need to be addressed. Thus far some of the strategies women have utilized in addressing the issue of violence against women have tended to be short-term and reactive. Long-term strategies addressing the root causes have not been adequately implemented. It is important to review and assess previous and current interventions with a view to strategising more effectively for the future.

Recommendations

Women's NGOs:

1. To view violence against women as a community problem, not as a women's problem. Women should initiate advocacy programs to make the community take the responsibility to end violence against women.
2. To establish a forum for sharing of experience between NGOs who are providing crisis intervention services and raising awareness in the community.
3. To undertake holistic measures to end violence against women through networking, with different organizations.
4. To embark on national campaigns so that family violence is recognized as a crime and for men and women to unlearn negative values against women.
5. To undertake legal literacy campaigns in order to raise awareness among women about their rights.
6. To strengthen the CEDAW mechanisms for implementation through raising awareness among women about the potentials of the CEDAW and state obligations under the CEDAW, as well as empowering them with information and skills to undertake advocacy and lobbying.

Governmental level:

7. To make governments accountable for violence against women.
8. To involve women and women's groups in finding solutions for the problem of violence against women.
9. To undertake multi-level training and gender sensitization programs for all sectors.
10. To include a report on violence against women in the government report for the 4th conference in Beijing. This report should be written in collaboration with women.
11. To make available resources for providing services for women survivors of violence.

12. To place violence against women in the national political agenda.
13. To strengthen the CEDAW implementation mechanisms by all governments which ratified CEDAW. Domestic legislation to comply with the CEDAW. A very strong call to Asia Pacific countries to ratify the CEDAW before the Beijing Conference on Women should be endorsed.
14. To view violence against women as a social, rather than private, issue and to take an active role in the collection of data regarding violence against women. Training should be provided to sensitize the law enforcement and criminal justice sectors.
15. To expedite legislative reforms for the elimination of all discriminatory laws. To monitor the gender components in judicial and legal systems.

International level:

16. To implement an international convention on violence against women. This convention should define violence and spell out legal, economic, and educational measures to end violence. State parties to initiate the convention.
17. To ensure that the UN Special Rapporteur on Violence Against Women be a feminist activist with wide contacts and experience. The rapporteur should be provided with financial and secretarial support from all governments. Full cooperation of all governments is sought in the collection of facts and figures on the issue of violence against women. Governments to assure that recommendations made by the rapporteur are implemented.
18. To ensure that the issue of violence against women is placed permanently on the agenda of the commission on human rights, including: 1) reports from all UN member states on facts and figures at every commission meeting; 2) reports on progress made, steps taken, setbacks etc. at every commission meeting; 3) major declaration developed by the UN Human Rights Commission on violence against women to be ratified and adhered to by all member states.
19. To reconsider the declaration of 1994 as the International Year of the Family given the underlying assumptions of family ideology it conveys.

General:

20. To initiate prevention programs including long-term, community-based ones with emphasis on the empowerment of women rather than short-term, reactive measures.
21. To make programs that are proactive in nature rather than reactive.
22. To generate more data on violence against women and develop a database.

23. To recognize marital rape as an urgent issue of violence against women.
24. To undertake re-evaluation of educational curricula with a view to changing perceived gender perspectives.
25. To ensure that research and data collection should be based on feminist principles so that the process can serve not only for data collection but also as a vehicle of consciousness raising, education and empowerment.
26. To develop a strong campaign against graphic and subtle depiction of violence against women in the media.
27. To undertake a comprehensive program that addresses remedial measures for both survivors and perpetrators.

VIOLENCE AGAINST WOMEN AS HUMAN RIGHTS VIOLATIONS

UN Conventions and Declarations

1. All UN bodies should put an issue of violence against women on their agenda and report on and publicize plan (platform) of action to be adopted at this Symposium and Jakarta and Beijing Conferences.
2. Women's rights should be integrated into an international humanitarian law which applies to the conflict situation.
3. "Human Freedom Index" rating should be prepared for all countries and published.
4. The UN, Governments and women's NGOs should translate the paragraphs relating to women's human rights in the Vienna Declaration for Human Rights as well as Declarations on the Elimination of Violence against Women into local languages and widely disseminate it.
5. Vienna Declaration for Human Rights should be monitored on:
 - a) ratification by Governments without "reservations"
 - b) appointment of a special rapporteur
 - c) protocol-NGOs can give reports
 - d) utilization of the draft convention against VAW.

6. NGOs should pressure Governments to revise national laws confronting against the ratification of Convention (CEDAW).
7. NGOs should pressure Governments to ratify the UN Convention for the Elimination of all Forms Discrimination and Violence Against Women and take out their reservation due to cultural reasons.
8. NGOs' report should also accepted by the CEDAW.

