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EXPERT MEETING & OPEN FORUM In KYOTO

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Asian Women's Fund

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Contents

Expert Meeting on "Women's Human Rights under Armed Conflicts"

Keynote Speech

- Women's Human Rights in Armed Conflicts*
Nisuke Ando, Professor, Faculty of Law, Doshisha University..... 3

Cambodia

- Mothers and Daughters Victims of a Continuing Vicious Circle of Violence*..... 5
Meng Ho Leang, Deputy Director, The Cambodian Institute of Human Rights

India

- Due Consideration of Gender Aspects in the Process of Peace-Building*.....11
Rani Jethmalani, Advocate at Supreme Court of India

Indonesia

- Military and Violence Against Women in Indonesia*.....15
Nursyahbani Katjasungkana, Lawyer & Director, Women's Legal Aid Bureau

Pakistan

- Status of Women in Pakistan*.....23
Musarrat Hilali, Vice Chairperson, Human Rights Commission of Pakistan

Sri Lanka -1

- Women's Participation in Peace Building*.....25
Saroja Sivachandran, Director, Centre for Women and Development

Sri Lanka -2

- The Intergrades Issues of Armed Conflict and Women's Human Rights*.....30
Nandini Samarasinghe, Coordinating Secretary, Ministry of Foreign Affairs

Vietnam

- Women's Human Rights under Armed Conflicts*.....32
Duong Thi Thanh Mai, Vice-Director, Institute of Law Research

Japan - 1

- The Necessity for an International Legal Framework of Reconciliation*.....35
Ayako Tanaka, Doctorate Student, Faculty of Law, Kyoto University

Japan - 2

- Toward Further Steps to Prevent Violence Against Women
under Armed Conflicts*.....38
Mikiko Atani, Attorney-at-Law

Japan – 3

- Women's Human Rights under Armed Conflict: The Role of the United Nations*.....47
Keiko Karube, Lecturer, St. Andrew's University, Osaka

Outside of Asian Region

- Cultures of Peace, Cross-Cultural Challenges: Women's Human Rights
In Armed Conflict Situations*.....50
Anne Bunting, Assistant Professor, Division of Social Science, York University

UNHCR

- Violence Against Women: Protection for the Refugee Women*.....55
Shahrazad Tadjbakhsh, Executive Assistant to the Director, Department of
International Protection, UN High Commissioner for Refugees

Summary (UNHCHR)

- Expert Meeting on Gender Participation*.....61
John Pace, Chief, Research and Right to Development Branch, Office of
The UN High Commission for Human Rights (UNHCHR), Geneva

Open Forum on Violence Against Women

Open Forum I

National Reports

Pakistan	71
India.....	74
Indonesia.....	77
Sri Lanka.....	79
Rwanda.....	81
Vietnam.....	84
Cambodia.....	86

Question and Answer.....	88
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Open Forum II

International Community and United Nations Agencies

UNHCHR.....	91
UNHCR.....	96
UN Human Rights Committee.....	102

List of the Participants.....	106
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EXPERT MEETING
on
Women's Human Rights under
Armed Conflict

September 14 and 15, 1999
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WOMEN'S HUMAN RIGHTS IN ARMED CONFLICTS

Nisuke Ando

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Expert Member of the UN Human Rights Committee

Introduction

This symposium aims at considering how best to protect women's human rights in armed conflicts (under situations of civil, ethnic and/or religious conflicts) as well as to take in gender perspective in post-conflict peace-building. For that purpose, I will first question if there is any specific human right of women, and depending on an answer, what specific measures are required to implement that right. Next, I will examine if international law of armed conflicts can apply to civil, ethnic, and/or religious conflicts in which women's and children's human rights are most likely to be affected. Then, I will discuss how best women's human rights can be protected in armed conflicts, and finally, I propose to expand women's participation in creating and implementing norms for the protection of human rights in armed

I. Women's Specific Human Rights

In my view, there are two basic assumptions with respect to human rights in general. One is that human rights belong to individual human beings. The other is that every individual should not be handicapped in his/her enjoyment of human rights on any ground for which he/she is not accountable. Consequently, men and women are equally entitled to all human rights. Indeed, human rights should enable every man and woman to develop his/her potentials in the maximum extent possible within legitimate restrictions.

Now, is there any specific human right that only women can enjoy? Personally, I do not believe so. I must admit, however, that women have specific capacity which men lack: the capacity to bear child. I must also admit that that specific capacity is accompanied by special burden of child-birth and child-raising. History shows that, in many respects, the burden has handicapped women in their enjoyment of human rights as compared with men. I do believe that the human society, composed of men as well as of women, should establish a system whereby such handicap could be rectified and both men and women could be guaranteed the enjoyment of their human rights to the fullest extent possible.

II. Human Rights in Armed Conflicts

Traditional international law of war, currently termed as international law of armed conflicts, is established on certain propositions. For example, war is an extended form of diplomacy; that is, war is a forcible means to attain a political end which diplomacy has failed to achieve

through peaceful means. Therefore, means to be employed in war should not go beyond what is reasonable and absolutely necessary to accomplish its end and thus are not limitless. Derived from this are such other propositions that belligerents (members of military force) should be distinguished from non-belligerents (civilians), that hostilities should be engaged only between members of military force, and that acts of war should affect civilians to the least extent possible.

Thus, military manuals of various nations provide for the prohibition of bombardment of undefended areas and the protection of civilian person and property. All in all, therefore, international law of armed conflicts pays due respect to human rights, and there is no reason to deny application of the law to civil, ethnic and/or religious conflicts within a nation.

Unfortunately, law of armed conflicts is not always scrupulously observed by belligerents. Again, history shows that violations of the law have not been infrequent, affecting vulnerable part of civilian population, in particular women and children. Such violations are more likely to occur in civil, ethnic and/or religious conflicts within national boundaries, and they do contradict my very belief as mentioned above.

III. Protection of Women's Human Rights in Armed Conflicts

Though there is not much new in it, the following are essential to the protection of women's human rights in armed conflicts: (1) First of all, every attempt should be made to prevent and contain armed conflicts. The attempt should include good diplomacy, conciliation efforts, and peaceful settlement of disputes. (2) If armed conflicts start, civilian population should be kept or removed from conflict zones. The international community should assist their transportation to safer areas. (3) Members of military or paramilitary force should be acquainted with law of armed conflicts, particularly its part relating to the protection of civilians. (4) In case of violations, prompt investigation, and where necessary, prosecution and punishment of perpetrators should follow. It is traditionally an obligation of national, military tribunal, but here the prospective role of the International Criminal Court should be enhanced. (5) prompt and adequate remedies should be provided to the victims of violations.

IV. Gender Perspective in Human Rights Protection

Several years ago an article appeared in American Journal of International Law which strongly vindicated "Feminist Approach to International Law," Subsequently, the article won a special prize of the year. I do remember that the article criticized male-oriented character of international law in the fields of dispute settlement, conclusion of peace, and law of war.

In line with that article, I would like to suggest the following: This symposium should study pro and con of the more active and larger scale participation of women in all stages of norm creation and norm implementation concerning not only women's but also men's human rights protection in armed conflicts. The participation should also cover issues of the related field such as prevention and containment of armed conflicts, methods of conflict resolution, recovery and maintenance of order, and rebuilding and consolidating of peace.

**THE SITUATION IN CAMBODIA – MOTHERS AND DAUGHTERS
VICTIMS OF A CONTINUING VICIOUS CIRCLE OF VIOLENCE**

Meng Ho Leang

Deputy Director

The Cambodian Institute of Human Rights

"It is normal for little boys to beat their sisters" was the shocking message my English colleague was told by his neighbors just a few weeks ago. He had seen the little eight year boy repeatedly beat his younger sister. *"Never repeat violence in the future"* is the theme of the conference. This is indeed a great hope for all of our countries, and especially for Cambodia. I feel proud to be closely associated to it. All of us live in a society where the "culture of violence" rules, and where invariably women suffer the most.

I commend the organizers of this conference for their initiative. Cambodian Government has pledged itself to the Platform for Action and the Stockholm Declaration, both of which followed the Beijing Conference. The Cambodian Government has therefore agreed to take all measures to ensure the Rights of Women, their freedom from sexual exploitation and freedom from violence of any form. The actual Ministry of Women Affairs announced its five year strategic plan "Neary Ratanak" or "Women as Precious gems" which intends to improve the status of women by addressing the crucial issue of violence against women. My organization and many NGOs in Cambodia, especially the women's groups, support every action taken to prevent violence, whether in situations of armed conflict or in the years after it. We consider violence against women as grave violations of women's rights and women's dignity. Cambodia, thankfully, is enjoying peace but it is fragile. More importantly, decades of conflict have left its mark indelibly in the minds of our people.

Violence in armed conflicts:

Fifty years ago, Cambodia too had its "comfort women" during the Japanese occupation. One of these ladies is still alive today. If only the hardship suffered by women like her had led to change for the better for later generations of women and girls, she may not have suffered in vain. But she did suffer in vain. Things got worse for women in Cambodia, very much worse under the Khmer Rouge rule, and they have not improved much since. Cambodia has a long history, of a mighty Khmer empire and culture, but like most ancient civilizations, it was the men in positions of power and privilege. Women were expected to serve men, in whatever way they wanted. The stronger the man, the more he took! After the period of French colony, Cambodia was relatively peaceful and prosperous, but then we know what followed. If women did begin to benefit in that period, it proved to be short-lived. War in Vietnam spread into Cambodia. The end of that war, through 'twists of fate' heralded the barbarous Khmer Rouge regime headed by Pol Pot, only to be replaced by extreme Communism.

In his book, "*The Tragedy of Cambodian History*, David Chandler (Page 243)" wrote: "Rouge revolution was exhilarating for some but left millions of others humiliated and confused. For the majority, village Buddhism, shared experiences, leisure, patronage, and family loyalties had served for centuries to mediate violence and injustice, and explain suffering and disorder. Under the Democratic Kampuchea {the Khmer Rouge regime} familism, individualism, private property, personality, vanity, and feudal religious practices were all renounced."

Today's fractured society of Cambodia has emerged, the product of war and tyranny, with the complete breakdown of social order, the loss of so many educated people including the Buddhist monks, our spiritual leaders, the destruction of pagodas, schools, the entire fabric of a decent society.

Mr. Chandler wrote about it. I lived through it. And I witnessed the most cruel acts carried out on women and girls. Group rape was common violence. Even Buddhist nuns were victims. Girls were forced into arranged relationships, and even marriage. Educated girls were forced to marry peasants boys – neither suited to each other. Can you imagine the lifetime suffering of girls brought up to expect one life and to be forced into another? As indicated above, Khmer tradition for centuries had placed great importance on weddings, as the centre-piece of family-life, with rituals and celebrations. All of that was removed by the Khmer Rouge to be replaced by a simple administrative formality.

For some of us reaching the refugee camps seemed an escape from this evil, but it proved to be no such respite. Women and girls were raped by Vietnamese or Government soldiers during their exodus. In camps, apart from the day-to-day hardship of living in primitive conditions for years, women and girls continued to suffer. Here I want to ask this conference to make a fervent plea to the UN authorities and the international community.

When people end up living in large refugee camps, please make sure there is proper full external international supervision in day-time and in night-time. Usually, resources are insufficient for this, so what happens? The host country's military are used for security combined with 'representatives' of the people in the camps. All I can say to you, are these people were the perpetrators of further inhumane acts on girls, in the camps in which I worked in Thailand. Unscrupulous people with power exploited the vulnerable. We must stop this happening in Kosovo, Sierra Leone or wherever refugees emerge. Families in the camps took all kinds of precautions to prevent the abuse of their daughters. Some adolescent girls lived for years in secret holes concealed below beds inside shelters. Others were married to the few men available, just to give them that small degree of protection. Here again there were more forced marriages. Sometimes mothers or older daughters sacrificed themselves to protect the young ones. Groups of young girls who went beyond the barbed wire to search for firewood, were victims of gang-rape. The older women were submitted to atrocity and humiliations. All of this went on under the "protection of UNHCR and the international community represented by NGOs." They were powerless to stop it.

In camps under the Resistance groups, my sisters married or girls were at the mercy of warlords or powerful military or civil chiefs.

Situation of violence in present Cambodia:

Throughout all of this chaos, girls became women and mothers, and new children grew up in this frightening world. It was a world where only one thing mattered – survival. The strong took all they could in the drive for self-preservation. The weak did whatever they could just to survive. Self-dignity, self-respect, was sacrificed by my sisters. It did not seem to matter. Women were the weakest, the 'victims at the bottom of the pile.' Women everywhere tend to introspection when things go wrong. Their sense of self-worth, the value they place on themselves, is low. This is the key issue we must address.

Very many of those forced marriages did not last. Many women to this day have remained single, bringing up children, children who are stigmatized by the way they were brought into this world.

War is fought, not just in set-piece battles, but in every aspect of daily-living where adversaries seek to establish supremacy over the other. Everyone becomes an unwitting tool in Cambodia's polarized society. They become conditioned to it. If they do not get hardened to it, it affects them profoundly, and some – many – are traumatized. We now see a new phenomenon in Cambodia, of 'second generation trauma.' The children of 'first generation victims' inheriting attitudes and behaviors from parents based on fears, indeed a whole set of negative social norms, that creates in them similar levels of personal inadequacy.

Cambodia has developed a culture of violence and here again, the most vulnerable are women and children. I recall here the 1993 UN Declaration on the Elimination of Violence against Women. Violence against women is defined as any physical, sexual and emotional harm, denials of basic freedoms and rights to women, or economic dominance over women. The following described the most prevalent harms affecting Cambodian women and children, in particular girls. Thousands of women and girls are being trafficked from rural areas and neighboring countries to the cities for prostitution. The Cambodian Commission on Human Rights and Reception of Complaints of the National Assembly estimates that over 14,000 women and girls are working as sex workers in brothels, bars, massage clubs, private accommodation and hotels in Phnom Penh alone. Findings from a survey conducted by the Cambodian Women in Crisis Centre show that there are roughly 50,000 to 55,000 prostitutes in Cambodia. 35% are under 18 years of age. The alarming statistics of the HIV/AIDS epidemic in Cambodia is significant and affects a large number of women and children. The National Committee Against HIV/AIDS estimates that around 180,000 are HIV positive in 1999. 6,689 persons died of AIDS in 1998 and these were only the cases reported. Contracting HIV/AIDS is largely attributed to men visiting prostitutes and then taking the infection back home. However, culturally influenced beliefs attribute to contamination from women prostitutes not from men who therefore do not feed health education message.

