



**Best Practices in domestic violence legislation and its implementation in the
Asia-Pacific
17 November, 2009, 12:30 – 14:00**

***Side event of the High-level Intergovernmental Meeting to Review regional
Implementation of the Beijing Platform for Action and Its Regional and Global
Outcomes***

Introduction and welcoming remarks – Dr. Jean D’Cunha

Dr. Jean D’Cunha, UNIFEM East and South-East Asia Regional Programme Director, welcomed the participants to the launch of the publication *Domestic Violence Legislation and its Implementation. An Analysis for ASEAN countries based on International Standards and Good Practices*, researched and written up by the Lawyers Collective Women’s Rights Initiative, based in India, and to the following lively discussion on creating response on DV.

In her opening remarks Dr. D’Cunha outlined the current situation of DV legislation worldwide and in the ASEAN countries. In 2006, she said, we had 60 countries around the world with full-fledged legislation on domestic violence and today we have 8 out of 10 ASEAN countries with full fledged laws on domestic violence. We currently have about 89 countries with some form of prohibition on DV. Despite this, she highlighted, half of the number of homicides of women today are actually committed by former or current partners and husbands; this shows a raising prevalence of DV. The main reason is either the absolute absence of legislation and sanctions or the existence of discriminatory and disempowering laws.

Regarding the UNIFEM publication, Dr. Jean D’Cunha said that it analyzes the ASEAN laws on DV from a CEDAW perspective and advocates very strongly for CEDAW compliant legislation. And in doing so it lays out the criteria for what might be seen or what might be drawn on or used as CEDAW compliant standards for CEDAW compliant legislation. Dr. D’Cunha mentioned the following questions as checklist to be considered in reviewing the domestic violence legislation:

1. Does your law look at DV as a form of discrimination against women as a violation of women’s human rights? Does your statement of objectives actually refer to international Human Rights instruments like CEDAW? Is your law gender specific as per CEDAW requirements?
2. Does your law have a comprehensive definition of domestic violence but does not allow for judicial interpretation and does take account of specific cultural manifestation of domestic violence?
3. Is your law comprehensive in coverage? Does it cover all dependency relationships within a share residence and does it clearly list the nature of those relationships and have a clear definition of what we mean by shared residence?
4. Does your law draw on either civil or criminal remedies or a mix of both?
5. Does your law have procedures, mechanisms, provisions for easy access for women to remedies including dispute resolution mechanisms?
6. Does your law have provisions for support services for women, easy and accessible support services prior to legislation and after legislation or litigation?
7. Do you have provisions for multi-sectoral coordination, collaboration and engagement?
8. Does your law have provisions for training of law-enforcement officials, service providers? Does it have provisions to run public awareness campaigns as a preventive measure?

9. Does your law have provisions for counseling, including trauma counseling for either party or for both parties as a preventive measure to prevent further violence or is it simply focused on reconciliation, on mediation and on settlement?
10. Does your law have provisions for monitoring and for evaluating the impact of legislation?

The Regional Programme Director emphasized that this is actually only one part of the story and that the other part of the story is represented by tardy implementation, lack of accountability, including a lack of allocation of financial resources and that all of this is grounded in gender mindsets. Against this background, she said, the publication also documents and analyzes good practices around the world on implementation and accountability. It very richly analyzes ASEAN DV laws and it provides a very robust framework for more gender sensitive implementation and accountability. At the end of her opening remarks, Dr. D’Cunha thanked Amarsanaa Darisuren, UNIFEM Human Rights Specialist, who played a fundamental role in organizing the side event.

Key note speech – Dr. Heisoo Shin

After Dr. D’Cunha’s opening remarks, Amarsanaa Darisuren gave the floor to Dr. Heisoo Shin, Former CEDAW Committee member, who made a key note speech. Dr. Shin served on CEDAW Committee for two terms (from 2001 to 2008). She was also a commissioner of the National Human Rights Commission in the Republic of Korea for 2005-2008. As President of Women’s Hot Line, she played an instrumental and prominent role in drafting and in the adoption of two national laws to combat domestic violence in Republic of Korea: a law on punishment of perpetrators and a law on provisional services and support of survivors of domestic violence. She is still considered a very well-known and prominent Human Rights activist in Asia-Pacific region.