NGOs

9. NGOs should monitor, document and report on the implementation of the Convention, Declarations and other UN mandates regarding the elimination of violence against women, including the appointment of a special rapporteur for VAW.
10. Directory of women's NGOs in the region who can intervene on behalf of survivors of VAW should be publicized.
11. Gap in text.
12. Human rights agencies should publicize discussions and regional NGO plan of action emanating from this Symposium.
13. Participants of this Symposium should present the Symposium report, UN Convention for the Elimination of all Forms of Discrimination of Violence Against Women, Vienna Declaration for Human Rights, in their own countries through public forums and wide coverage of media in order to provide women and men who could not participate in this Symposium with information on those matters.
14. NGOs should establish effective and systematic networking to pressure the UN Government so that conventions and Declarations regarding elimination of violence against women can be adopted successfully.
15. NGOs should oppose the use of military forces to bring "peace".

Education

16. Human rights education should be presented in a way/language grassroots women can understand.
17. Violence against women should be a main issue in the school textbooks.
18. The Un bodies and agencies should provide massive information on VAW to raise consciousness.

19. Ways children are raised (especially boys), contents of education and value system portrayed in textbooks and media should be changed so that boys can learn to respect women.

Other human rights issues

20. Governments should be responsible and accountable for violations and be aware that the omissions and non-implementation of legislation regarding violence against women are also violations of the responsibility of the Governments.
21. Customs and practices which affect large numbers of women/girls, such as genital mutilation, female infanticide, should be highlighted and roundly condemned and publicized.
22. Lesbian's rights should be recognized as women's human rights, since many women face violence because they are lesbians.
23. Survivors of violence against women should be encouraged to participate in this kind of meetings and gatherings so that other participants could learn from them.

VIOLENCE AGAINST WOMEN IN WAR AND INTERNAL CONFLICT

A. Refugee and Displaced Women

1. To work towards a definition of the categories of "Refugee" and "Internally displaced" under the 1951 Convention relating to the status of Refugees, the 1967 Protocol should be modified to include gender as one of the enumerated grounds on which a claim of actual or past persecution may be based;
2. To demand that nation states should recognize claims of gender based persecution as a basis for establishing eligibility for refugee and asylum status. They should adopt and implement the recommendations of the Office of the UN High Commissioner for Refugees in its Guidelines on the Protection of Refugee Women prepared in Geneva, July 1981. Mechanisms should be put into place to ensure compliance with these guidelines.
3. To extend the possibility of women living in conflict situations and subject to political violence, torture, military rape, trauma, etc. and women subject to sexual violence to obtain refugee status.
4. To recommend that gender analysis training be provided for the members of the various UN human rights institutions and mechanisms and the staff members who service them.
5. To urge states to design policy and implementation mechanisms dealing with refugees that are not coloured by xenophobia and religious intolerance.

6. That the implementation of "Women at Risk" program be given priority by the UNHCR to ensure that women at risk are identified and removed from situations of extreme persecution.
7. That NGOs working with refugees be given the mandate to identify women at risk and to refer these women to UNHCR in order to expedite the process.
8. The health, safety, work and education of women living in refugee camps must be recognized and ensured. This should also include adequate medical services, health care and the right to be free from physical and sexual abuse;
9. We would like to take note that the October 1983 UNHCR Executive Committee Conclusions on Sexual Violence, recommended the development and implementation of training programmes for members of the military, law enforcers and those involved in the determination of refugee status, particularly relating to gender based violence against women. It also recommended the wide dissemination of the UNHCR Guidelines on the Protection of refugee women and the promotion of equitable access for women to refugee status.

B. War Crimes

We recommend that:

1. An International Penal Court be established by the UN to ensure the prosecution and punishment of perpetrators of war crimes against women.
2. The UN and other intergovernmental bodies guide Governments in the establishment of a comprehensive and adequate compensation process for crimes committed, both within internal and international conflicts. This guidance should include appropriate responses to the psychological, emotional and health needs of women victims of war, as well as incorporating the level of appropriate compensations.
3. The UN discuss war crimes against women at the Second Asian and Pacific Ministerial Conference on Women in Development in 1994 and at the Fourth World Conference on Women in 1985.
4. NGOs demand that the Government of Japan:
 - apologize officially to the victims of war crimes against women, in particular, comfort women;
 - carry out a full investigation into the accusations of war crimes against women particularly comfort women;

- take appropriate and urgent legal responsibility for war crimes against women including providing reparation to survivors of comfort women status.
- 5. NGOs demand that the UN Commission on Human Rights conduct fact-finding missions on the status of human rights violations against women in Kashmir and Bangladesh.
- 6. All NGOs urge their Governments to adopt (or amend where appropriate) a War Crimes Act to ensure rape, enforced prostitution, or any form of indecent assault committed against women in a situation of war are classified as war crimes.
- 7. Communication networks be established and maintained to raise attention of all NGOs and Governments of current abuse of women under internal and international conflict.
- 8. Communication networks be established and maintained to raise the attention of all NGOs and Governments of current abuse of women under internal and international conflict.
- 9. Governments whose nationals are claimants should assist the victims, their associations and representatives. Claimants should be given assistance in filing the claims whether in their countries or abroad.