I would also state the cases of thousands of other Cambodian women and girls who are trafficked to Thailand, Malaysia and Taiwan to be forced into prostitution, beggars, construction workers or servants.

One crucial issue I would raise here is culture of violence Cambodia developed during more than two decades of conflict conducts to actual domestic violence. Domestic violence is defined as any acts or act of any family members to physically, sexually and emotionally harm the other family members. It takes on various forms such as polygamy, jealousy battery, confinement, threats, curses, incest, pulling, burning, forced abortion, marital rape, shooting and killing. Domestic violence is regarded as a private family problem. People outside the family, including authorities have no rights, it is believed, to intervene. Nowadays Cambodian community is beginning to perceive domestic violence as a significant problem. However, few respondents of a survey perceived it as illegal even if they agreed that any violent action of conduct including domestic violence is wrong and unacceptable behavior in society. The most tragic situation is that the future generation will continue this violence.

Is reconciliation possible between victims and perpetrators?

Conferences like this are vital. The work of the UN Commission on the Status of Women is so important. We have to lobby the entire international community and all national governments for equality of the sexes to be real and to be a part of all cooperative ventures (Bilateral aid, multilateral aid, the UN itself, inter-country initiatives like ASEAN etc.). Many donors have sections in proposal guidelines that ask for an assessment of 'the impact on women.'

We must alert the UN agencies, the international community, our colleagues in international NGOs, to make proper arrangements for the full protection of women and girls once they are under their care in refugee camps.

Generally, by recognizing the real contribution of women in society and in the economy, we all need to promote women to be active in public affairs we should not stop until parity is achieved.

Regional and bilateral networks do help. We learn from each other:

We have to have a sustained campaign to portray women and girls more positively. The Cambodian Institute of Human Rights and other NGOs in Cambodia are working to empower women's status. We advocate presence of many women as possible at the level of decision makers.

We must strive for better, more consistent enforcement of law within countries and across borders. Cambodia, along with other countries, has adopted laws intended to protect the rights of women and children, but we see daily failure on the part of those entrusted with upholding the law. Sadly this institutional weakness has encouraged perpetrators to continue. A small number have been apprehended, hardly any prosecuted.

Is it possible to reconcile victims and perpetrators? This is a crucial moral dilemma. We profoundly pay our respect to the Japanese people who presented their apologies to the victims for the tragedy that occurred during the second world war. Possible reconciliation

After all, the protection of human rights in peace as well as in armed conflicts requires not only good knowledge of the subject but also sufficient courage to put it into practice. That, in my view, should be the ultimate goal of any human rights education.



concerns future generations. They should be educated to respect women's human rights and women's dignity and ensure that this kind of tragedy should not be repeated. Forgive but not forget. We can not drive a car by looking in the rear mirror all the time. We are sharing responsibility to improve our world and make it more moral, harmonious and peaceful. Our common efforts should go to a common wish that our children live in peace. Real peace starts within each of us. Do not teach our children revenge and hatred. Our planet will have a better and healthier reason to exist.

I am looking forward to learning more ideals from all of you. My best wishes to each and everyone of you in your work in your countries. May women emerge from being victims to victors in our societies.



DUE CONSIDERATION OF GENDER ASPECTS IN THE PROCESS OF PEACE-BUILDING

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"The war against war will be fought by women" – Aung San Syu Chi [Detained opposition leader of National League for Democracy – Myanmar]

Women have a greater stake in peace than men. They are protectors and sustainers of families. International humanitarian law has failed to protect women. The evolution of International human rights law in the last decade culminating in the Vienna Conference of 1993 and the Beijing Platform of action must shape and impact humanitarian law. The magnitude of sexual violence against women in this century in armed conflict despite the four Geneva Conventions and the Subsequent Protocols must call for a review to explicitly recognize sexual violence as a war crime and a grave breach of the Conventions and that it can be punished as a crime against humanity.

Conflicts are devastating moments in the life of nations. They are traumatic signals of the need for change and transformation of inequalitarian structures. Peace is possible where societies understand the nature of healing. The process of peace will be strengthened by a collective effort that ensures de-victimization and consequently the de-stigmatization of women by institutional mechanisms. These must provide for reconciliation introspection accountability, forgiveness rehabilitation. National catharsis must be sensitively institutionalized.

Recent examples in contemporary history have laid the foundation – The Truth and Reconciliation Commission of South Africa, of El Salvador, the International Crimes Tribunal for Yugoslavia and the Rwanda Tribunals.

The S.A. Truth and Reconciliation Commission (TRC) was established by an Act of Parliament – the Reconciliation of National Unity and Rehabilitation Act of 1995 (Act 34). The Act provides for the establishment of a Truth and Reconciliation Commission to promote national unity and reconciliation in a spirit of understanding by establishing three Committees – the Committee on Human Rights Violations, the Committee on Amnesty and the Committee on Reparation and Rehabilitation. The submissions by the Commission on Gender to the Truth and Reconciliation Commission contain deep insights and a wealth of material in understanding S. Africa's painful past and the struggle against apartheid through a gendered approach focussing on women's experiences with a view to reconstruct the future and understand the past.

The International Tribunal for Yugoslavia was established by the Security Council under

Chapter VII of the Charter of the UN to prosecute persons for serious violations of international humanitarian law committed on the territory of the former Yugoslavia since 1991. It criminalizes rape as a crime against humanity and genocide within a specific context of ethnic cleansing. The Statute of the ICTY in Article 22 deals with gender sensitive rules of procedure and evidence for the protection of victims and witnesses.

The El Salvador Commission made recommendations for removal of all. Military officers cited for human rights violations and for steps to ensure civil control of military promotion and the military budget. It called for transparency in monitoring human rights violation. It has been assisted by the United Nations.

The Peace Agreements pertaining to Bosnia-Herzegovina reflect the importance of women's human rights and concerns in negotiating peace. The common theme running through all these Commissions and agreements is the need for establishing democratic systems where there is transparency and accountability. The demands made in Nairobi in 1986 for Democracy, Peace and Development will alone ensure the needs of women.

Governments must ensure that national legislation conforms to the new constitutional globalism. The ratification of CEDAW and its incorporation into domestic laws must be insisted upon. Discrimination on the basis of sex and gender biases in the administration of justice must be eliminated through appropriate forums to challenge and redress these practices. India has through successful use of public interest litigation provided access to the courts to the disadvantaged. The recently enacted Mongolian Constitution of 1994 provides for petitions to the Supreme Court and Constitutional Courts for violations of human rights.

Affirmative action to advance women's rights recognized in the Convention on the Elimination of Discrimination against Women (1979) will ensure the strengthening and acceleration of women's human rights at the domestic level. This is necessary particularly after armed conflicts.

National mechanisms must be established to advance the women's human rights agenda. India has set up the National Women's Rights Commission Statutory Legislation conferring it with powers to investigate suo moto violations of human rights and advance gender sensitive policies. The commission has great potential to creatively and imaginatively use its powers to radically change society.

In addition to this the Protection of Human Rights Act of 1994 has set up a Human Rights Commission to monitor and protect human rights. A human rights culture can transform and supplant existing notions and practices that prevail in societies.

At the international level, UN mechanisms providing for human rights committees, the Rapporteurs, Commissions and Tribunals within domestic sphere post-conflict influence and sensitize domestic mechanisms in their approach to appreciate and understand the concerns of gender. Governments must be motivated to submit reports to the various U.S. Committees to conform to their International commitments. Reservations in International Treaties that exclude the application of gender-sensitive provisions and human rights within national laws must be resolutely discouraged.

Women must lobby that the concerns of gender require that the Statute of the International Criminal Court adopted at Rome in 1998 is ratified by their governments. India has abstained with twenty others. The U.S. voted against the Statute together with China, Israel and four others. Pakistan is not a signatory to the Statute. The Statute is a powerful tool against crimes of genocide, war crimes and crimes against humanity including rape and torture. Only three countries have ratified the Statute – San Marino, Trinidad and Tobago, Senegal. Sixty nations are to deposit the instruments of ratification for the Statute to come into force.

The role of the ICRC (International Committee for the Red Cross) with its vast experience for handling conflict and protecting the rights of women with sensitivity must be respected by all governments. The Committee's expertise should inform and assist governments in post conflict scenarios to rehabilitate and restructure society towards peace.

International feminist and human rights groups like Amnesty International and Human Rights watch must be allowed access to vulnerable areas where there are atrocities and violation complaints to prevent a relapse into conflict situations.

The role of NGOs has been internationally recognized by the Beijing Platform for Action. International NGOs must build solidarity with domestic NGOs. Networking and communication is a powerful check against gender atrocities and creates pressures in enacting gender sensitive laws.

Feminists can strengthen nationalism by humanizing male agendas which glorify power and aggression. Nuclear wars and armaments manufacturing must be debated by women. Women must be integrally involved in formulating peace policies. The female ethos must contribute to the politics of peace. The establishment of Jerusalem Link in 1993 – joint venture for Peace and Empowerment for Women. Israeli and Palestinian, provides for dialogue as a key to change a resolution of conflict. This was facilitated by the mutuality of their experience as women in patriarchal society. This enables cutting across barriers of class ethnic religious and national identities. The appeal by Afghan women – RAWA – the Revolutionary Association of Women in Afghanistan to oppose the agenda of the Taliban must be strengthened in the process of international coalition building.

Refugee and displaced women face severe problems in conflict and post conflict situation to protect refugees. India has not ratified the Refugee Convention. Though Indian policy is to rehabilitate refugees. India has 19,327 refugees on its rolls. Of these 9,966 are refugee women. But the problems of displaced and uprooted women returning to their countries require economical, financial and psychological rehabilitation to reintegrate them. The UNHCR has been operating in most countries, its efforts must be supported by domestic initiatives and laws.

Gender-sensitive laws have been enacted in India dealing with sexual violence and rape. The rules of evidence have changed the burden of proof in custodial rape. These laws – may be considered for adaptation by countries emerging from conflict. They have to be disseminated and security officials, military officers made aware of the implication of these new laws.

In July, India successfully repelled armed conflict in its most vulnerable and sensitive state—the State of Jammu and Kashmir. This at a time when it was in the midst of a general election. Democratic elections have been held in Kashmir early this month. Peace and diplomatic efforts must emphasize compensation to war widows who are most acutely affected by war and conflict.

Human Rights education must permeate all levels. Women themselves must be empowered and educated to oppose a culture of silence and pervasive violence.

Fragile and fractured structures with broken economies create exceptional hardship for all women. Economic and political rights must be empowered by the right to development and the conventions pertaining to this right be followed, so that women are involved in economic efforts of rehabilitation and reconstruction.

Our cultures must stress on the quintessential humanism of all our religions. The spiritual wealth of our heritages emphasized. Mahatma Gandhi gave the world a powerful tool to resist oppression through non-violence and civil disobedience. The world's most important refugee – His Holiness the Dalai Lama has adopted this strategy with the holistic and healing ethic of universal responsibility and individual responsibility to nurture and cherish life – with compassion and understanding of our diversities and commonalities.



MILITARY AND VIOLENCE AGAINST WOMEN IN INDONESIA

Nursyahbani Katjasungkana
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I Background of the Armed Conflicts

In Indonesian context, the state violence policy given birth by the New Order can not be separated with the role of the military in it. It can even be said that the birth of the New Order is the history of the military violence itself, as it is evident in the process of the power transfer from the civilian to the military motorized by Lieutenant General Soeharto at that time. "Control" and "Command" are two key words used to consolidate political power that was very militarist in character, where the Dual Function of the Armed Forces became a justification of all its socio-political role, including its control over economic resources. This political militarization was manifested especially by the introduction of a controlling and commanding policy, as it was reflected in the policy of unifying all social political organizations that were potential to change into sole associations. In addition to sole associations, there was also a coercion process into making Pancasila philosophy the only principle of those organizations. All these were included in the packet of Political Acts and were centralized under the President's control, which was, concurrently, the Supreme Commander of the Indonesian armed forces. Viewed from this framework, state violence was none other than a logical consequence of the prevailing militarization of the political life, although actually the violence itself is an inherent character of state or power.

This control and command model was, especially had an impact on women's position in the family and the community as it was obvious in different policies on women that have been enforced. Even in its very inception, the New Order created a model by contrasting it with one of the existing women's organizations, namely, Gerwani, which was accused of its complicity in the CPI inspired 30th September Movement (G#)S?PKI) and the murder of some generals, as an organization of the most horrible women maniacs, an accusation that has never been legally proven.

The ensuing stories were about gender oppression and injustices in all its forms, including violence against women, which was perpetrated by the state apparatus or was allowed to take place by the state. The state, or in this case the state apparatus – civilian as well as military – committed violence not only against women, but also allowed such violence to happen without any tangible sanctions. It seemed that this condition sprung from a cultural value consistency cultivated by Soeharto in the words "lifting highly, burying deeply," which means more or less that the society should always uphold the dignity of its leader and to bury deeply all his faults. This is perhaps the root of the **"culture of impunity."**

The state equally did not succeed in neutralizing gender biases, reflected in the behavior of

its apparatuses, including the law enforcement apparatus, so that women found it difficult to get justice. This can be seen in the cases of Marsinah (a woman worker who was suspected of having been raped and murdered by the military), Alianca dos Santos, Martina (a domestic helper who was tortured and had her teeth pulled out by her military employer). Violence cases taking place within a household was another story, where "private problem" (at the state level it became "domestic problem" or "state sovereignty") was the key word, not only to reject its legal process, but placing the problem as not being human right violations (the right to life and to safety), but merely as violation against decency.

In this way, it appears that actually women have become violence victims at all times and places. In an armed conflict situation or in a military operational region, violence becomes more intensified. It may take many different forms: first, gender-based violence, where women become the target of violence only because they are sexually female, or become the indirect target because of their responsibility as household managers. For example, in cases where their area becomes the target of industrial expansion or military operation, their responsibility in providing household necessities – such as drinking water – forced them to pass through such areas. Or they become the targets only because their children or brothers or sisters are suspected to be the state "enemy"; as was the case of Alianca and an Acehese mother described below. Viewed from its *modus operandi*, taking place both in East Timor and Aceh or Irian Jaya, it is difficult to believe that the prevailing violence is not a systematic violence.