Dr. Heisoo Shin made a presentation on “Combating DV from CEDAW prospective”. The Former CEDAW Committee Member begun her speech reading a Poem by Paulette Kelly, called “I got flowers today...”. She drew attention to the fact that, although we might think that DV happens mostly in developing countries, it is actually prevalent everywhere. In this regard, she mentioned the case of Finland. In fact, when the CEDAW Committee examined the Report of Finland last year the number of women killed in homicides was quite high (30 in 2006).

She then talked about CEDAW’s principles and State obligations under the Convention. She also mentioned the CEDAW Committee’s General recommendations no. 12 of 1989 and no. 19 of 1992. Under the G.R. no. 12 all the States parties should provide the situation of VAW as well as the laws and remedies that they have in place. The G.R. no. 19 defines gender-based violence as a form of discrimination that seriously inhabits women’s ability to enjoy rights and freedoms on a basis of equality with men. So, she said, it is clear that the CEDAW Committee and then CEDAW prohibit VAW as violation of human rights.

Dr. Shin emphasized that in order to combat domestic violence the so-called 3 Ps are needed (prosecution/punishment, protection and prevention), as well as a good domestic violence legislation, that must contain a clear purpose, cover all the relationships and include the above-mentioned 3Ps. She also emphasized that to combat domestic violence a full implementation of the law and a close coordination among various ministries, among administration, parliament and the judiciary, between government and NGOs and within each community are essential. Regarding the full implementation of the law Dr. Shin mentioned the case of Korea, where the government gave an exam to 70,000 policemen on domestic violence legislation. Before dealing with domestic violence cases the policemen must pass this exam.

She also added that to combat domestic violence a constant monitoring of implementation of the laws and policies is needed. A specific and more careful monitoring is needed especially in time of crisis. For example, when Korea experienced financial crisis in 1997 domestic violence increased of the 20%. In addition, a special attention should be draw to the situation of women in minority groups. She mentioned the case of Korea, where

domestic violence in the so-called multicultural family is higher than in Korean couples. In addition, to monitor the situation regular surveys should be carried out. In Korea the domestic violence law prescribes that there should be national surveys at 5 years intervals. Also social costs should be calculated and taken in account as stated in the Secretary General's *In-depth Study on all forms of violence against women*.

The Former CEDAW Committee Member ended her speech by saying that with a strong political will and with our commitments, domestic violence can be drastically reduced, and finally eliminated.

Launch ceremony

After the key note speech, Amarsanaa Darisureen invited Joanne Sandler (UNIFEM Deputy Director), Socorro Reyes (Chief of the Asia-Pacific and Arab States Section of UNIFEM), Dr. Jean D'Cunha, UNIFEM East and South-East Asia Regional programme Director) and Dr. Heisoo Shin (Former CEDAW Committee Member) to take part in the launch ceremony of the publication *Domestic Violence Legislation and its Implementation. An Analysis for ASEAN countries based on International Standards and Good Practices*.

Panel

After the launch ceremony, the panel discussion on practical issues of implementation of DV legislation, moderated by Socorro Reyes started. The Chief of the Asia-Pacific and Arab States Section of UNIFEM emphasized the fact that domestic violence is continuing to increase rather than decrease and that we need to think about the issue in a more profound way. She introduced the panelists of the session: Libby Lloyd AM, Chair of the Australian Government Violence Against Women Advisory Group, Emmeline Versoza, Executive Director of the National Commission on the Role of Filipino Women and Yustina Rostiwati, Commissioner of the Indonesian Commission on Violence Against Women (Komnas Perempuan).