C. **Pornography**

Inherent in all pornography is the concept of violence against women. Pornography condones sexual violence, objectifies women and reinforces patriarchal concepts of women as the property of men.

Pornography is used in zones of conflict as a propaganda tool to justify sexual violence against women.

1. We demand that the UN recognize pornography as a form of discrimination against women, using the instrument of CEDAW.
2. We demand that Governments in Asia and the Pacific, and NGOs recognize through appropriate legislation that pornography is a crime against women.
3. We urge NGOs to lobby their governments to act to eliminate this crime against women.

WORKSHOP ON VIOLENCE AGAINST WOMEN IN THE COMMUNITY

There were four presentations - prostitution, population control and reproductive rights, sex trafficking, communal violence.

All presentations looked at situating violence against women into larger contexts and processes.

RECOMMENDATIONS:

The group made the following General and Specific recommendations:

General Recommendations:

1. It was felt that there had been accomplishments after the Nairobi conference and these should be reviewed, documented and disseminated.
2. It was recommended that the issue of violence against women should be raised at all international and national conventions and the use of them to provide additional avenues for redress and as pressure points to present our demands from our respective governments and international organizations to make violence against women a global issue.
3. It was recommended by the group to oppose international policies on structural adjustments that impoverish women.

Specific Recommendations:

Section 1 - Media and education

Section 2 - Community based action

Section 3 - Prostitution and Sex trafficking

Section 4 - Population policies and reproductive rights

Section 1 - Media and Education

1. The group calls upon NGOs and the media to promote sustained coverage and an information campaign on women's issues in the media which is informed, sensitive and consciousness-raising.
2. Governments and the media should set up a committee to stop patriarchal symbols and images that perpetuate violence against women.
3. Women's groups and organizations should give priority to media work specifically mass communications e.g. radio, in the control of women in order to reach out broadly to communities with the purpose of creating new images, values and recreating women's role in public life.

Section 2 - Community-based action

1. Citizen's committees at community level are recommended to ensure implementation and monitoring of laws concerning violence against women.

2. Local political representatives and law enforcing machinery would be held responsible and accountable to the community for violence against women. Government inaction is complicity in violation of women's rights.
3. Mobilization of women's NGOs in the community is recommended to act as community pressure groups.
4. Provision of gender sensitization training to all local law enforcement machinery.
5. Where violence against women is concerned, women's groups should be empowered to assist and participate in law enforcement e.g. women in distress cell in police headquarters, social work bodies etc.

Section 3 - Prostitution and sex-trafficking

1. We should work for amendment of the 1949 convention and ensure full implementations of provisions to protect women in sex "services".
2. Prostituted women willing to undergo a new life should be provided with alternative sources of income and livelihood, going beyond stereotypes such as sewing.

Section 4 - Gap in text.

WORKSHOP ON WOMEN'S HUMAN RIGHTS

INTRODUCTION

The militarization and militarism of the nation states in Asia, and in some cases, the nuclearization of these states, is escalating. A polity and a state that is becoming increasingly violent, where human rights abuses are intensifying. While both women and men are victims of illegal detention, torture, disappearances, murders, there are specific dimensions of suffering and violence related to women who are victims of sexual abuse, sexual harassment, acts of sexual terrorism, and systematic rape which form the greatest part of the torture of women.

Inside the prison. And outside.

And sexual violence has never been understood as a human rights violation. Violence against women - rape, prostitution, dowry-burning, incest, genital mutilation, female infanticide, women battering have never been seen as "personal" violences. These crimes have been privatized and relegated to the domestic domain. In relegating these crimes against women to the personal realm, they were refused a place in the political domain. In privatizing their pain, women have been excluded from the main human rights discourse, from its precepts, its praxis. The parameters that have defined the discourse have been drawn blinded to gender. Political paradigms that determine political thinking and institutions in our times have been based on the legitimated discrimination and degradation of women.

And if we would add to these crimes the trafficking of women, the forcing of women into prostitution for economic security, the kidnapping of girls, the selling of women, the luring of "guides" or "entertainers" of sex tourism, or for foreign military or local brothels, or as wives for harems of 'mail order' brides, we are convinced that the whole area of female sexual slavery has nowhere been understood as a human rights violation. But these are violations of the human rights of women: these are the total negation to the right to life, the right to be human. Millions of women in Asia have been denied their most fundamental right of all, their right to be human.

We, the women from the Asia Pacific Region have begun to speak. We speak now not only of the violence against women as human rights violation - we also speak of all human rights violations from a gender perspective. We are broadening this discourse on women's rights as human rights, we are deepening and extending the terrain making visible, dimensions of violations that have remained until now, invisible.

1. UNIVERSALITY OF HUMAN RIGHTS

At the session on "universality of human rights" the presentation traced the ideological, historical and philosophical roots of the human rights discourse and international covenants. Located then within the framework of Western liberal philosophical tradition, the ethic of possessive individualism forms the cornerstone

What then was specific to the West, became universal; a 'universal' that, but naturally, hegemonized and subsumed other 'universalisms' in other cultures, other civilisations, other consciousness - in fact the "other".