This situation is increasing numbers of women who affected by violence during armed conflict and political terrorism of state sponsored violence. The majority of **internally displaced people** and refugees are women and children. Many of them were experiencing physical or sexual violence from soldier or fighter. Some of them are being beaten, tied up or locked up and raped by soldier as experienced by Alianca dos Santos in East Timor. She told me as follows: *"I do not know where is it begin. Suddenly, the army suspected me and my family of having dealing with guerillas. I and my families tried to escape but were followed by army trucks. We were detained and interrogated with regard to arms and ammunitions. I was tied to a pole and beaten for about for hours. After that I was taken to the cell and was kept for our days. On the fourth days the soldier raped me. I was so scared and shocked. The next day I was taken to another post. At this post I was raped four times by different soldier. One of them is Soepardi. I know his name because one of them called his name. I was detained at the post for two weeks. During that time my duties is to clean the post including providing coffee or other menial chores for the soldier. Thank God, that finally I was released. (because her families and priest intervention). As a result of rapes, Alianca become pregnant. Now her daughter is almost two years. Initially, she hated her baby but with the aid of counselor her situation is getting better. Aniceto (lawyer from Yayasan Hak, Dilli) and I were representing her to report her case (rape and torture) to the Military Police in Dilli. Lastly t he military office in Denpasar informed me that the rape case was dismissed without any explanation. The soldier who raped her only is being charged for torture.*

Thousands of women experience the same thing in refugee camps, in prisons or detention camps or in places where women are forced to leave their homes because of different ethnic or armed conflicts and or other conflicts on (land) ownership. Violence against women during war and armed conflict impact **women's health, economic status and human rights**. In

Indonesia, there is no thorough study on the impact of violence against women in conflict situation. But some newspaper reported that many women in refugee camp have a reproductive health problem such as sexually transmitted disease, neonatal and maternal mortality. Most of them suffered from shame, fear and other psychological problem. Unfortunately there is no "official" attention from international body since until now no single UN body who have "**statutory responsibility**" upon internally displaced people. As stated by UNHCR (1977): "there is substantial evidence available to demonstrate the acute conditions of physical, material, legal and psychological insecurity experienced by many internally displaced people. At the same time it remains the case that refugees are generally more likely to come to attention of international community and thus to receive some forms of protection and humanitarian assistance than internally displaced people." ".....internally displaced people generally find themselves in more difficult and dangerous circumstances than refugees, primarily because they remain under the jurisdiction of the state which is unable or unwilling to protect them."

II. Women and Military Operation

Indirect violence suffered by women is also found in many instances, for example, in cases of abduction or forced disappearance conducted by the military against their children. Let us see the suffering of a mother in Aceh as it was reported in *Kompas* daily (16 July 1999) as follows: *"Help me, Sir. Help me..... I have lost a son, should I lose yet another one? Help me,.....Sir. Release my son. You do not have the heart to take away my both sons, do you, Sir?"*

Ms. Rosmawati's moaning, a villager of Blangmalu, Mutiara sub-district, Pidie must be touching anybody's inner heart, despite its simple wording. This mother of three children lost her second son, 24, when a group of soldiers took him away from her house. At that time the soldiers said that her son was "borrowed" a little while for questioning. "But up to now, I have inquired everywhere, nobody knows my son's whereabouts." This was revealed in a seminar on "The Escalation of Violence in State Violence Practice in Aceh" held in Jakarta 9h 15 July 1999. As the fate of her second son has not been clear yet, Ms. Rosmawati's suffering piled up by the arrival of six soldiers on three motor cycles in her home, on 2 July 1999 morning. This time her first son of 29 years was dragged off his bed when he had been soundly asleep. Because there is a radio antennae on her house, her son was accused of being a member of Free Aceh Movement (GAM) by the soldiers of the Military District Command of Pidie. As a mother, Ms. Rosmawati went straightly to Kopassus (elite troops) Command Post that is closest to her house to find her son. She met an officer in charge, called Tono, but according to him Ms. Rosmawati's son was taken away to Rancung, Lhokseumawe. She went right away to the Military District Command (KOMIM) headquarters, as she happened to know that the soldier who took away her son was Soegianto. However, the officers at Kodim told her that this soldier called Soegianto has been away from the headquarters for the last three days. *"I kept asking, and they replied that my son was not there. But as I persisted in my effort, finally the officer in charge told me that my son is detained inside, but could not be visited."* It was not allowed even to send him clothes. As she did not want to lose another son, Ms. Rosmawati kept going to the Kodim headquarters. However, it seems that the door was really closed in front of her. Meanwhile, *"My son is only a PLN (State-owned Electricity Co.)*

employee, who usually installs electric poles. Help me, dear Sirs, give back my son! Up to now I do not know where my son is."

How long and sad Ms. Rosmawaty's suffering is. Meanwhile, another woman in Aceh called N. suffered from extra-ordinarily serious physical and spiritual wounds as a result of torture and rape she went through, as was told as follows: *"Initially, her husband was taken away by Kopassus elite troop and disappeared for several days. While he was detained in the command post, he was tortured until one of his thigh-bone was broken and he lost audibility of one of his ears. For fear of being re-arrested by the military, he left his village to work as an agricultural worker in another village. However, the Kopassus troop became suspicious and convinced that he joined GAM (Free Aceh Movement) guerillas. In the end they brought N to the military post to be interrogated on her husband's whereabouts. As they did not believe her story, the soldiers began to resort to violence. They stripped her naked and raped her. This was done amidst the laughter of other soldiers who watched the scene. Afterwards they applied electric shocks on her ears, nose, breasts and vagina. Consequently, N suffered from wounds that have not completely healed up to now. To prevent her from screaming, the soldier gagged her with a fistful of paper and used a piece of rope to strangle her. She fell unconscious because of that treatment. Five days later she was released and warned not to tell anybody about her experience. When Habibie government revoked the status of Aceh as the military operational region, she revealed her story. Thereupon a Kopassus soldier came and threatened her. As a result of the torture, she suffered from internal wound and had no money at all to pay medical treatment (cited from the Report of the Special Rapporteur on Violence against Women, Mission to Indonesia and East Timor, 20 November – 4 December 1998).*

Meanwhile, because of extreme fear and trauma, many inhabitants of Aceh districts left their villages. Many of them died, suffered from hunger and illness. A great number of children were neglected and did not go to school any longer. Women and children suffered most in this situation, because of the gender values that have been cultivated in them. They have to continue their role as wives and mothers in this difficult situation. Although there has never been a comprehensive research, but from the information received so far, and also from direct meetings with those victims, it is easy to know that they are suffering from psychological and personality troubles, such as lost of self-confidence, fear, a sense of non-usefulness or neglected, continual suspicion, a sense of insecurity, difficult to concentrate, remorseful, etc. Besides, they felt their body weak, difficult to breath, heart throbbing, lost of appetite and suffered from prolonged pain. Meanwhile among the refugees, as it was published in many mass media, they suffered from diarrhea, cold, respiration trouble and other common disease, because of lack of nutrition, and lack of hygiene in the refugee camps. Because of arm conflict and political violence many women become widowed single heads of households, and find themselves caring for children of relatives who had been killed.

Ironically, although initially the military had always denied that Aceh (and also Irian Jaya) was decided as the Military Operational Region, in fact all forms of movement and social activities were met with military operations. The enforcement of Aceh as the military operational region was assumed to have been enacted in 1989 and was revoked in 1998. The decision to make Aceh as the military operational region was perhaps because here

have been a natural gas strategic industry and other natural and forest resources in this region. Presently, foreign investors that are highly interested to see their investments safe in Aceh, so that extra strong military guard is necessary control this industry. During the last 10 years, and even after the revocation of the military operational region, Acehese people have always been under military violence. The absorption of the earnings from this and other natural resources to the central government has deteriorated the situation, because amidst the rich natural resources the Acehese people live in poverty. Naturally this situation gave rise to disappointment in the majority of the Acehese people which, in turn, gave birth to separatist movement called the Free Aceh Movement (GAM) by the Indonesian government. Subsequently this development gave legitimacy to the military to decide Aceh as the military operational region. This military operation has victimized thousands of people, killed or disappeared. Hundreds of women and children underwent violence, including sexual violence especially rape. Violence continues to prevail despite the fact that the status of the military operational region has been revoked. It happened because the Indonesian military again launched the so-called Operasi Wibawa. Again numerous people died, suffered from rape and sexual harassment because of the new operation.

III Why violence against women?

The objectification of and violence against women in war and other armed conflict situations has taken place for hundreds of years and has been accepted as normal, namely, as a part of war violence. Stories about how subjugated lands and colonies had to surrender women as "tributes" or "objects" of war conquest inherent in legends of the might of the existing armed forces or kingdom at that time. The same thing happened once again the colonial days. They did not only conquer a country's territories or cities, kill their men, but also raped their women and looted their belongings. In addition to rape, there was also other form of violence, such as forced prostitution, and in Bosnia case, forced pregnancy as a part of ethnic cleansing.

Therefore, the same event repeats itself in the Second World War and it continues to the present in different parts of the world, in inter-state war as well as in internal conflicts, including in Indonesia. Thus, actually the problem of the military and violence against women becomes something inherent in it. Despite the fact that normatively their doctrine strictly prohibits violence against women and children (included in the 8 obligations of the Indonesian armed forces), however, facts show something that is highly contradictory with their doctrine.

In view of the cruelty level and the number of victims, it can be said that violence against women in war and armed conflict situations is a violation against human rights in large and massive scales. Nevertheless, attention to this problem is not sufficiently paid or is not even recorded in history. In many instances it is even rejected. Various reports and observations (cited by Anne Tierney Goldstein and Margaret A. Schuler (ed) in *Gender Violence: The Hidden War Crime*, 1998) show that:

Rape has been used:

- *to terrorize civilians populations and induce civilians to flee their homes and villages;*

- to humiliate rival army by showing control over "their" women;
- as a "peck" for soldiers and inducement to courage on the battlefield.

Forced prostitution has been used:

- as a morale booster for soldiers and officers and
- as a way to make women feel responsible for their own violation

Forced impregnation and forced pregnancy have been used:

- to deepen the humiliation of rape victims and
- to produce babies of the ethnicity of the rapists

From above observation it can be concluded that rape, including forced prostitution and pregnancy/forced pregnancy, has been used as one of the war strategies. As a war strategy, rape is the most blatant and the worst manifestation in the history of oppression against women and their placement as objects. They are raped in order to humiliate or degrade them as women and to humiliate the enemy as a nation or group. Women's misery and suffering are not their (the state's) concern. Even when the war is over, there is not the slightest attention to them. This happened in the case of 'Jugun Ianfu', where the Japanese as well as the Indonesian governments did not pay attention to them (their existence was even rejected) until the international world raised the question.

A question that may arise from above phenomenon is, why violence against women, especially in conflict situation spread so widely into different parts of the earth and is even used as a strategy to subjugate the enemy. As it is stated in the consideration of the Declaration of the Elimination of Violence against Women, "violence against women is a historical imbalance in power relations between men and women resulting in the domination of, and discrimination against, women by men and in impeding their progress, and that violence against women is one of the crucial social mechanism in stimulating women into subordinating position vis-à-vis men.

From this formulation it can be said that violence against women in an armed conflict situation stems from the patriarchal social system that places women as second class citizens. They will only be called war victims, their misery and suffering or even their death will not bring the perpetrators before the court of justice – because of the absence of political will as well as because the available legal instruments are not conducive/responsive and the strong culture of impunity. If in the end the perpetrators are brought to trial the available evidence is not enough to keep them in jail. In the case of violence in Bosnia, for example, there was a lengthy debate between the Defense Counsel and the Attorney on what was called evidence, in view of the fact that the victims – as key witnesses – have never been presented before the Court. When the Attorney argued that the victim could not give her testimony because her mental condition has not been stable, one again the Defense Counsel got a good argument to cancel the accusation on the ground that a testimony of somebody whose mental condition was not stable was not valuable as a testimony. Thus, the perpetrators continued to feel innocent because the Court never sanctioned them. The victims' demand for justice in the form of compensation or other rehabilitation programs did not get sufficient attention or was even neglected.

Another reason – as stated by the Special Rapporteur on Violence Against Women – in her report in 1995 (E/CN.4/1995/42, para. 56-61) and 1997 (E/CN.4/1997/47, para. 8) was because of gender bias in the concept of “honor.” The report mentioned in the main that: *“A key component of community identity and therefore the demarcation of community boundaries, is the preservation of communal honor. Such honor is frequently perceived by both community members and non-community members, as residing in the sexual behavior of the women of the community.”*

The concept on honor finds its most obvious expression during the war. In order to defend the honor of women and their children – which means defending the honor of the family, community and nation – they are ready to wage war. In such a situation rape as an instrument to subjugate the enemy or to humiliate the opponent is very easy to understand.

This concept of honor is also used in different International Humanitarian Law. Although the Hague Convention 1907 does not mention rape and forms of other sexual assaults, article 46 of the Convention Regulation does mention that: ***“family honor and rights, the lives of person, and private property, as well as religious convictions and practice, must be respected.”***

The same is mentioned in article 27 of the Geneva Convention IV that provides, among others, that: ***“Women shall be protected against any attack of their honor, in particular against rape, enforced prostitution or any form of indecent assault.”***

In its comment on Geneva Convention IV, the International Committee of the Red Cross even used the word “immoral” for all women who are forced into what is presently called “sexual slavery”: ***“The convention listed as examples (of violation) certain acts constituting an attack on women’s honor, and expressly mentioned rape, enforced prostitution, i.e. the forcing of a woman into immorality by violence or threats, and any form of indecent assault.”***

From the above formulations, it becomes clearer that in general the community tends to relate the problem of rape or violence against women in general to the “moral” (sexual history) of the victim. Consequently, the community tends to degrade the victim vis-à-vis the perpetrator. Such an understanding clearly is closely related to the values prevailing in the patriarchal community, where men act as value controller in the sense of both sex and system. This situation is highly fundamental and significant in understanding the problem as to why the majority of rape victims do not want to appear or to report to the police.

In later development the relation between rape and the victim’s moral is not taken into consideration any longer. Almost all international (as well as national) instruments, at least in formulation, do not connect the victim’s moral with the perpetrated violence. In practice the problem becomes completely different in view of the fact that law enforcers generally have internalized patriarchal values. Or in other words, they are not gender sensitive and less responsive to women’s interests.