Libby Lloyd – Recent developments in Australia to reduce Violence Against Women

Libby Lloyd made a presentation on the Australian experience in finding a way through the issue of violence against women. She started her speech by saying that the Australian context is not very different from the others. One in three women is victim of domestic or family violence in her lifetime and one in five women is victim of sexual assault in her lifetime. She highlighted that the figures of violence against women are much higher in indigenous communities and that indigenous women are 44 times more likely to be victims of violence. She also said that we should consider how much it affects economy, she said. It has been predicted that the cost of violence against women will be 15.6 billion Dollars by 2021-2022.

Ms. Lloyd talked about the political change in Australia and the creation of a new body to combat violence against women. In November 2007 a new government was elected and both the new Prime Minister and the Minister for the Status of Women placed a priority on reducing violence against women. They declared a "zero tolerance" policy towards violence and they established a National Council to reduce Violence Against Women and their Children. The objective of this body is to give further advice to the government on ways to reduce, prevent and eliminate violence against women. But in fact the Council's focus is on reduction, she said.

The government asked the Council to present evidence-based policy advice. From the Declaration of Zero Tolerance, the new body moved forward and it organized a consultation with 2,000 Australians across the country, in the cities, in regional areas and in remote areas. The Council's approach was to start with desktop researches of material that have already been developed, to commission new research and to call for public submissions

(some of which were quite substantial documents, she added). They conducted interviews with victims of domestic violence and/or family violence or sexual assault and one interview with perpetrators and people who have worked with perpetrators. The Council convened 6 expert roundtables, which was an extremely valuable step of the process. It also worked with people who worked with indigenous perpetrators, with lawyers and judges and with practitioners of the law. After this process, the Council developed a Policy Advice, contained in the Report: *Time for Action*, which is actually the plan of what they would suggest the government to do. This Report consists of 5 documents: *Time for Action*, a Snapshot, a Background Paper, a paper on the cost of violence against women and their children and a detailed analysis of domestic violence laws in Australia.

Ms. Lloyd then draws the attention to one of the main challenges they had to overcome, namely the complexity of the Australian system of government, which is a Commonwealth government/initiative. They have 6 States and 2 territories, each of which has internal legislation developed in no consultation with any other states. All States have laws, all States apply those laws and all States fund their initiatives quite differently.

At the end of putting together this huge document, the government gave back to the Council with its response on April of this year (2009). The government committed 42 million dollars over 4 years to take forward some of the priority actions, outlined in the Plan. As part of the total package that the Council put together there were 11 Recommendations, 25 very clear strategies and under those 117 Actions. The Council identified 20 priority actions for immediate implementation and the government has already acted on 18 of those. They acted pretty rapidly, she commented. The mandate of the new body was to put together a way to reduce violence and just dealing with the lack of legislation was not enough. For these reason six outcome areas have been identified:

1. Communities are safe and free from violence;
2. Relationships are respectful;
3. Services meet the needs of women and their children;
4. Response are just;
5. Perpetrators stop their violence;
6. Systems work together effectively.

Ms. Lloyd highlighted that outcomes 1 and 2 are mainly related to prevention and that they have nothing to do with services: in regards to outcome 1 each as individual have some responsibilities to make sure that everyone is safe and free from violence; in regards to outcome 2 the government should support a major emphasis on education (formal and informal education).

She then draws the attention to the major issues around the laws, such as the differences between State laws and the lack of intention to harmonize laws across States, as previously mentioned, and the application of the law itself.

In April 2009 Commonwealth and State Attorney-General agreed on several points:

1. Have a working group to develop options for a national registration scheme for domestic violence orders;
2. Assess the impact of Coroners' recommendations including on domestic violence related deaths;
3. Audit best practice in the investigation and prosecution of sexual assault cases.

In fact, on 10 cases brought before the Court, only one out of those ten will actually reach prosecution, she said.

So far, the Australian Government asked the Law Reform Commission to examine the interaction of Federal and State/Territory laws on safety of women and children. The Commission is currently reviewing the laws to see where there are gaps and what should be done to fill them out. Some problems linked to commonwealth laws, particularly around

shared parenting, are being addressed by the government. And it will also develop a multi-disciplinary training package for professionals working in the family law system.