Such a universalism built around the scientific, mechanistic, dualistic and consciously patriarchal world view obviously left out the irrational, the intuitive, the feminine, the women. Recognizing only two principle protagonists, i.e., the state and the individual citizen, this universalism also blurred other identities based on ethnicity, race, caste, et al.

Locating such a critique within the conflicting qualities of modernity and tradition, universality and plurality, some in the workshop expressed a fear that a rejection of universalisms might lead us towards oppressive traditions - an alternative used as a defense by most cultural relativists and revivalists, relativists who want to cover up human rights violations in their countries in the name of "national sovereignty" like some of the Nation States in Asia; or the religious revivalists who want to deepen dogma and perpetuate traditional hierarchies in the name of cultural plurality.

As women we have known only too well the violence both of the new and the old; we have been the victims of both the Modern Nation State as also oppressive tradition and cultures. Sati, female circumcision, foot binding, rapes in times of communal conflicts have been the grotesque faces of this violence. Institutionalised religions have been used to silence the woman, marginalise her from decision-making processes and deny her equal access to resources and equal opportunities while controlling her body and her fertility.

Rejecting both the logic of traditional universalism and the violence of modern cultural relativity, we have to search a third terrain for the new non-hegemonic universalisms that while democratising and opening up traditionally closed spaces, can simultaneously draw upon silenced culture and faiths, ways of life and living that have evolved around collective codes of mutual respects, compassion and harmony between woman and man; between peoples of different faiths, between communities and nature. And it is these new visions and traditions for a deeper humanism that we seek in all culture, in the diverse societies.

The Vienna Declaration and Plan of Action, 1993

The second part of the workshop on the Universality of Human Rights went into a critique and discussion on the Vienna Declaration.

A consensus document called the Vienna Declaration and Plan of Action 1993 was adopted by 160 countries attending the Second World Conference on Human Rights in Vienna, June 25, 1993.

To the millions of people all over the world who are victims of human rights violations, it brought little hope.

It spoke more in its silences.

- a) It addressed itself to the congregation of the Governments of the world and confined itself to the polity and the politics of the nation state system. The state is the protector and promoter of human rights.

It is silent on the role of the state as violator of human rights.

And by its silence legitimizes state violence and state terrorism. The violence of poverty, of famine, of malnutrition, of multinationals, of ecological destruction and technological terrorism are not recognized forms of violence which the state through its development models, its technological choices, its wars and its weapons culture perpetuates on its people.

- b) The World Conference reiterates (Part II, Paragraph 6) the right to development as established in the Declaration on the Right to Development (1986).

What it is silent on is the development model itself.

What is this development that we are being given a human right to?

It underscores a development model which has brought with it the dispossession of the majority of people, the decentralising of nature, the destruction of a way of life of entire cultures, the degradation of women. Development reduces all differences into a flatland called modernity where dams displace people, forests and rivers become resources, and nuclear energy becomes a reason for the state. The declaration underscores the dominant model of development, of technology, of nation-state power. The 'new world order', or the North-South Dialogue or 'self-reliance', each has been a political technique that has allowed concessions to be sought within, never touching the essence of the economic order. The names keep changing but the methodology used still remains, technicist manipulated by the world financial institutions and the forces of a global market economy.

What must also be underlined is that for some states in the third world the right to development "emphasized the primacy of what they called collective rights over individuals rights". What it means in reality is that collective rights is synonymous with the rights of the state.

- c) There is a great silence on the notion of community and community rights. Encapsulated in the dominant understanding of human rights which informs the Vienna Declaration is an understanding of a human being who is an independent, isolated citizen. But human societies are made up of tribes, of castes, of communities from which people gather their strengths and wisdoms. There is no place in the dominant discourse for the notion of community and hence the violence done to whole communities and collectives of people can find no mechanisms of redressal for these crimes.

Minorities - religious, linguistic, ethnic - are only given rights as persons belonging to minority communities or groups.

But it is silent on the rights of minorities as peoples, as communities.

- d) But is there not a collective dimension to the individual? Or notions of communitarian justice, collective knowledges, community rights? One of the cornerstones of the human rights instruments

is the right to property. There is inscribed in these covenants no notion of collective property hence, the knowledges that indigenous peoples and their traditional culture have about bio-diversity of the earth's species, and their knowledges are now being sought to be brought into the mainstream, commercialised, dragged into the market and to find a place in the debate on intellectual property rights. In the existing discourse there is no concept of collective property, no mechanisms by which the collective property of peoples may be protected from the violence of the dominant mode.

- e) The 'paragraph between 12 and 13' focuses on the right to return to one's own country. The World Conference on Human Rights recognises 'the gross violations of human rights, including in armed conflicts, are among the multiple and complex factors leading to the displacement of people'.

It is silent on the other causes, besides situations of armed conflict, of the displacement of peoples.