Some international law instruments referred to above, namely, the Universal Declaration of Human Rights, Covenant on Civil and +Political Rights, CEDAW especially articles 1, 2, 3, 4,

5, 6 and 15 (Act number 7, year 1984) including the General Recommendation number 19 on Violence against Women, The Convention on Torture and Other Cruel Treatment (the President Decree number 25 year 1998) can be used as a basis to protect women in an armed conflict situation. Nevertheless, both the government and non-governmental organizations should make efforts to prevent and to overcome violence against women in this armed conflict situation, as it was formulated in Beijing Declaration and its Platform for Action. In international law, state obligation arises when violation takes place. However, although different international laws could be applied to punish the perpetrator, more often than not the crime itself is allowed to go unpunished. This situation seems to allow the perpetrator to commit a crime without any punishment (impunity). This culture of impunity can be explained in a context of the highly centralist New Order policy in the form of KKN disease (Corruption, Collusion and Nepotism). Consequently the government failed to enforce the Rule of Law. On the contrary, what happened was the Rule by Law, where the system of governance was based on bureaucratic decisions, rather than decisions obtained through democratic legislative and judicial processes. In connection with the KKN disease, the state used more communal values especially family-like values, including the one "lift highly, bury deeply" as a method to settle problem related to oneself (i.e. the apparatus).

IV Indonesian strategies

There is no single solution to fight against all these violations. A lot of strategies have been formulated at international, regional, national as well as local levels. In Indonesian context, in addition to the necessity of psychological, social and legal recoveries as it is included in the UN Declaration on the Justice Principles for Victims of Crime and Power Abuse, an Act is also needed capable of providing protection of victims as well as witnesses. Without such an Act, it would be impossible for the victims to present their cases openly. An Act on Compensation for Victims of Crime and Power Abuse, according to the principles UN Declaration mentioned above should necessarily be enforced. Such an Act should include a service for post-trauma recovery mentally, physically as well as socially. It also highly recommended that Peace Movement be established at the national, regional and district level. In this effort, we have to make sure that women were included in all initiative for the prevention, management, and resolution of conflict. We also have to encourage NGO and other party to undertake research on the impact of violence against women in conflict situation.

One thing is clear, that violence against women wherever or whoever the perpetrator may be, has prevented women to enjoy human rights and basic freedoms. In women's perspective, there would never be any democracy if the socio-political role of the military is not revoked. There would never be any democracy, if women are not given any opportunity take part in every decision-making process, especially that concerning the interest of ordinary people.

(This paper is a rewritten version of a paper under the same title, presented in a seminar on State Violence against Women, organized by Women's Journal, Jakarta, October 1998.)

STATUS OF WOMEN IN PAKISTAN

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The constitution of Pakistan 1973 forbids discrimination on the basis of sex. It grants equality and allows action for the protection of women. According to the article 227 of the constitution of Pakistan "all existing law shall be brought in conformity with the injunction of Islam as laid down in holly Quran and Sunnah (the holly book) in this part referred to as the injunction of Islam no law shall be enacted which is repugnant to such injunctions. Under this article the constitution and religion guarantees economic, cultural, spiritual and social freedom.

Women in Pakistan are facing multi dimensional problems mostly emerging out of the existing social setup. Pakistan is a perfect example of developing countries with an underdeveloped and dispossessed female population. In our country, generally the birth of a daughter is considered as unfortunate event. A daughter is discriminated by the parents themselves who do not wish to educate their daughters like their sons. Most of the Women are less educated, unemployed and unaware of their legal rights deep-rooted social prejudices against woman and little is being done to remedy this ignominious state of affair in Pakistan. Poverty, illiteracy and tradition bind people down and make them narrow-minded. Women have been effectively side lined from the main stream. This is a very unfortunate situation for a Muslim country since Islam provides women with rights dignity respect and security that she rarely attains.

It is an established fact that family violence against women occurs at t he global level but with many local version and dimensions and traditional/cultural faces. The most ugly face of family violence is beating and torturing wives which is very common in our society, even educated are not immune from this practice, however, more rampant in rural area.

A simple survey showed that 82 % women in rural feared violence resulting from husband displeasure over minor matters, in the most developed urban areas and 52 % admitted to being beaten by husbands. The husband in our society considers it their rights to beat their wives. Our laws and police never accept domestic violence as cases of violence but considers it domestic affairs because it is not a crime in Pakistan.

The typical Pakistani women grows up in fairly sheltered environment. Most decision affecting their lives are made by others. These 'others' are of course men. She is married at the age of 14 or 15 years, bears seven kinds and enjoys a live expectancies lower than that of man. She has no say in her marriage, but whenever a girl asserts her right to choose husband or if abusive wives attempts to suppress the revolt and eradicate transgression by using all cultural/religious and political weapons. Only in the last three months two girls, namely, Samia Sarwar and Razma were shot dead by their relatives who tried to marry the

man of their own choice. They call it honour killing or Karokari. Bride price is very common in some parts of our country. There is another practice called Swara. Swara means giving of a female of the accused party to the deceased party as compensation to end the enmity. It is usual practice to deprive of the daughters and sisters of their legitimate share in property. Brothers and in-laws usurp such rights. It often happens that for the sake of keeping ancestral property intact, the female heirs are never given in marriage or wedded to either old man or every young boys without any consideration or respect for the girl's sentiment, like or dislike. Besides women have been cowed down so much socially that mostly they do not assert for their right and continue to suffer in silence. The social tradition and individual outlook towards women is not only discriminatory but also harsh.

Women in our country have slowly and steadily been pushed in the background of the political stage. In Pakistan there is always a political fight between the government and the opposition and in accordance with our political tradition the price of that fight is always paid by the women. The most conspicuous assault on women's rights was launched during the last martial law regime through discriminatory laws like the enforcement of Hood Ordinance 1979, Law of Qisa and Diyat (State Laws), Evidence Act.

Under the Hudood Ordinance, if a girl is raped, she is required to produce four male witnesses to support her. In case she fails to produce four witnesses then she will be booked for committing the offence of adultery because under the law the sole testimony of victim women is not valid. It is physically impossible for a woman to expose to such unfortunate situation to present four witnesses to support her because a woman is assaulted only when she is alone. These laws are made up for the protection of man.

Accordingly, the Evidence Act has reduced women's evidence to half of a man. The Citizenship Act of Pakistan 1951 blatantly discriminates against women under the law the right of citizenship by descent can only be acquired through fathers thus discriminating against mothers. The registration granted to a person includes the person, his wife and minor child or dependent this excludes husband. The right of citizenship by virtue of marriage is available only to the wife of Pakistani male and not to the husband of Pakistani female.

In spite of the fact that those women do engage in productive labour and play a vital role in the economic and social life of our society. Yet they continue to be perceived as marginal to our society. She works bare footed on the burning asphalt, working on building sites and an ageless suffering looks in their eyes carrying on their head loads under which strong man would wilt.

The attitude of the state is always to prevent law and order situations rather than perusing the goals of the constitution. It is, however, undoubtedly challenging but in Pakistan as in other developed countries women specially those who are fortunate enough to be in downed training and talent risen to this challenges very courageously have started endeavoring to overcome traditional and customary prejudices and are doing what they can do to remove the barriers that still prevent the advancement and full equality of women in our society.

WOMEN'S PARTICIPATION IN PEACE BUILDING

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President, Netball Association in Jaffna

I must express my sincere appreciation of, and the gratitude for the opportunity afforded to me to express my views before this September assembly, I represent the organization "Centre for Women and Development" which is devoted to the fulfillment of the aspirations of women in general and particularly the section subjected to traumatic conditions brought about war, which has lasted for over fifteen years in Sri Lanka.

All over the world armed conflicts from whatever cause they arise have brought about untold sufferings and misery to the families in general and women in particular. Attempts to bring about the peace building process or negotiated settlements have not given adequate opportunities for women involvement. Even in countries where women have been directly entangled in armed conflict the correct emphasis on women representation in the peace building process has not been forthcoming. Even in Northern Ireland where the conflict was long drawn the women's significance in negotiation have been ignored for quite sometime. This view was expressed by Carmel Roulston in her paper on did women make a difference the Northern Ireland women's coalition in the peace process read at a seminar in Colombo. The patriarchal Ideologies still persist in Sri Lanka and influence the participatory decision making process matters in national importance. In this context, one would recall earlier women's world conferences which were intended to bring about a universal awareness of women's problems have not had full impact which was hoped for at the time of various resolutions were passed. Some countries have so far failed to ratify the resolutions passed. Even countries that have adopted the platform for action of Beijing conference have not achieved complete fulfillment. Although women are rarely party to starting war, they tend to be amongst the most vulnerable groups in conflict situations. International conferences of this nature must resolve for more determined and result oriented action by impressing the governments to ratify and implement the resolutions this conference is a momentous one at a time when there is a crying need for action to secure greater participatory opportunities for women in both political and social spheres.

In the Context of events of my own country I wish to place before the conference the continued sufferings and sacrifice of women in conflict areas which sufferings were never brought about by them.

Ethnic Composition of Sri Lanka

There are several ethnic and Religious Communities in Sri Lanka. In 1981 the majority Sinhalese Community formed 74% of the total population, families as a whole formed 18.1%

of the total population. The third major Community the Muslims constituted 7%. The two national languages are Sinhala and Tamil.

The demand for a separate state for the Tamils which was expressed most clearly from the 1970's onwards arose from the failure of repeated attempts to meet Tamils aspirations. This failure together with the growing economic problems and rising unemployment contributed to the rise of Tamil Militancy the language act introduced in 1956, further aggravated the problem. In 1958 the Tamil language provision act was passed as a palliative. It allowed for the reasonable use of Tamil in the North Eastern Province. However, implementing regulations to give effect to this legislation were not framed until 1966. The consequence of the 1972 constitutional provisions was to result in the reduction of the minorities mainly the Tamils and the Muslims. These provisions gave the Buddhist religion and Sinhala Language a pre-eminence. These provisions coupled with the standardisation and Quota system resulted in the frustration of the Youth. The frustration caused by unemployment, inability to enter the university and the impact of Sinhala only provisions all contributed to the growth of militancy on the part of the youth, on a scale unknown earlier in the history of this country.

The repressive measures adapted by successive governments was to launch full scale war attaching the targets of militants dispersed among the densely populated areas. The Indian peace keeping force which arrived in July 1987, at the invitation of the Sri Lanka government did not succeed in keeping the peace their military operations resulted in several civilian deaths which left hundreds of women widowed and children orphaned the situation continued even after the Indian army had departed. The sufferings worsened as the government started imposed economic blockade restricting the free flow of medicine fertiliser and food items. The movement of people also been restricted by the warring parties. Fishing activity was restricted thereby reducing a very large member of active fishermen to compulsory unemployment the fishing provided traditional employment is approximately to 20,000 families. Similarly in the agriculture sector these restrictions affected the farmers and their families, so seriously that tilling the soil became worthless.

The movement of the army towards Jaffna town worsened the situation and created the exodus that took place in Oct. 1995. The exodus was the most traumatic one in the chain of events that took place. Almost the entire population fled their homes leaving every thing behind to areas which they then thought to be safe haven the impact of this sudden and unexpected movement was heaviest on women. They were forced to occupy whatever living space that were available, and start daily routine of life once again. A few fortunate families had the luxury of staying with relatives and friends. But by and large they had to cross the lagoon very often in the night, and moving to areas in Vanni which places were stranger to them there were no organization, governmental or non-governmental catering to their needs. Most of the people had been impoverished by the loss of their positions and employment. In April 1996, the people who had taken refuge within peninsula returned to their homes, after army occupation to find these homes virtually empty devoid of furniture fittings, and cooking utensils etc. The women had to bear the blunt of this disturbed conditions.

The farming families found that they could not till the soil as the farm lands had been planted with any personnel land mines. Similarly the fishing families too found themselves benefit of their fishing equipment. The fishing activity also reduced to a great extent by the conditions

imposed by the army, limiting them hours of fishing and the area confined to few kilo metres of the sea. There were no immediate aid or assistance coming from the government. It was at this junction, the non-governmental organisations proved their usefulness to the society. The most urgent need of the hour was to afford relief and rehabilitation to the women headed families. The conditions that prevailed before the exodus in 1995, had already shaken the confidence of the population.

Most of the families who fled in 1995, had second thoughts about their returns to their homes, particularly households which had young girls and boys who were likely to be arrested by the forces. The young mothers themselves entertained unknown fears of rape, assault and various other forms of violence.

The heavy shelling and bombing had caused serious damage to hundreds of houses, and the reoccupying them without proper repairs acted as a deterrent to the return of the people. Because of these reasons the returnees tempted to remain gregarious and confined themselves in and around Jaffna town. The houses in rural areas, were situated in isolated areas, which were studded with security camps. The returnees were diddled with questioning by the security for as and the detention of "suspects" were not conducive to peaceful resettlement.

Several returnees who had the means and resources to move to Colombo and other more secure areas. Some have sought political asylum overseas. The on going conflict has altered the democratic balance of certain areas in the Jaffna peninsula. Women are forced to take on new roles due to the social disruption caused by the conflicts. Many young and middle aged women have had to take on and unaccustomed roles as heads of the house hold and main income generators. The conflict also has caused a major social transformation particularly within family relationship-, women find themselves widows, single women, single mothers, refugees in the society, women also acquire or continued to play a vital role in holding the community together and in carrying out the necessary daily life. This level of social interaction makes the society more sensitive and peaceful community above and beyond political or ideological considerations. Women in particular in Jaffna with all their problems organise ceremonies, temple festivals etc. to keep the morale and mores of the society going. This is the kind of escapism they have resorted to over come their fear and tension of the war.

It would be appropriate to outline in brief the activities of our Organization centre for women and development and its involvement in rehabilitation work. Our main task is to concentrate our activities in the present context to afford immediate and urgent relief to poor women headed families besides our normal activities, that are intended to confer self-confidence and instill motivation for development of women. In the process of establishing and sustaining gender equality we always involve men too. The main physical impediments are uncleared landmines, damaged houses lack of medical centres and unopened schools inadequate transport and communication. In short the social infrastructure has to be restored to a state that prevailed before the exodus in 1995 October. The development efforts so far done have touched only the surface of the problems confronted the people in general.

We are unable to revive fully, because of the restrictions imposed. In spite of all these difficulties we still continue our income generation activities to women, apart from conducting awareness and leadership programmes, we have organised a special programme for pregnant women and children by supplying nutrition food packets to maintain their nutritional status. We also run a hostel for women in Jaffna. Our free legal aid programmes serve to a vast number of women who are neglected by men, and society. The problems confronted by women include legal remedy for suffering from personal violence, maintenance, divorce etc. Our conflict resolution programme conducted at school level are being well received.