In conclusion, Ms. Lloyd said that they are now moving forward and with a combination of prosecution/punishment, protection and prevention they should be able to do something to reduce violence in Australia.

Emmeline Versoza – Performance Assessment of various duty bearers in the implementation of the Philippine anti VAW Act: Protocols for assessment of service providers

Ms. Versoza made a presentation on the Philippines experience in developing performance standards for VAW-related services. The project, called *Strengthening Institutional Mechanisms in Mainstreaming Gender in RH, PDS and Anti-VAW Programs* was funded by UNFPA. The main component of the project is strengthening mechanisms on VAW and the Sub-component is the establishment of Benchmarks and Performance Standards for VAW-related services of priority line agencies.

In the development of the project extensive research, with review of literature, fieldwork and consultation were conducted. Consultant's baseline Report and the draft standards and tools were then endorsed to the individual agencies for review and adoption and the Performance standards were also approved by the Inter-agency Council Against Trafficking and the Inter-agency Council on Violence Against Women and Children.

The Philippines Commission on Women works in cooperation with priority line agency partners, such as the DSWD (Social Welfare Department), PNP (National Police), DOH (Health department), DOJ (Department of Justice) and DILG (Interior and Local Government).

Major outputs of the project are a Baseline Report on existing anti-VAW related service and standards of the pilot partners, an assessment tools to evaluate effectiveness of VAW services and performance standards for gender-responsive VAW services. As Ms. Verzosa highlighted, seven parameters need to be considered:

1. Policy-Related areas (does the agency have an administrative order or a memorandum/circular providing guidelines for the service providers on how to address VAW in a gender sensitive way? Does the local government have a gender development code or do they have local mandates?);
2. Physical facilities (does the police station have a private space for women to be able to narrate their own stories? Do they have adequate equipments?);
3. Personnel (Are there women police? Are they properly trained? Are there women's desks?);
4. Services (Do they have referral system? What's the nature of this service?);
5. Monitoring (Does the agency or the local government unit have monitoring and evaluation research? Do they have a proper data-base system, a recording system so that we can track the cases and the number that have been reported?);
6. Information and advocacy (Are there available information and education materials? Do they have campaign?);
7. Resources (Are they properly founded? Are they sustainable?).

Ms. Verzosa also informed the audience that there is a checklist for each of the parameter and that a scoring can be done. To address violence against women the agencies will issue policy to influence standards adopted at the local level, they will provide technical assistance and they will monitor compliance with national laws and policies. The local government units will use this system as standard to handle VAW cases, to plan for VAW-related interventions and programmes, to advocate for women's human rights, especially for those of VAW victims/survivors.

A baseline application was conducted in 2006 in selected UNFPA areas. This was followed by a second assessment in 2008. There should be caution on the results, she said.

The results of the assessment are actually partial and confined only to those included in the sampling. Also this is a self-assessment tool and the classification of score for rating description is arbitrary.

The VAW performance standards were used as the main tool in the “Search for the VAW-Responsive LGU”, but Ms. Verzosa emphasized that there were also limitations on the use of the VAW performance standards in the “Search for the VAW-responsive LGU”: this tool assesses only the services and facilities present in the LGU, but cannot assess fully their quality and the client-feedback or satisfaction is not captured in the tool.

Yustina Rostiawati – Survivor’s access to services in Indonesia

Ms. Rostiawati’s presentation focused on the purpose, objectives and duties of the National Commission on VAW and good practice in the Indonesian context.

The NATCOM has been established in response to the May 1998, by the Regulation no. 65 of the President of the Republic of Indonesia (2005). The purpose of the Commission is to prevent and address VAW issues and to facilitate the elimination of all forms of VAW. Its objective is to develop the environment conducive to the elimination of VAW and the enforcement of Women’s Human Rights in Indonesia, to strengthen, to prevent and address VAW and to protect women’s Human Rights. To achieve these objectives there are several duties that should be fulfilled.