There are in the world today over 25 million people who are internally displaced which include displacement because of ethnic, communal or sectarian conflicts, people are displaced and uprooted because of state development policies (Narmada Dam in India), environmental degradation, nuclear weapons testing, nuclear power plants, toxic and nuclear waste dumping making their habitats and homes impossible to live in.

It is also silent on the displacement of indigenous people, and that the majority of displaced persons are women; who are often subjected to rape and other forms of sexual abuse and violence. In the existing Convention and Protocol on Refugees there is no recognition to the right to asylum or of granting refugee status on the basis of sexual violence or sexual abuse against women. Woven into the matrix of the international human rights instruments on refugees to a clear notion of what is political.

And violence against women is not seen as political.

There are over 20 million refugees in the world; of them approximately 80% are women and children. Yet, in the paragraph on refugees, the declaration refers to the 'special needs' of women and children. It speaks of refugees, it speaks of displaced persons.

It does not see the woman's face.

Most refugees have a woman's face.

The World Conference called upon the General Assembly of the UN to adopt the draft declaration on violence against women in accordance of its provisions.

It encourages the ratification by all states of the Convention on the Elimination of All Forms of Discrimination Against Women by the year 2000. It will consider the appointment of a Special Rapporteur on Violence Against Women at its 50th session.

The Preamble 7 bis of the Vienna Declaration of the deep concern of the states 'by various forms of

discrimination on violence to which women continue to (gap in text).

Women's rights are clearly on the world's human rights' agenda. Part II para 9 focuses on the human rights of women and the girl child. And point 3 in this section is perhaps the greatest gain that women have in the Declaration in which the governments are urged to work towards the elimination of violence against women in public and private life.

A whole area of hidden violence may now be named as human rights violation.

Once again this set of women's rights are placed in the nation states paradigm; the promotion and protection of these rights are responsibilities of the state. The Bangkok NGO Declaration of Human Rights, March 1993 in its section of women rights noted that "women's realities and the violence of their human rights are not reflected either in language, substance or interpretation of most human rights

It has left out half of humanity, it has left out the women.

And thereby its claim to universality of the existing human rights are seriously flawed.

The ideology that pervades the discourse disparages women and defines them as the 'other'; the process of gender socialization violates their fundamental human rights and confines them as the "other". While we need to extend the horizons to integrate the gender perspective and to deepen the existing human rights discourse, we need too a new generation of women's human rights.

II. INTERNATIONAL MECHANISMS

The third workshop that sought to review specific U.N. Conventions, took up specifically CEDAW for discussion.

A. CEDAW

The U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the United Nations in 1979 and opened for ratification in 1980. To date, around 130 countries of the world have acceded or ratified CEDAW. The strength of CEDAW lies in the fact that it promotes the following principles:

- * the principle of equality;
- * the principle of collective measures;
- * the principle of conformity of domestic legislations to the principles of the Convention;
- * the principle of state obligation to ensure not only de jure but also de facto rights of women.

While the CEDAW has the potential to guarantee the human rights of women through the above principles, this potential cannot be achieved without the active agency and citizenship of women. The state, which is the major

actor in guaranteeing and protecting women's rights will not voluntarily honour its obligations unless fulfillment of women's interest becomes a matter of critical importance, on which its survival and legitimacy may depend.

There is a need therefore to address two levels of action:

- * to strengthen the implementation mechanisms of CEDAW itself;
- * to enhance women's capacity to create spaces for negotiating with the state and to command state accountability towards themselves.

The principles that need to be established are that, on ratification of CEDAW, states become accountable on two levels:

- * To the United Nations
- * to the Women in their countries.

B. Recommendations

1. In formulating recommendations, the following principles were endorsed as being fundamental for actions at all levels. These are:

- * principle of sharing of power
- * principle of anti-violation
- * principle of sustainability.

2. The following recommendations were suggested for strengthening CEDAW:

- a) All states that have not ratified CEDAW must do so by the 4th World Conference on Women in 1985.
- b) Need to expand and update the definition of "refugee", to include economic refugee, displaced persons, and refugee persecuted on the grounds of their gender.
- c) Need to use the provisions in Article 21 to demand protection of refugees from state parties.
- d) To ask for a special report from state parties on refugees, asylum seekers and migrant workers.
- e) Under Article 13, (21) state parties should be obligated not only to give women the right to participate in the elaboration and implementation of development planning, but also the right to participate in evaluation of the implementation.
- f) State parties reports should be based on participation and collaboration of women's groups.

- g) The system of reservation should be reviewed, and the U.N. should stop state parties from reserving on the principles of CEDAW.
- h) A special study needs to be conducted on the reasons for the heavy reservations of state parties on Article 16.
- i) Women's groups should send alternative reports to the committee.
- j) Resources of the CEDAW committees must be expanded to enable it to perform its tasks effectively.
- k) The Bangkok recommendations on CEDAW must be endorsed by the U.N.
- l) Creation of optional protocol for individual complaint procedures.
- m) CEDAW must be publicized in local languages.