We do not lose sight of the general world-wide trend of women's emancipation and the struggle for gender equality through the various fora, we attend.

WOMEN AS PEACE MAKER

"The world will be a more pleasant place to live in if its inhabitants tried to observe all least part of their religious doctrines in their letter and spirit."

President of Sri Lanka

Love and compassion enable one person to reach out to the other and build bridges of friendship among ethnic groups. War can never lead to a just durable peace. Political solutions are far more reliable than war as means of ushering some stability into society in Sri Lanka despite many difficulties some changes to the gender status quo wrought by armed conflict might have empowered women to assume new roles in the society. But where women's Human Rights are concerned, we must not only consider the causes of conflicts.

It is also necessary to address the problems posed by the traditional social role played by women and their absence from public debates. Against this background. Let us now recall the relevant strategies for action adopted at the Beijing conference to protect women living in situations of armed conflict or under foreign occupation.

With regard to rape and other forms of evils in war situations, the society is bound to assuage their feelings and provide assistance. It is also important to organize necessary mechanisms to investigate and punish all those who are responsible and bring the perpetrators to justice. We also recommend a war crime commission be established to look into this matter of crime against women. We also stress, that a favourable climate be established where women in this region could participate in politics without any interventions and women be encouraged to participate in peace negotiations at every level. Women's complete emancipation requires political involvement and participation and administration.

NEGOTIATION PROCESS

A women network group can be set up to lobby parties involved initiate the Negotiation Process towards peace building.

REHABILITATION WORK

We must accelerate rehabilitation programmes as to give the social and economic support to those war victims so that they can be self dependent and be courageous to go ahead with peace making.

ATTEMPTS MADE IN THE PROCESS OF PEACE NEGOTIATION

We talk about conflicts; but we don't talk about real issues. We don't talk about peoples everyday realities, oppression and Human Rights Violations. Over 8,000 people attended the May '99 Hague Appeal Conference held in Netherlands, Civilian Organisations, Governments, and interest groups from around the world gathered together. All came with a common thought. Government can no longer ignore the role of civilian society in making peace. Whatever the resolution coming out from this conference should be taken seriously by the Organisers who can implement them.

We still have leaders with divergent political views. Without a sense of peace with those with whom we speak true peace cannot be gained. As we go into the area, we will make it a point to integrate this task. It is important to encourage new approaches to development that take account of women's priorities and perspective. We must promote relevant quality education that impart knowledge of the human rights of men's and women's skill of non-violent conflict resolution which are essential to build a culture of peace. We, with great confident develop a great Network on this Issue, expand upon our base and get non-violence into the agenda, which could be link with the decade for culture of peace and non-violence.

Healing wounds and building peace is our responsibility. Governments are not very good at preventing resolving violent conflicts of the mistakes of this century are to be avoided, we must ensure that a strong system of people's diplomacy takes its place along with the efforts of governments. Before I conclude my address, it is my bounden duty to make mention of the significance role that the Japanese Asian Women's Fund, continued to play in the cause of women's capacity building towards emancipation.



**THE INTERGRADES ISSUES OF ARMED CONFLICT
AND WOMEN'S HUMAN RIGHTS IN SRI LANKA**

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Sri Lanka is an Island State of 65,000 sq. km. Governed by an Executive President and a unicameral legislature. Its multi-racial, multi-religious population of 19 million comprises of 74 per cent Sinhalese, 18 per cent Tamils and 7 per cent Muslims. Equal rights to women are being guaranteed by its Constitution, and Sri Lanka has ratified both the Covenants on Civil and Political Rights and Social and Economic Rights. It is not only a State Party to the Convention of All Forms of Discrimination against Women, but has adopted a progressive women's Charter, the State Policy guideline on women's issue and has created an implementation authority – a Women's Committee in which, the UN Special Rapporteur for Violence against Women and the Sri Lankan member of the UN Human Rights Committee are actively involved. It also has a separate Ministry of Women's Affairs to look into the issue relating to the protection and promotion of women rights.

The superficial pretext of equality projected by the legal guarantees, have not succeeded in making women enjoy equal rights/status in their day to day lives in Sri Lanka. The primary causes of these as in many South Asian countries are historical/cultural, attitudinal, and socio-political. For example, women are still being discriminated in areas of ownership of State Land (although under the General Laws women have equal right to property) and a spouse of a Sri Lankan women has to go through rigorous immigration process just to obtain a resident visa, contrary to their counterpart, the spouse of a Sri Lankan man. Although majority of women are employed, the incidents of unequal pay, specially in the informal sector where most women are employed is not an isolated incident but the norm.

In the sphere of violence, increasing number of rape and incest, as well as sexual harassment (in particular at the work place) and cases of domestic violence are being reported, reflecting typical characteristics of a male dominated society.

The country's women's movement which had been active even prior to its independence (1948), succeed in changing a century old penal code provisions, only in 1997, after a systematic and vigorous campaign. Although the new penal code provisions giving protection to the female victims of violence is a major landmark, still there are areas for improvement to guarantee full protection for women victims of violence. The recently held Provincial Council elections saw an unprecedented rate of violence and intimidation against women. The existing legal framework and the institutions thus created have so far failed to redress the victims.

Even though Sri Lanka produced world's first woman Prime Minister and the current Prime Minister and President both are women, this definitely does not reflect country's social attitudes towards women. In differed measures, it has the same socio-cultural biases as in any other part of South Asia.

In a general environment which is discriminative towards women, the outbreak of an ethnic conflict by a group of minority Tamils with a demand for a separate State of 1/3 of the Island and the two armed insurrections by the majority Sinhala youth, within the last couple decades, have surfaced an host of different issues, broadening the sphere of victimization of women.

The ethnic conflict which required the military presence in the north as well as in other parts where there were outbreaks of violence, gave rise to incidents of rape and sexual harassment.

Apart from direct personal violence, the burden of displaced families had to be primarily carried out by the women. The refugee camps established under constrained circumstances, lacked proper protection for women and a system of proper supervision/monitoring. In these camps, the basic amenities available for women were scarce, although they had to do all the manual work while looking after the needs of the children.

With most of the male members either being killed/disabled in the war front, or still engaged in fighting with either of the party to the conflict, women are forced into situations of becoming the head of the household. A recent research reveals that in some parts of the Island, 60% houses are headed by women. In a society still not ready to accept women as head of household, these women encounter enormous problems – from the very basic harassment experienced in settling ordinary bills to serious security problems.

Although international law has developed norms and concepts to be operative at times of internal civil conflicts/war, the observation of these at times of conflict are questionable. The nature of conflicts in the post war era being dramatically changed, it has become imperative to develop a system of minimizing the violation of internationally accepted norms and procedures during armed conflicts, may they be perpetrated by states or militant groups. The trials, errors and suffering of those effected by the two world wars and many armed conflicts of century should provide courage to the international community to rise above the differences, to develop such standards to avoid /minimize violation of human rights of vulnerable groups, such as women and children during armed conflict and provide necessary framework for adequate legal protection for the victims.

As an important lesson from the history, one has to consider the above only as a 'follow-up action' viz. the basic commitment; the support of the international community towards the peaceful settlement of conflicts, so that not only women's human rights but the inherent rights of all human beings would be respected and protected.

WOMEN'S HUMAN RIGHTS UNDER ARMED CONFLICTS

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War can devastate all of civil society. Continuous wars in Vietnam during more than 30 years (1945-1975) devastated not only our nature but also human being. The conventional weapon and toxic chemicals used in these wars killed and wounded millions of people and have left hundreds of thousands of families suffering from serious post-war problems. Women and children are likely the most vulnerable group among the war victims in Vietnam.

In this paper, I would like to focus on the using Agent Orange in Vietnam war and its consequences suffered by Vietnamese people in general and Vietnamese women as well as their children in particular.

1. Situation:

Between 1961 and 1971 totally 44 millions liters of Agent Orange were sprayed large areas of central and southern Vietnam, containing 147 kg. Of Dioxin (TCDD) which is one of the most toxic materials known on earth. The consequences have been devastating on the environment and on human life.

Dioxin can enter the body through food and drink, via the respiratory tract and through direct skin contact. It is very persistent in human tissues and the environment, so it would have been particularly dangerous not only to those who were directly exposed to the spraying and their children and grandchildren, but also to those now living in areas which were sprayed.

According to the research results reported by the Institute of Medicine under American Academy of Sciences, there was evidence linking the following 10 diseases Agent Orange exposure:

- 4 diseases with sufficient evidence of a link with exposure to herbicides: Soft tissue sarcoma; non-Hodgkin's lymphoma; Hodgkin's disease and chloracne.
- 6 diseases having limited evidence of a link with exposure to herbicides: respiratory cancers; prostate cancers; multiple myeloma; peripheral neuropathy; spina bifida and porphyria cutanea tarda.

Many studies conducted by Vietnamese scientists on the lasting effects of herbicides on human health suggested that among people exposed to dioxin there was an increase rate of primary liver cancer and oropharynx cancer; abnormal pregnancy such as: miscarriage, still birth, premature birth; high rates of birth defects, especially neural tube defects. Congenital

malformations could occur successively in several children of the same family – the evidence of existence of a second generation of disabled children, grandchildren of veterans or civilians who were in the sprayed areas. There is an increase rate of infant mortality, particularly in the years right after the war. This is believed to be associated with the higher level of dioxin in breast milk of nursing mothers at that time.

Based on domestic and foreign studies, some criteria have been proposed to identify and categorize the Agent Orange victims: criterion on exposure to Agent Orange during the war and criterion of pathology (who are suffering from one or more diseases or reproductive problems believed to be associated with Agent Orange). Although surveys on Agent Orange victims have not been completed, through pilot surveys, the number could be estimated more than million people. In addition, there are from 70,000 – 100,000 children born deformed as a result of Agent Orange exposure. The number will, however, change with every passing day because the older victims die and new victims are added to the list.

2. Resolving the consequences of Agent Orange:

- 2.1. Scientific research: Up to now, it has been very difficult to present reliable statistics on total number of people affected by the spraying of Agent Orange and even more difficult to prove that each case is caused by this. So scientific researches should be continued in order to fully investigate the long term harmful effects of the chemicals used in war on the environment and human health and learn the most appropriate measures for overcoming them.

The research on human health aims on making clear more deeply the effects of dioxin on human health and focus on the following problems:

- Pathology linked to Agent Orange/dioxin exposure
- Specific measures for prevention and treatment those pathology
- Persistence of dioxin on human and the environment
- Complete the investigation throughout the country on the total number of Agent Orange victims.

- 2.2. Solving the harmful effects of the Agent Orange:

Besides the measures and technical methods to solve the effects of the herbicides on the environment, Vietnamese Government and people of Vietnam have taken several active measures in order to minimize the harmful effects of chemicals on humans:

- a) Educational measures:

- Disseminating knowledge on the chemical war, their effects on health; preventive measures and measures for the early detecting illnesses.
- Educating the population about hygiene and disease prevention.
- Implementing family planning, abolishing superstitious beliefs including discrimination against malformed children.

- b) Health care measures:

- Conducting regular health control for early detection of diseases especially

for people in high risk group (who lived in the intensively sprayed areas during 1961-1971).

- Helping the Agent Orange victims in treatment of their illnesses and supporting to improve their living standards which are , in general, lower social average.
- Categorizing malformed children in according to the nature of their diseases in order to give them special, appropriate care.
- Performing surgical treatment and functional rehabilitation.

c) Economic and social measures:

- Defining needs including rehabilitation support, education/professional training, income generation activities and creation of job opportunities for the Agent Orange victims. Based on these assessment of needs, the community, and especially the Government, should allow the victims certain privileges such as disability compensation and health insurance.
- Establishing special schools and giving priority in getting suitable jobs for malformed children.
- Providing support to the most vulnerable through sustainable programs, community projects and family support, including provision of adaptive equipment.

d) International cooperation:

In 1998, the Government of Vietnam appointed Vietnam Red Cross as humanitarian coordinator and leader of the Agent Orange Fun. The overall aim of the VNRC Agent Orange Fund is to mobilize domestic and international support in order to assist and alleviate suffering of the people affected throughout Vietnam.

Up to May 1999, about 2,000 families have received financial contributions through the Fund, and support has also been given to rehabilitation centers for disabled children. The Fund has also initiated the work to compile statistics in each province of people affected by Agent Orange and their most urgent needs. The VNRC survey will make a good complement to the Government study for forming further and more detailed needs assessment which will be carried out in order to develop and implement appropriate programs.

International assistance and cooperation in scientific research, sharing experiences in implementing measures and projects including those for training VNRC members and social workers are always needed to Vietnam.

**THE NECESSITY FOR AN INTERNATIONAL LEGAL FRAMEWORK OF
RECONCILIATION: HOW TO GUARANTEE COMPREHENSIVE AND LONG-TERM
COMMITMENTS TO FEMALE VICTIMS**

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Introduction

Reconciliation matters in various contexts, such as in individual cases and in nationwide conflict management. Among them my major interest is in the reconciliation in the individual and personal context, an issue to which international law has not paid attention to much. In particular, in the cases of violence against women in armed conflicts, reconciliation has not been studied thoroughly from the viewpoint of international law in promoting reconciliation in such context. The following discussion briefly observes the significance and the possibility of reconciliation, the present legal framework and its problems, and the ways to improve it. When I use the word "reconciliation," it assumes the individual and personal context unless modified otherwise.

1. The significance and the possibility of reconciliation:

Although the word "reconciliation" is difficult to define, and different people may describe it differently, it can be said that the fundamental element of reconciliation is the faithful compromises between a perpetrator and a victim. The significance of reconciliation to the lasting peace is large, because reconciliation requires a spirit of tolerance, which is essential to realize the coexistence of different people. Therefore, not only will the reconciliation contribute to the solution of the ongoing armed conflict, it will also prevent the recurrence of war by restoring or establishing mutual trust among conflicting groups, instead of mutual hatred. It must be remembered that women tend to have stronger influence on children's development, and that how female victims educate their children about the war is crucial for the stability of the future society.

As for the possibility of reconciliation, I stand for the position to affirm it. It is true that the victims' emotional wounds, especially in the cases of violence against women, are so serious that reconciliation sometimes cannot be attained in life. Nevertheless, the possibility for reconciliation does exist and will increase with comprehensive and long-term social commitments, including proper physical and mental care for the victims, and the education of the general public to foster the spirit of tolerance. The problem is how to guarantee such comprehensive and long-term commitments, in particular to the female victims.