It is necessary to promote public awareness on VAW in Indonesia, to implement assessment of and research on existing laws, regulations and international instruments relevant to the protection of women’s Human Rights. It is also necessary to fulfill the following duties:

1. monitoring activities, provide information and recommendations to the government, legislative and judicial parties as well as civil society organizations;
2. advocate for formulation and ratification of legal or policy framework conducive to prevent and address all forms of violence against women;
3. develop a regional and international partnership to improve the weakness of preventing and address all forms of violence against women.

The NATCOM is an independent body, whose highest decision making body is the plenary commission. Among the duties, the Commission also has to issue the Annual Report on the 7th March of every year. This is to commemorate the International Women Day. The Report focuses on the magnitude of VAW in Indonesia and on issues related to VAW, emerged during the year, and new regulations set at the provincial or national levels.

To emphasize the victim’s prospective in the assessment of service quality, to ensure that the implementation of the policy meet the service standards for victim’s rights compliance justice, truth and recovery, it is necessary to carry out a Joint Monitoring System. The NATCOM did the assessment with NGOs and community-based organizations. The monitoring aims to: formulate and develop monitoring instruments including indicators, which can be used by government institutions and community service providers, carry out monitoring in selected areas as pilot projects, encourage the development of a regular monitoring mechanism and formulate recommendations based on monitoring results.

This System is now carried out in three regions in Indonesia: Maluku in ambon and central Maluku, east Java (Pasuruan, Sidoarjo and Blitar) and Riau Island (Batam and Tanjung Pinang). The selection of region is based on several considerations, such as the representation of the western, central and eastern Indonesia, the diversity of cases (not only domestic violence, but also trafficking and migrant workers violence), the diversity of social, economic, cultural and geographical conditions.

The assessment actually was carried out because the Indonesian government in 2002 signed an agreement between three ministries and the Head of the National Police Department. This was focused on Cooperation in integrated service for victims of VAW.

Following this agreement the government implemented two laws: Law no. 23 of 2002 on Child protection and the Law no. 23 of 2004 on the Elimination of domestic violence. Ms. Rostiawati also mentioned the Government Regulation no. 4 of 2006 on Implementation and Partnership for the recovery of Domestic Violence Victims. Results of the assessment show that the most accessible services for survivors are health care and police service, while the less accessible is legal service. Ms. Rostiawati, at the end of her presentation, mentioned a good practice in a General Hospital in Blitar (East Java). This model, based on a Citizenship Charter, prioritizes service user satisfaction.

Open Forum

Two rounds of questions were collected during the open forum. Several issues were raised, such as how to deal with perpetrators/abusers, whether to criminalize domestic violence or to take it to civil procedure, the importance of working with men to end violence against women, the use of the media as tool to increase awareness on violence against women and whether reporting is mandatory or not, considering the fact that the majority of women don't want to report for various reasons.

On perpetrators Ms. Lloyd replied that this is one of the six important areas considered in the Australian plan and that it is necessary to focus on prevention and education. She also added that perpetrators should be assisted in the process of reintegration in their community and in going back to their old relationship or to a new one. Ms. Verzosa added that in the Philippines there are several counseling groups initiating by local people, and not by service providers. Also the Filipino Department of Social Welfare and Development is currently starting a programme focused on perpetrators in collaboration with NGOs. The DSWD has already a programme called "Enhancing Responsibility of Fathers", focused on the role of father and on gender-sensitive values, she said.

On criminal and civil law Libby Lloyd said that we need to use both. In this regard, Dr. Shin mentioned the Korean legislation, which has a special procedure on punishment as compromise. It is up to the prosecutor to decide whether to send the case to the normal criminal procedure or to the so-called family protection case. At the time of making the legislation 70% of women victims didn't want criminal records for the husbands. But now, she added, it is necessary to strengthen the law and try to set more punishments; and, first of all, we need to make clear that domestic violence is a social crime.

On the reporting issue, Dr. Shin emphasized that we have to respect the opinion of the survivors and to consult them on the right strategy to adopt.