3. **Recommendations for enhancing women's capacity to use CEDAW:**

- a) Women's struggles need to be connected to the struggles of other groups.
- b) To develop skills and sophisticated advocacy strategies to use and expand the spaces that the state offers.
- c) Developing sharper understanding of the potentials that the Convention offers and learning to use it for achieving women's human rights in the context of development.
- d) To train government functionaries about state obligations under CEDAW.
- e) Mobilization of women to spread awareness of the possibilities for social transformation offered by CEDAW.
- f) Networking at international levels to create pressure on state to adhere and conform to international standards on women's rights.

III. HUMAN RIGHTS EDUCATION

The methodology, concept, and content of Human Rights education should be suitably transformed and re-oriented. Including the gender dimension in human rights education implies transforming it from a pedagogy to a process of learning and empowerment for both the "teacher" and the "taught"; a process of education that should recognize the core of human dignity within each of us; that should have as its basic philosophy the nurturing of self-worth and self esteem within women both in the public and political domain; that should be

in the nature of campaign constantly naming and making visible violences of people who have been pushed to the fringes of our regions and societies; the process of education should be such that it should not only create spaces for grassroots struggles of women but also empower women who are victims of violence.

Addressing all those involved in the process of human rights education, the recommendations that emerged revolved around the form and content of such programs and processes. These include:

Recommendations to the State:

1. Incorporate human rights education (both formal and informal) into the educational curriculum from the primary to the higher levels.
2. Extend human rights education on "the women's rights are human rights" to (a) human rights educators and community educators, (b) women and men in the police, judiciary and amongst the policy makers and other law enforcing agencies.

Recommendations to the NGOs:

In terms of evolving new methodologies and content for the human rights education programs, these should include:

1. Holding of public hearings and tribunals to not only create alternative spaces and fora for women to speak and be heard but also provide public visibility for 'personalized' crimes. Such tribunals will be new mechanisms to sensitize the people of the community to hidden violences.
2. Expand the content of human rights education to not only include specific violence like rape, forced pregnancy, sex slavery but also place the violations of the human rights of women within a critical appraisal of the ideological, philosophical and historical roots of the various international covenants on human rights.
3. Human rights organizations, women's groups and developmental activities should work together to create appropriate mechanisms through which political spaces can be opened and widened in civil society.

IV. SOCIO-ECONOMIC RIGHTS

There were several presentations in the workshops on human rights violation related to the right to asylum, right to shelter, right to dignity of persons/people, right to livelihood.

A. DALIT WOMEN

Dalits are the indigenous people of India. And they comprise almost 200 million people. Dalit women are

referred to as Dalit among the Dalits: as they are the poorest of the poor, the lowest of the caste, the most denigrated of all women.

Suffering from untouchability and impoverishment under caste and class oppression, enslaved in their own country, the Dalits have been reduced to a sub-human status. The effects of cumulative inequalities and injustices over the centuries have stifled their social progress and spiritual growth. The Dalit women, specifically on the one hand, because of their caste are denied land rights, social and legal rights, forced into dehumanizing hiring and working conditions, deprived of basic health conditions, on the other, because of their gender, are targeted in government family planning policies, their bodies violated and experimented upon by new contraceptive methods.

Recommendations to the UN:

1. Crimes against Dalits should be considered crimes against humanity and therefore a human rights violation.
2. That the United Nations Commission on Human Rights (UNHCR) appoint a special rapporteur on crimes against Dalits, to conduct fact-finding missions and public hearings in specific instances where such violations have happened and penalize the guilty be they the dominant caste or/and the agencies of the state.

Recommendations to the State:

The government in all our regions should be pressurized to recognize Dalits as indigenous people and include them into the UN Working Group on Indigenous Populations.

B. INDIGENOUS WOMEN

The Vienna Declaration recognizes the value and diversity of the distinct identities and culture and social organization of the indigenous peoples. But it is silent on the dispossession of their lands, territories, and resources; i.e. all that is their ancestral domain.

The Human Rights Workshop states that indigenous peoples have a right to self-determination. By virtue of that right, they freely determine their political status and they pursue their economic, social, and cultural development. Indigenous peoples shall not be forcibly removed from their lands or territories nor may they be forced into categories of indigenous. No displacement as such can take place without the free and informed consent of the indigenous people concerned and after agreement on a just and fair compensation, and where possible with the option of return.

Indigenous peoples have the right to special protection and security in times of crises and armed conflict.

Practices and traditions of indigenous peoples which are unacceptable to indigenous women because they are

unjust should not be protected in the name of preserving cultural identities, e.g. polygamy, denial of access to land and natural resources, inheritance, etc.

Notions of community property rights and collective knowledges find no legitimate space on their own terms. These within the paradigm of private property have instead sought to be brought to the mainstream, commercialized, dragged into the market to find a place in the debate on intellectual property rights. Despite a recognition of this unique contribution as indigenous people who with their diverse identities, and cultures and social organizations have a right to enjoy the fruits of sustainable development the State, because of its commitment to the market, will allow these resources to be further impoverished and manipulated.