2. International legal systems and its problems:

a) The role of current systems in reconciliation process

International law has had two systems against the violation of its rules in the time of armed conflict: the criminal responsibility of the individual offender, and the compensation for damages by the party to which the offender belongs. Such systems have a potential for promoting reconciliation among the people concerned, in that by setting legally on the wrongful act done in the past, it can also give them peace of mind. In addition, if the International Criminal Court comes to work effectively in the future, every vicious perpetrator will be brought to justice and will be given a due sanction. In such a case, the deterrent effect against the potential perpetrators will be reasonably expected, and the victims will be assured that the violence will not be repeated again. Such a feeling of safety is essential to reconciliation.

On the other hand, few rules of international law of armed conflict directly aim at reconciliation. Only the Article 6-(5) of the Additional Protocol II has the direct purpose of reconciliation, saying that the amnesties should be granted as much as possible after the armed conflict is over. But the provision assumes reconciliation in national policy level, rather than the individual and personal context. It is in contrast with the implementation procedures of major international human rights treaties, which expressly emphasize on "amicable settlement" between a petitioner and the States Party.

b) The problems in present systems

In order to guarantee comprehensive and long-term commitments to the female victims, present systems of international law need further development. Largely it has two problems. Firstly, since the functions of existing systems in reconciliation process are not fully recognized, they are not utilized under the integrated purpose of reconciliation. Next, the rules are lacking which aim directly at the physical and mental recovery of the people concerned. Here I would like to focus on this latter point.

In order to connect the legal settlement to the real reconciliation, most of them – both the victims and the offenders – need various kinds of delicate support to overcome their traumas and to go forward. In particular, women victims have special and enormous sufferings which are beyond imagination of the ordinary male people. Under the present legal conditions, however, it does not matter legally if their feelings are far from reconciliation, as long as the problems of legal responsibility are settled.

The only exception to this is the Article 39 of the Convention on the Rights of Child, which obliges state parties to take every appropriate measure for the physical as well as mental recovery and rehabilitation of the children affected by any form of violence. The scope of application of this article is wide enough to cover any legal circumstances, whether in peacetime, in armed conflict or other. There seems to be no reason for denying to extend such concerns to the victims of violence in general.

3. Suggestions for an international legal framework of reconciliation:

From the above observation, I would like to make three suggestions toward an international legal framework which will work effectively in the reconciliation process. Firstly, it should be clearly recognized that the existing systems, mentioned in 2-a) above, have a function of facilitating reconciliation. Based on this viewpoint, the ways of reinforcing each system should be discussed. The topics can be raised like, for instance, how to make perpetrators admit their responsibilities for the illegal acts as the first step toward reconciliation, how to bring ICC into function as soon as possible, and what a government shall do when it does not have enough capacity to compensate to all the victims.

Secondly, new systems should be devised which directly deal with reconciliation. To achieve reconciliation in the post-conflict society, international cooperation is essential and it requires a variety of support from individuals and organizations – governmental, intergovernmental or non-governmental. It is therefore necessary to form international rules which can offer backgrounds and guidelines for their activities. For example, a system can be established to guarantee physical and mental rehabilitation to adults, like that of the Child Rights Convention, taking into account the special needs of women victims. Another system can cope with education for the present and future generations in order to share the spirit of reconciliation, tolerance and coexistence. If such systems are created, governments will find the guidelines to follow in domestic legislative, administrative and judicial activities. Intergovernmental and non-governmental organizations will find the grounds for their activities even when a government refuses to accept them. And above all, individual victims will be find ways to live more peacefully.

Finally, both of the existing and the new systems should be integrated into a framework of reconciliation, which guarantees comprehensive and long-term commitments to the reconciliation process. The framework should encompass various contexts of reconciliation, keeping their interrelationships in mind. In order to be effective, it is important to introduce a gender-sensitive, victim-centered perspective into the whole framework.

Conclusion

In this position paper, I pointed out the necessity for an international legal framework of reconciliation with gender-sensitive, victim-oriented perspective. Considering the significance of the reconciliation process in restoring peace and security in the conflict-torn society, it is time for the international community to think about the “law of reconciliation,” rather than to leave it only to the matter of politics. Efforts should be made to create such a trend at the international for a like the UN, as well as at the domestic and the grassroots level. There is an urgent need to do so.

TOWARD FURTHER STEPS TO PREVENT VIOLENCE AGAINST WOMEN UNDER ARMED CONFLICT

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I. Introduction

While the horrifying practices of rape and other forms of sexual violence targeted against women have repeatedly occurred under armed conflict situations, we have seen some progresses for more properly responding to such violence. The most prominent among such advancements is seen in the development of international criminal law. In addition to the contributions of the two Ad Hoc International Criminal Tribunals for the former Yugoslavia and for Rwanda,¹ it should be noted again that the Statute of the International Criminal Court adopted on 17 July 1998 explicitly recognizes "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" as one of the categories of "crimes against humanity," over which the Court has jurisdiction.² These developments are very important, strengthening the legal framework and mechanisms for the prosecution of crimes involving sexual violence against women under armed conflict, which is seen as a vital step to end the cycle of impunity. Another advancement is our access to more accurate and detailed information of the pictures of such violence and the real situations where victims are now living. Numerous reports including concrete recommendations as well as the facts have been produced and brought to the international attention based on the missions to the fields and the extensive studies by more than one UN Special Rapporteurs. The facts and analysis in these reports are precious basis for designing humanitarian assistance more appropriately to meet the needs of the victims and building preventive measures in the future.

In spite of these progresses, however, there still remain problems and concerns, which should be addressed when we seriously consider effective preventive measures. My paper intends to discuss those problems and issues that need further attention and studies, basically based on the examination of the previous studies by the UN Special Rapporteurs and others. Firstly, I will bring up and discuss some issues revealed in previous studies, which have important implications in considering preventive measures. Finally, I would try

¹ The International Criminal Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda have issued a number of indictments charging persons with war crimes based on sexual violence. The final report of the Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict, Ms. Gay J. McDougall. UN. Doc. E/CN.4/Sub.2/1998/13, para. 62. The two Ad Hoc Tribunals concluded several cases involving sexual slavery and other forms of sexual violence including the Celebici case (at the Yugoslav Tribunal) and the Jean-Paul Akayesu case (at the Twardan Tribunal). The Update to the Final Report of Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict. Ms. Gay McDougall, submitted to the Sub-Commission at the fifty-first session, page 4.

² Rome Statute of the International Criminal Court adopted on 17 July 1998. Art. 5, Art. 7 (1)(g).

to propose some recommendations for further studies and actions, based on these discussions.

II. Important Findings Revealed in the Previous Studies

The first part of my paper will discuss some findings and their implications revealed in the previous studies, such as the reports by the UN Special Rapporteurs. The World Conference on Human Rights in 1993 may be the first occasion when the United Nations and the member states paid proper attention to the issue of violence against women under armed conflict, explicitly addressing it in the Vienna Declaration and Programme of Action.³ Following that, the Beijing Platform for Action adopted at the Fourth World Conference held in 1995 attached further importance to the issue by recognizing it as one of the twelve critical areas of concern. This recognition of the urgent need of responding to violence against women under armed conflict has resulted in the extensive studies on this issue by UN bodies particularly by Ms. Coomaraswamy, the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences and Ms. Chavez and Ms. McDougall, the Special Rapporteurs of the Sub-Commission on systematic rape, sexual slavery and slavery-like practices during armed conflict.⁴

Besides their contribution to strengthening the legal framework and mechanisms for the prosecution of crimes involving sexual violence against women under armed conflict, the insightful studies by Special Rapporteurs made some points, the implications of which are particularly important in further considering preventive measures. Let me draw your attention to the following four points picked up from these reports and then discuss the implications of these findings and the way to reflect them in the future actions:

- Although the international humanitarian law has long prohibited some forms of violence against women including rape at war times, these acts were inappropriately conceptualized as a crime against "honor" rather than a crime of violence as provided in Article 27 of the 1949 Fourth Geneva Convention.⁵
- Violence against women under armed conflict is not incidental adjuncts to armed conflict but often "a deliberate strategy designed to intimidate or undermine and inflict deep and lasting damage on entire communities."⁶

³ The World Conference on Human Rights articulated that "violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response." The Vienna Declaration and Programme of Action. UN Doc. A/CONF.157/23, Part II, para. 38.

⁴ Other relevant UN documents on the issue include the reports by the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia and by the Secretary-General.

⁵ The report of the Special Rapporteur, Ms. Coomaraswamy: UN Doc. E/CN.4/1998/54, para. 4. The final report of the Special Rapporteur, Ms. McDougall: UN Doc. E/CN.4/Sub.2/1998/13, para. 16. Article 27 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Times of War provides that "women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault".

⁶ The report of the Secretary-General. UN Doc. E/CN.6/1998/5, para. 48. The final report of the Special Rapporteur, Ms. McDougall. Ibid., para. 9.

- Discrimination and violence against women existing in the society in peacetime may be exacerbated by the situation of armed conflict to a large-scale violence against women, as seen in the Rwandan case.⁷
- Violence against women under armed conflict is very often perpetrated by non-State actors, such as paramilitary troops, guerilla organizations or even members of their own community.⁸

Misconception as A Crime against Honor

The first point I would like to discuss is the mischaracterization of violence against women under armed conflict as a crime against honor. The implications and the consequences of such "honor paradigm" are serious. As the reports of the Special Rapporteurs correctly make a point, rape survivors are often viewed by their community as "dirty" or "dishonored."⁹ As a result, they will be silent, which then hinders perpetrators from being prosecuted.¹⁰ Furthermore, as Ms. McDougall's final report notes, "[s]urvivors of sexual violence often face ostracism and discrimination from their families and communities."¹¹

Intentional Means to Intimidate the Enemy Communities rather than Incidental

The incorrect "honour paradigm" has another implication, which is related to the second point that violence against women under armed conflict is often used as a deliberate strategy of intimidating enemy groups. Although the Article 27 of the 1949 Fourth Geneva Convention phrases "women shall be especially protected against any attack on their honour" (emphasis added), that is the honour of victims; it might be correct that Ms. Coomaraswamy points out that in reality sexual violence against women is perceived as a crime against the honour of the enemy of the enemy group which women victims belong to rather than the honour of the victims.¹² The finding based on a general survey of municipal law conducted by Ms. McDougall also suggests that rape and other forms of sexual assaults are sometimes defined as crimes against the community and not against the individual victim.¹³ If such perception prevails in communities, we can understand more why sexual violence against women is used as a deliberate and strategic weapon to intimidate the enemy, in particular by perpetrated in front of the families and the communities of the victims.¹⁴ Also ostracism and discrimination against women victims in their families and communities may be partly explained because their communities may view the victims as the symbol of the "dishonour" the communities were attached to.

Although the recent developments of international criminal law have corrected it, we should

⁷ Coomaraswamy, *supra* note 5. McDougall, *supra* note 5, para. 115.

⁸ Coomaraswamy, *supra* note 5, para. 8-10. The Secretary-General, *ibid.*, para. 47.

⁹ Coomaraswamy, *supra* note 5, para. 4. Ms. McDougall, *supra* note 5, para. 16.

¹⁰ Coomaraswamy, *supra* note 5, para. 4.

¹¹ McDougall, the final report, *supra* note 5, para. 96, 105

¹² Coomaraswamy, *supra* note 5, para. 5.

¹³ McDougall, the final report, *supra* note 5, para. 96.

¹⁴ Coomaraswamy, *supra* note 5, para. 5

not underestimate the impact of such mischaracterization of violence against women, which may still remain in many societies over the world. Unless we eradicate the "honour paradigm" from anywhere in the world through necessary measures including education among all, we cannot prevent people from invoking to the use of violence against women with the intention of humiliating the enemy.

Pre-existing Discrimination against Women as One of the Causes

Thirdly, not only the misconception of rape and other sexual violence against women as a crime of honour, which itself is discriminative against women, but also discrimination against women as a whole existing in societies have to be eradicated. This is so because discrimination against women pre-existing in societies in times of peace can be amplified resulting into a large scale violence against women once armed conflict brings about. Thus changing societies into gender equal ones would be a long-term but fundamental preventive measure.

This point has another implication for preventive actions. It can be said that women in those countries whose social, economic and cultural data indicate the existence of strong discrimination against them and their low states may be vulnerable to widespread violence against women in the event of armed conflict. Such gender specific indicators should be utilized in the early warning system so that the international community can discern nascent occurrence of a large-scale violence against women and quickly respond to such situations. I will come back to the issue of the early warning system later.

Non-State Perpetrators

Finally, the fact that violence against women under armed conflict is very often perpetrated by non-State actors tells us that strengthening regulations and providing training for military are not sufficient to prevent these crimes. How can we or should we control and stop violence against women by non-State actors under armed conflict situations?

One possible hope would be the non-governmental organizations and community or religious leaders, who may have influence on or channels of dialogue with militia or guerilla members. However, more fundamental way to prevent non-State actors from perpetrating violence against women, I believe, is making efforts to eliminate discrimination against women existing in societies in peace time through legal and other reforms and education to the public widely. Thus, dispelling the misconception of rape and other sexual violence against women as a crime of "honour" and other discriminative attitudes against women has special importance as a preventive measure in the contemporary world where all the men in the society could be perpetrators of such crimes in the event of armed conflict.

III. Some Other Problems/Concerns

Now let me turn to some other problems and concerns regarding preventive measures,

which are not fully addressed in the previous studies. I would like to focus on the three points. The first point is designing and implementing effective preventive training/education. The second issue is truth commissions. The last issue is the early warning system and other preventive actions.

Designing Effective Training/Education

Let me begin with my first point, designing and implementing effective preventive training/education. While appraising and supporting the advancements in strengthening the legal framework and institutional arrangements to prosecute the perpetrators, we have to note that criminal punishment is not the only or perfect preventive measure. Well-designed preventive training/education for potential perpetrators is as important as punishment, having possible influence on the course of actions they will take.