C. REFUGEE WOMEN

Gross violations of refugee women are not generally recognized as gross violations of their human rights. Nor are they recognized as grounds of persecution within interpretations of the Convention and Protocol of Refugees.

In the existing Conventions, there is no recognition of their right to asylum or the granting of refugee status on the basis of sexual violence or sexual abuse.

Eighty percent of the world's 25 million refugees are women and children, yet the Convention and Protocol on refugee status is gender neutral.

Woven into the matrix of the international women's rights instruments of refugees is a clear notion of what is political. And violence against women is not seen as political.

We, therefore, recommend to the UN:

1. That sexual violence, sexual abuse, rape and other gender-crimes be recognized within the UNHCR Convention on Refugees as grounds for granting refugee status.
2. That as a major form of protection, UNHCR implement programs designed to maximize self-determination of women in all aspects of their daily life.
3. That all relevant human rights instruments be examined to strengthen their effectiveness with regards to the prevention of sexual violence in particular the institutionalized socially sanctioned violence against refugee women.
4. That rape and sexual violence in situations of conflict be recognized internationally as a war crime, thus placed in the public sphere, and not a crime against honor.
5. That the UN recognize illegal detention and rape of refugee women as war crimes which are subject to the same legal rights and restitution as any other war crime, including punishment of and compensation by those responsible.

Recommendations to the NGOs:

1. That NGOs working with refugees be given the mandate to identify women at risk and to refer these women to UNHCR in order to expedite the process.
2. That regional instruments and mechanisms be set in place to monitor the implementation of UNHCR Policy on Refugee Women in places of asylum, resettlement, repatriation.

D. DISPLACED WOMEN

In addition to people recognized as refugees under the provision of the Geneva Convention, there are 25 million people who are internally displaced. This includes displacement because of ethnic, communal, or sectarian conflicts, state development policies, environmental degradation, nuclear weapons testing, nuclear power plants, and chemical and nuclear waste dumping. Because of civil conflicts and economic contingencies, many indigenous people are also displaced.

We, therefore, recommend to the UN:

That the UN establish a parallel body to that of UNHCR with a mandate to address the issue of displaced persons. This body must give equivalent recognition to the needs and rights of these people as is accorded to refugees with a special focus on women.

E. MIGRANT WOMEN

Women who are part of the migratory process are marginalized by the fact that they are women, they belong to an economically marginalized sector and also from poorer countries. Pushed into a state of no choice faced by poverty and lack of opportunities, women are forced to migrate not necessarily out of individual or family choice but by other forces who benefit most from the migration of women. Amongst such forces is the state that directly benefits from the revenue from workers' remittances which are used to prop up their flagging economies. The overseas employment policy of many Asian governments in turn breeds illegal recruitment and the institutionalization of traffic in women. Another dimension to the situation of women migrants is that they occupy jobs that merely reinforce the traditional gender roles of women - as domestic servants, as entertainers, and as wives to foreign men - jobs that are vulnerable to sexual and physical abuse. It is most often a situation of bonded labor or sexual slavery.

Recommendations to the UN:

That the UN Convention for the Protection of the Rights of Migrant Workers be ratified.

Recommendations to the State:

1. Set up mechanisms that will ensure the full participation of migrant women in the formulation of laws and programs affecting them and ensure widespread dissemination to increase the migrant women's awareness.
2. Reformulate the review of state policies that encourage and produce the migration and consequent exploitation of migrant women.
3. Make the Government responsible and accountable for human violators, omission of legislation and lack of implementation of laws relevant to migrant women.

Recommendations to the NGOs:

1. Campaign for the inclusion of migrant women as legitimate members and citizens of the countries to which they migrate.
2. Ensure that all migrant women are entitled to the same rights as the citizens of the country they have migrated to.
3. Enforce a review of state policies and programs affecting migrant women of both countries - the sending and the receiving countries.

F. WOMEN OF THE URBAN POOR AND UNORGANIZED SECTORS

It is recognized today that the socio-economic-political system in the present model of development pursued in our regions has exploited nature and people: increased disparities at all levels, created hierarchies in the nation's people, cultures, sexes. We also experience varying forms of violence be it along class lines or communal, language, ethnic and gender lines.

On the economic front what we are now experiencing is: (1) a total opening out to free markets and export-oriented industries; (2) cutback in government expenditure on social welfare measures; (3) production of cash crops at the expense of food crops; and (4) with industrialization has come privatization and commodification resulting in the feminization of poverty.

We, therefore, recommend to the State:

1. That the state takes all necessary steps to ensure people's right to life and livelihood, in particular women and consequently reject all such programs and policies that negates such rights.
2. That the wages of women especially those of the unorganized sector be regularized immediately.

3. We demand greater investment into housing schemes for women who are battered, deserted or single.
4. We also call upon the State central governments and concerned international agencies to protect the environment from devastations, and also ensure an equitable distribution and access of the use of natural resources.
5. We demand for the protection of women's rights, access and control over resources necessary for livelihood.
6. Provision of institutional funding to women victimized by economic, social factors in order to become self-supporting.
7. An immediate halt of all plans and programs of the government of eviction, demolition and displacement in the name of development. This is especially true of the poor in the Asia Pacific region.

Recommendations to the NGOs:

1. We call upon the women's movement to support the struggle for the housing rights of women in the unorganized sector.
2. To review, update, expand the provisions of the Forward Looking Strategies on urban poor women to be incorporated in the platform of action.

G. LESBIAN WOMEN

In every country, there are lesbian women who live hidden lives in constant fear of being victimized. Because of their sexual preferences, they are discriminated against in employment and other services and programs.

It is in this context that the following recommendations are made:

Recommendations to the UN:

1. That Article II of the Universal Declaration of Human Rights be extended to include the right of sexual preference of one's choice.
2. That all the rights accorded to women must include women of different sexual preferences.

Recommendations to State Governments:

1. That governments who have ratified the Universal Declaration on Human Rights incorporate these rights into state and domestic legislations.
2. That under this legislation specific reference be made to the rights of women with regard to sexual preference. (Incorporating point 2 of the recommendations to UN.)

Recommendations to NGOs:

The women's movement, while sustained by the energy and labor of many lesbians, continually fails to recognize their existence thus adding to further discrimination meted out to them by state patriarchy. Hence:

1. That NGOs endorse the adoption by state governments of legislation designed to give freedom of choice in matters of sexual preference.
2. That NGOs endorse and assist in the implementation of recommendation to the UN.
3. That NGOs recognize and respect the existence, labor of lesbian women.
4. That NGOs provide safe space for lesbian women to listen, to share and to explore the possibilities of protecting their rights.

H. SEX TRAFFICKING

The traffic in Asian women has increased dramatically in the last two decades. Women are sold, traded, exchanged for sexual slavery, prostituted and used as bonded labor across state borders. The traffic in women is a serious violation of the basic human right to dignity and integrity of human beings, the right to security, the right to life.

Recommendations to the UN:

The experience of being trafficked should be a basis for granting refugee status. Further, victims who wish to prosecute traffickers should be assisted in their aims. These should include residence permission and legal assistance by the state.

Recommendations to the State:

1. The concept of traffic in persons should not be limited to traffic for the purpose of forced prostitution, but should be widened to encompass traffic for the purpose of other activities, such as forced domestic labor, false marriages, clandestine employment, and false adoptions.

2. Governments should apply the punitive sanctions relating to traffic in persons to traffickers. Prosecution and deportation under national immigration law should not be applied to the victims of such traffic.

I. MILITARY SEXUAL SLAVERY

There is an immediate need to address all forms of military sexual slavery committed against women of the Asia Pacific Region, particularly the war crimes committed by the Japanese military during World War II through the "comfort women" operation.

Recommendations to the UN:

A United Nations War Crimes Tribunal should be created to hear crimes of military sexual slavery and that this War Crimes Tribunal be given a broad mandate to prosecute the criminals and to order civil remedies and compensations to the survivors of these crimes.

Recommendations to the State:

Government should prohibit military sexual slavery and forced prostitution and take effective measures to eliminate and discourage these violences.

J. RAPE IN WARS AND CONFLICT SITUATIONS

The rape of a woman, the ultimate degradation and violation of her spirit and body is being transformed from an individual act of violence into a gendered crime against half of humanity. These we have seen happening in times of war when rape has been committed by the invading armies on the women of the local populations. This we are also seeing in times of internal conflicts between communities - those based on religion, caste, language or ethnicity. Rape of women in such conflict situations becomes part of a systematic strategy of "ethnic cleansing" of terrorizing, dishonoring, humiliating the "other" community.

The women victimized in such conflict situations rarely ever speak out due to community pride and honor. Existing legal machineries have no means by which to indict the violator who can never be identified because the crime is in fact a collective violation.

Recommendations to the UN:

1. Rape in armed conflict situations should be prosecuted as a war crime and a grave breach of the 1949 Geneva Convention relative to the protection of the civilian population in times of war.
2. UN records related to past and present incidents of violence against women in situations of internal and international armed conflict and emergency, should be made available to all women and interested

groups in order to encourage states to make similar information available. The UN should develop standards to this effect.

Recommendations to the State:

1. New relevant laws should be formulated to deal with rape committed during times of internal conflict situations such that the guilty be prosecuted.
2. The State should be held accountable for the acts of violence against women committed by their agents: soldiers, police, civil servants, and others. They should take adequate and immediate action to prevent such violence including prosecuting the perpetrators accordingly.

Recommendations to the NGOs:

1. Set up support groups involving local activists, women's groups, women and people from the local communities, that will facilitate and strengthen women who are victims, to talk about the crimes perpetuated on them. Social and moral pressure should also be exerted upon the community to which the violators belong to make appropriate reparatory measures to the women.
2. Wherever possible, public hearings and tribunals should be held in communities to expose and indict the guilty.