Of course, the Special Rapporteurs have given proper consideration to the training/education as a preventive measure. For instance, Ms. Coomaraswamy, in her report, recommends that "[e]very State should ensure that all military and law enforcement personnel undergo systematic gender sensitization training. Such training should provide information on how to: (a) Identify sexual assault as a serious crime under international law;(c) Address underlying attitudes of members of the forces which may lead to gender-insensitive action when operating in the field."¹⁵ My question, however, is the content of training to be given to the military and other personnel. When I think the issue of training and education to prevent serious crimes, I remember a TV programme I watched several years ago. This programme reported a unique attempt in the United States to prevent juveniles who committed crimes such as injury and murder from committing the second offence. They used roll plays of reproduction of the crime scenes the juveniles committed. The purpose of the roll plays was to make these juveniles try to imagine and understand the fear of the victims. Although whether or not, and to what extent such attempt has really contributed to preventing the second offences has to be studied before making arguments, this attempt suggests an interesting approach for preventive measures. This is the approach of studying and reflecting the experiences and the feelings of the victims into preventive training/education. Similarly important in my view is to study and reflect the experiences and the feelings on the perpetrator side into preventive training/education as well. This is my conviction that training and education to prevent violence against women under armed conflict should not be only informative but rather should be designed based on the studies of the experiences and the feelings of both victims and perpetrators and reflecting them.

If reflecting the actual experiences and the feelings of the victims and perpetrators may make preventive training/education more effective, although the question needs further studies, two things are needed to design such training/education. The one is further and more careful studies of underlying motives of sexual violence under armed conflict. The other is involving women into the process of designing and implementing preventive training/education.

¹⁵ Coomaraswamy, *supra* note 5, para. 5.

Firstly, it is critical to study the underlying motives of such acts more carefully and seriously, which has been paid comparatively less consideration in the previous studies. For example, Ms. McDougall, in her updated report, states that "[w]hile the reasons and motives behind the use of sexual violence certainly merit consideration as to ways in which they might be countered, the most immediate and effective deterrent to the use of sexual violence during armed conflict is to hold the perpetrators responsible for their crimes."¹⁶ In fact, she did not clearly take the question of "whether or not the underlying motives for rape and sexual slavery in times of armed conflict should be studied more carefully," the question set up by the original Special Rapporteur Ms. Chavez as the principles and approaches to be considered in pursuing studies to explore ways to prevent such crimes.¹⁷ I would say, answering to the question raised by Ms. Chavez, that "yes, we should study motives more carefully." In my view, to trace and understand what drove perpetrators to committing such acts, what were their emotional conflicts at the time of commitment if any, and what could prevent such acts in their own views is vital in considering and designing more effective preventive measures including training/education.

The other necessary thing is to involve women in designing and implementing preventive training/education. The need for gender integration into the training of persons taking part in armed conflicts is already mentioned by Ms. McDougall in her final report as one of her recommendations.¹⁸ However, I would like to stress this point again. Furthermore, what is needed is not only to integrate gender perspective into the training but also to actually ensure women participation into process of designing and implementing such training. The women who should be invited include specialists from the various related fields and women survivors where possible and appropriate. There may be the opposite view against the idea of involving women survivors into such processes. However, while we should be careful to the conditions of traumatized victims and should seek advice and support from the specialists, involving women survivors may produce more effective preventive training/education. At the same time, participating into the preventive training/education may have possible effects of empowering women survivors by recovering their self-confidence and giving them a sense of contributing to prevention of future similar situations. At least we can start gathering information of similar attempts and experiences of involving women victims in designing and implementing preventive training/education done to prevent violence against women in peacetime. If we find positive results, we can draw upon these experiences.

Truth Commissions

Thirdly, one missing issue in the previous studies is truth commissions. On the subject of the impact of armed conflict on children, a report by the Secretary-General once mentioned national truth commissions among various preventive mechanisms.¹⁹ It also notes that

¹⁶ McDougall, the updated report, *supra* note 1.

¹⁷ The working paper of the Special Rapporteur, Ms. Linda Chaves on the situation of systematic rape, sexual slavery and slavery-like practices during wartime, including internal armed conflict. UN Doc.E/CN.4/Sub.2/1995/38, para. 8 and para. 9 (a)(ii).

¹⁸ McDougall, the final report, *supra* note 1, para. 109

¹⁹ The report of the Secretary-General on impact of armed conflict on children. UN Doc. E/CN.4/1996/110, pa45

"[t]ruth commissions have proven their importance as a means to facilitate social reintegration and reconciliation."²⁰ To the contrary, there appears no reference to truth commissions in the reports by the UN Special Rapporteurs on violence against women under armed conflict. This absence of reference to truth commissions in the previous studies is understandable in light of the recent unified efforts toward punishment of perpetrators. As a study on the fifteen truth commissions created in the past reveals, in most cases there was an amnesty law or a *de facto* amnesty along with the establishment of truth commissions.²¹ As a result, addressing the issue of truth commissions and the related issue of reconciliation may be considered as implying impunity, which is the target the international community has fought against.

However, dropping the issue of truth commissions from our discussion is not desirable for two reasons. Firstly, establishing truth commissions does not necessarily mean amnesty, although this was mostly the case. As Human Rights Watch, a human rights NGO, correctly puts it, the question of prosecution vs. Amnesty is a matter at the justice phase, distinguished from the truth phase.²² It is true that we cannot assure that establishing truth commissions will necessarily deter the repetition of similar human rights abuses in the future.²³ But this is not the same as to conclude we do not need to study more carefully the effects and problems of truth commissions and reconciliation as preventive measures, since at least "the expressed intent of most truth commissions is to lessen the likelihood of human rights atrocities reoccurring in the future."²⁴ The other reason why we need more attention to truth commissions is because we should ensure the organizations, works and outputs of truth commissions integrate gender perspective where truth commissions are established, as was not the case in the past. For example, it is clear from the report of the Guatemalan Truth Commission (the Commission for Historical Clarification) that violence against women in particular against Mayan women was a common practice during the conflict.²⁵ Despite this finding, the recommendations by the Guatemalan Truth Commission appeared to lack gender perspective and do not include specific recommendations concerning violence against women and women victims. Whether or not truth commissions should be actively utilized in the future is one question. But it is critical to involve women commissioners and staffs in the organizations and to integrate gender perspectives into the whole process of the works such as investigation, truth finding and making recommendations, where truth commissions are created.

Early Warning System and Preventive Actions

Finally, I would like to mention briefly the issue of the early warning system and other preventive actions before and during nascent armed conflict develops. It is critically important to integrate gender perspective, in particular, a view to prevent violence against

²⁰ Ibid., para. 47.

²¹ Priscilla B. Hayner, "Fifteen Truth Commissions - 1974 to 1994: A Comparative Study," *Human Rights Quarterly*, 16 (1994), at 604, note 4.

²² Ibid., at 605.

²³ Ibid., at 608.

²⁴ Ibid., at 609.

²⁵ <http://hrdata.aaas.org/ceh/report>, para. 91.

women under armed conflict into the on-going efforts and discussion for developing more effective early warning mechanisms at the UN. As I mentioned earlier, to include gender-specific indicators into database and information to be gathered will make it possible to discern and warn occurrence of a large scale violence against women under armed conflict earlier. As Ms. McDougall correctly asserts, "[w]idespread, frequent and unremedied acts of rape and other forms of sexual violence are important indicators of a nascent conflict and such alerts must be taken as seriously as report of mass killings and forcible expulsions."²⁶

Maybe a more serious question is how to prevent violence against women detected through the early warning system from developing into a large scale one. Ms. McDougall is right in stressing that "[t]he international community must respond quickly to these early warning of armed conflict situations and humanitarian, diplomatic and preventative intervention must include efforts to address such sexual or gender-based violence."²⁷ In this regard, special attention should be given to a recommendation by an expert group meeting, as introduced in the Secretary-General's report, that "the gender issues that arise in the creation or operation of 'safe havens' or 'secured zones' as a means of protection in situations or armed conflict should be examined."²⁸ The issue of safe havens or secured zones should be further studied with considerations of using them as a means to protect women from possible violence by the enemy groups and preventing violence against them by peace-keeping personnel as well.

IV. Recommendations for Further Studies and Actions

Based on discussions in the previous sections, I would recommend the following points for further studies and actions to prevent violence against women under armed conflict:

- Make more efforts in peace time to eliminate discrimination against women from any societies with a particular focus on eradicating mischaracterization of rape as a crime of honour that may still prevail consciously and unconsciously in many societies.
- Recognize and work closely with NGOs, community and religious leaders as vital key actors particularly in the contemporary armed conflict situation where violence against women is very often committed by non-State actors.
- Involve women specialists and victims when possible and appropriate in designing and implementing preventive training/educational programmes.
- Conduct more careful studies of the perpetrators' motives, experiences and their own views about what could have stopped such acts and reflect the results of such studies into designing preventive training/educational programmes.
- Study and evaluate the preventive and other effects and problems of truth commissions from gender perspective.
- Ensure future truth commissions if created involve women experts and gender perspectives into the organizations and the works so that they properly address the issue of violence against women under armed conflict.
- Involve women experts, staff and gender perspectives into on-going efforts of developing and improving the early warning system and other preventive actions at the UN.

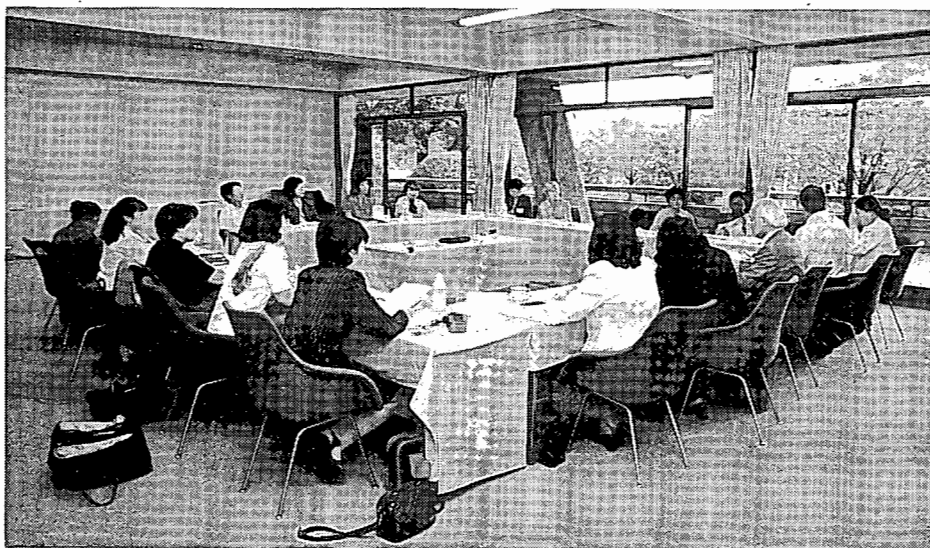
²⁶ McDougall, the final report, *supra* note 1, para. 114

²⁷ McDougall, the final report, *supra* note 1, para. 114

²⁸ The Secretary-General, *supra* note 6, para. 61.

V. Conclusion

In concluding, it is not an easy task to prevent future victimization of women. But one thing seems clear to me. It is that prevention cannot be assured by any single approach. Multiple and various approaches are needed. While one concrete step to end the cycle of impunity was taken at the time of the adoption of the Statute of the International Criminal Court last summer, we can not rely only on punishment as preventive measures. I believe that to explore various preventive measures other than punishment is not to deny or underestimate the preventive effects of the punishment approach. Now it is time to start discussing various preventive measures from many perspectives and to take further steps.



WOMEN'S HUMAN RIGHTS UNDER ARMED CONFLICT: THE ROLE OF THE UNITED NATIONS IN THE 21ST CENTURY

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INTRODUCTION

Since 1945, the United Nations has adopted many international instruments which stipulate women's human rights. Among them, the most important ones are the following: the UN Convention on the Elimination of All Forms of Discrimination against Women (hereafter "the CEDAW Convention"), adopted by the UN General Assembly in December 1979; the Declaration of the Elimination of Violence against Women, adopted by the UN General Assembly in December 1993; and the Draft Optional Protocol to the CEDAW Convention (hereafter "the Draft OP"), adopted by the UN Commission on the Status of Women in March 1999. The Draft OP, if adopted by the General Assembly at the end of this year, will establish a communication procedure (the right of petition) and an inquiry procedure by the Committee on the Elimination of All Forms of Discrimination against Women (hereafter "the CEDAW"), a committee that oversees domestic implementation of the CEDAW convention.

Unfortunately, however, these documents do not provide a "shield" to protect women's human rights, especially during armed conflict. Once such a conflict breaks out, the rule of law diminishes, and women often become subject to violence including physical abuse, systematic rape, and even genocide. We must admit that throughout history, international human rights law and international humanitarian law have been ignored many times even by states which ratified them. The best way to prevent violence against women, which is probably the worst form of violation of women's human rights, is to solve disputes peacefully through diplomatic negotiations or other measures stipulated in Chapter XI of the UN Charter before they escalate into armed conflict. But this is indeed a difficult task for the international community.

CHARACTERISTICS OF ARMED CONFLICT IN THE POST-COLD WAR ERA

It is ironic that the end of the Cold War ignited a number of armed conflicts all over the world. With the major exceptions of the Gulf Crisis in 1990 and the following Gulf War in 1991, most conflicts in the 1990s are ethnic-related. In other words, causes of conflict originated a long time ago, and their peaceful settlement in the near future is arduous because of complicated interests among concerned parties and their historical backgrounds. Moreover, ethnic conflict usually creates an enormous amount of hatred, anger, and distrust, and these feelings often lead people to act brutally against confronting ethnic groups. As observed in Bosnia-Herzegovina in the early 1990s, people with different ethnicities were able to form

friendships on an individual basis, but as an ethnic group they did not hesitate to engage in conduct such as systematic rape of women and mass murder of men.

One should note that in many states amid ethnic conflict, decision-making processes of one ethnic group are monopolized only by a handful of people. That is, ordinary people do not enjoy democracy and human rights fully, even within their own ethnic group. They have little influence in decision-making and are prompted to believe the use of force will be the ultimate solution. The recent bombing of Kosovo by NATO forces merely strengthened this tendency. Now in Kosovo, there seems to be no room for peaceful coexistence, and separating the Serbs from people with Albanian-origins looks to be the only choice.

Actually, the lack of tolerance for different ethnic groups does little good for promoting women's human rights. In a sense, men and women belong to different groups of gender, and their agendas may not always be the same. In a community with little tolerance for ethnicity, women receive little respect, endure lower social status than men, and have limited access to decision-making processes even during peacetime. Thus, immediately after armed conflict begins, women find themselves exposed to the dangers of torture, rape, and murder. That is why promoting democracy and human rights for all is the only effective way to eliminate violence against women under armed conflict.

This is not to say that it is less important to impose economic sanctions on governments daring to use force, dispatch military troops to stop mass killings, and to convict those responsible for crimes against humanity. However, punishing "bad guys" afterward will not erase damages to women who have already become victims of violence. Physical injuries may be curable, thanks to the advancement of medical technologies, but psychological injuries would remain in women's memories no matter how many years may pass. Violence against women is something that should never take place.

THE ROLE OF THE UNITED NATIONS

The United Nations must work even harder to nourish democracy and human rights in areas at risk of armed conflict. The importance of this mission was already stressed by the former UN Secretary-General Boutros Boutros-Ghali in his 1996 paper entitled "An Agenda for Democratization" (A/51/761). The UN also must promote women's rights by educating girls and women, giving job training to women who want to become economically independent, and encouraging equal distribution of national decision-making processes between men and women. These aims were highlighted by the Beijing Platform for Action, a document which was adopted at the Fourth World Conference on Women in Beijing in 1995.

To promote democracy and human rights around the world, the UN should mobilize its treaty-based monitoring bodies such as the CEDAW. The UN also publicize the Draft OP to the CEDAW Convention. This document will create a communication procedure and allow the CEDAW to make an inquiry into grave or systematic violations of women's rights if the CEDAW receives reliable information about such violations. One may point out that states can declare, at the time of signature, ratification, or accession, not to recognize the competence of the CEDAW or even may not ratify the Optional Protocol itself.

Nevertheless, this new international instrument, along with the reporting system stipulated in the CEDAW Convention, will put enormous pressure on those states which are penetrating or condoning violations of their own nationals' rights on a daily basis, while empowering women who suffer severe discrimination.

To let monitoring bodies function efficiently within limited budget and staff members, the UN should seek more support from NGOs around the world. They have provided precious information on human rights situations in many states. They have also provided job training for women in poverty and medical care for women in refugee camps. Perhaps NGOs can play a more active role in democracy-nourishing, such as teaching skills for peaceful settlement of disputes within a multi-ethnic state and training local women activists to turn them into future national leaders. The UN should take initiatives in creating such programs, prompting NGOs to participate in them, and coordinating activities of NGOs with different expertise.

CONCLUSION

We must recognize that there is no panacea for protecting women's human rights under armed conflict. Promoting democracy and respect for human rights may work slowly but will be the most effective measure in the long run to prevent armed conflict and thus eliminate violence against women. In addition, long-lasting peace cannot be given by foreign countries or international organizations. Rather, it must be created and maintained by local people themselves. What the UN should do is to empower people who seek peace sincerely. With the cooperation of NGOs, the UN must work continuously and tirelessly on the issues of democracy, human rights, and the elimination of violence against women from various perspectives until the day that all women enjoy more respect, participate actively in national decision-making processes, and can make a difference in their countries.



CULTURES OF PEACE, CROSS-CULTURAL CHALLENGES: WOMEN'S HUMAN RIGHTS IN ARMED CONFLICT SITUATIONS

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Introduction

I am honoured to be included in the list of participants for this expert group meeting. As I said to the organizers, I am happy to contribute to this conference but will acknowledge my unease with the term expert. With that disclaimer, let me proceed.

The topic for the meeting invites us to think about the collapsing distinction between international humanitarian laws and international human rights laws; about the collapsing of public violence of war and the private violence in homes¹; and about the collapsing of legal and extra-legal solutions to the harms caused by war. In this short paper I want to explore a number of these themes from the perspective of international women's rights and informed by my experience working on the issue as it relates to Rwandan women and the genocide. (I should also mention that my doctoral research focussed on early marriage of girls in northern Nigeria specifically and around the globe more generally; forced and early marriage and the consequences of marriage practices for women.)

In this paper I am interested, in particular, in:

- 1) cross-cultural prescriptions; cross cultural judgements
- 2) truth commissions versus criminal proceedings (national or international)
- 3) witness protection and other issues for legal solutions
- 4) the problematics of reconciliation-driven solutions
- 5) gender in peace-building

Empowerment

In preparing for this conference I was struck how easily I moved into a legalistic analysis of international laws and sexual violence against women in times of armed conflict. However, this meeting challenges the assumption that we ought to focus exclusively on rape and sexual violence during armed conflict and that we ought to look only to the law when seeking redress. Rather we must ask – of our own analysis and others – about human rights abuses experienced by women including denial of housing, movement, food, medicines, and economic relief. In other words, economic, social and cultural rights of women must be secured and protected and the denial of these rights during times of armed conflict must be addressed.

This brings me to the first theme of the meeting: empowerment of victimized women under

¹ Michael Halewood, "Preface" to the Symposium on Method in International Law 92 *American J. Int'l Law* (1999)

armed conflict and the protection of women's human rights. Global inequalities have affected the world's responses to victimized women. Empowerment of victimized women must take account of these inequalities and seek to respond with imagination and commitment. For example, the world was slower to respond to reports of sexual violence during the genocide in Rwanda. Empowerment entails economic empowerment determined by the needs of women affected. But I sound a cautionary note on the issue of empowerment: as you all well know the causes and consequences of armed conflict around the world are complex and diverse and prescriptions must take these complexities into account. Further, I believe the best prescriptions are those that can take on many forms, as language can take on vernaculars.² This dovetails with the goal of bringing a diversity of women's voices into international rights discussions.

International laws and violence against women

Let me begin with a brief overview of international humanitarian law and violence against women during times of armed conflict and then proceed to look at international human rights. Since I know the Women's Convention best I will also include reference to the Convention on the Elimination of All Forms of Discrimination against Women and its Committee, CEDAW.

Distinctions have also been drawn sharply between relations between states – international conflicts – and conflicts within states – internal conflicts – where international human rights law applies. This expert group meeting and other developments invite us to collapse this distinction that is based on the role of *sovereignty*. Human rights law traditionally is conceived of as conferring rights on individuals not to be subjected to arbitrary abuse by the State. While states carry the first responsibility to protect its citizens from human rights abuses, individuals may seek redress in the international for a should they have exhausted domestic remedies.

In situation of armed conflict, violations of women's rights are proscribed by both international human rights law and international humanitarian law. **The Vienna Declaration** and Programme of Action, adopted by the World Conference on Human Rights in June of 1993 notes:

Violations of the human rights of women in situations of armed conflict are
Violations of the fundamental principles of international human rights and
Humanitarian law. All violations of this kind, including in particular murder,
Systemic rape, sexual slavery, and forced pregnancy, require a particularly
effective response.³

The law of wars or humanitarian law pertains to combatants and civilians during times of war. It include the Laws of Geneva which provide for such matters as the treatment of prisoners of war, civilians in occupied territories and persons hors de combat. The Law of the Hague deal with the regulations of the conduct of war. These laws primarily confer rights on States that are designed to further military efficiency. Here is one of the first tensions in this area of international law: military efficiency versus humanitarian interest. [Note for example the American reluctance to sign the treaty on land mines since land mines continue to be used to

2 Sally Engle Merry, an anthropologist, talks about vernaculars of human rights.

3 Vienna Declaration and Programme of Action, June 1993, Doc. UN A/CONF.157/23, II, para. 38

protect soldiers, in other words for military goals.] Some critics have argued that military efficiency is more important in this framework than humanitarian interests.

The law of armed conflict is grounded historically in European conflicts between politically independent States with well-organized, well equipped and highly trained professional armies. The law of armed conflict may be limited by these historical roots when applied to civil wars, guerilla warfare in self-determination struggles, incidents of chemical warfare and where civilians are deliberately targeted. These rules also developed on chivalric notions as we shall discuss further. Women are to be protected from crimes against their honour; honour of course is not merely a matter of personal dignity and security but also a matter of familial and communal dignity. Let me list the **Law of Geneva**:

- First Geneva Convention: Amelioration of the Condition of Wounded, Sick and Shipwrecked ;
- Second Geneva Convention: Amelioration of the Condition of Wounded Sick in Armed Conflict;
- Third Geneva Convention: dealing with prisoners of war;
- Fourth Geneva Convention: dealing with civilian persons in occupied territories (12 August 1949). Article 27 (2) stipulates against attacks on women's honour;
- Protocol I: relating to the protection of Victims of International Conflict (8 June 1977);
- Protocol II: Article 4 (2)(e) rape has been outlawed in the context of non-international conflicts.

Some have argued for a new Protocol.⁴

In the context of the Geneva Conventions "*grave breaches*" of the law of armed conflict include inhuman treatment or torture and willfully causing great suffering causing great suffering or serious injury to body and health. Grave breaches refer to infractions of the rules which impose obligations on contracting parties to enact legislation to repress such breaches and in respect of which jurisdiction is conferred on all States parties to seek out and prosecute persons who commit such offences. Rape and other sexual offences are not specifically designated as grave breaches of law of armed conflict but some scholars and activist argue that rape is covered by the proscription of "torture or inhuman treatment" or "willfully causing great suffering". However, since rape is specifically mentioned in Article 27 of the Fourth Geneva Convention may militate against this interpretation.

Recall too that this Fourth Geneva Convention is limited to protect persons in occupied territories from arbitrary actions by occupying powers - certainly not all situations of rape during warfare occurs in occupied territories.

Rape was not prosecuted in the Nuremberg Tribunal. The International Criminal Tribunals for the Former Yugoslavia and Rwanda each have constituting statutes and they provide fuller response to sexual violence, constructing it as potentially a crime against humanity and a war crime. In Article 5 of the statute for the Yugoslav tribunal systemic and mass rapes are

⁴ Judith Gardam, "Women and the Law of Armed Conflict: Why the Silence?" 46 *International & Comparative Law Quarterly* (1977) 55.

condemned. In Article 3 (g) of the statute for the Rwanda Tribunal includes rape as a crime against humanity and Article 4 (e) included outrages upon personal dignity.⁵

Another prong in international law of armed conflict is the Genocide Convention. And of course we have witnessed the International Criminal Court initiative come to fruition with the statute to create such a Court. Hilary Charlesworth recently argues, however, that international criminal law, the amalgam of international humanitarian law and international human rights law, has combined the gender blinded spots of both traditions.⁶

The programme of action adopted at the Fourth World Conference on Women in Beijing clearly states that:

Massive violations of human rights, especially in the form of genocide, ethnic cleansing as a strategy of war and its consequences, and rape, including systemic rape of women in war situations, [.....] are abhorrent practices that are strongly condemned and must be stopped immediately, while perpetrators of such crimes must be punished.⁷

Violence against women is not explicitly in the Convention to End All Forms of Discrimination against Women. The Committee to the Convention has issued a general recommendation, Recommendation 19, which states that violence against women is to be read into the definition of discrimination found in Article 2 of the Convention. The Recommendation includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. It is the only legally binding document specifically designed to protect women against violence including the right not to be subjected to torture and cruel and inhuman treatment.

One advantage of the approach developed through the Women's Convention is that it takes us beyond the rigid state-centrism of other documents and treaties. The Convention calls on states parties to change practices in all areas of life that discriminate against women and that are based on stereotypical roles of men and women, and views of inferiority and superiority of the sexes. With the availability of individual petition to CEDAW through the recently drafted (and passed by CSW (Commission on the Status of Women)) Optional Protocol, individuals and groups will be able to petition the Committee. This is one way in which women's voices, women's stories can come to the fore.

Truth Commissions: Another initiative which can be a forum for women's narratives is the truth commission. While I caution against broad cross cultural prescriptions, truth commissions have been quite favourably received in South Africa. Albie Sachs, the Constitutional Court Judge described this year how the purpose of the Commission in South Africa was distinct from criminal justice proceedings. Truth Commission are part of a national healing process, part of the reconciliation of perpetrators and victims. For the victims or

⁵ Kelly Askin, "Sexual Violence in Decision and Indictments of the Yugoslav and Rwandan

⁶ Tribunals: Current Status" (93 (1) *American J. Int'l. L.* (1999)97.

Hilary Charlesworth "Feminist Methods in International Law" 92 *American J. Int'l Law (Symposium on Method in International Law)* 1999 379 at 388.

⁷ Report of the Fourth World Conference on Women, A/CONF.177/20. Art. 131.

surviving members of the family to face the perpetrator is a very powerful moment. Beyond the individuals involved, however, truth commissions offer some countries the opportunity for collective remembering and healing. I for one do not believe the criminal trials at the national level have the same potential for healing. The role of the victim and perpetrator are very different in a court of law than a commission room. Judges do not routinely cry with those giving testimony, weep over the accounts and hug those in the room as Reverend Desmond Tutu did in South Africa with his country watching. Collective grieving and healing

Of course truth commissions raise the issue of impunity which has plagued similar attempt in South America to create truth commissions in good faith. We must remain even vigilant that women's stories are not silenced in these methods of reconciliation and reparation as they may be in any other forum. We must remain committed to bringing about justice for women survivors of rights violations during armed conflict, including in the context of truth commissions. On a flip side we must be careful not to replace accountability for women's rights violations with reconciliation. I see accountability and reconciliation as complementary not exclusive strategies in the struggle to see justice realized for women.

Reconciliation and Peace-Building: Women are often left to rebuild their communities and heal from their own personal wounds of war. They may outnumber men in their societies and may need to rewrite the customs and practices in a post-war civilization.

Prevention can only come from empowering women and holding perpetrators of violence against women accountable. The methods of accountability may be many, but justice is one route for redress for victims of armed conflict. This includes changing cultures of violence and militarization. Women must be active participants at all levels of peace building and change:

- support to women's NGOs
- reconceptualization of violence must include eradication of economic, psychological, social and political subordination of women⁸
- support for diversity of women's voices and "searching for the silences"⁹ in international laws
- international coalition building
- accountability for military and governments and civilians, i.e. individual perpetrators: "cultures of compliance, cultures of peace"
- beyond ethno nationalism

- reconceptualize women beyond their roles as mother, pregnant, sexual objects

Rape in armed conflict is made possible by the prevalence of rape in times of peace.

8 Berta Esperanza Hernandez-Trujol, "Sex, Culture and Rights: A Re/Conceptualization of Violence for the Twenty-first Century" 60 *Albany L. Rev.* (1997) 607.

9 Hilary Charlesworth "Feminist Methods in International Law" 92 *American J. Int'l Law (Symposium on Method in International Law)* 1999 379 at 381.

VIOLENCE AGAINST WOMEN: PROTECTION FOR THE REFUGEE WOMEN

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UN High Commissioner for Refugees (UNHCR)

I would like to begin by expressing the United Nations High Commissioner for Refugees, and indeed my thanks to the Asian Women's Fund for organizing the Expert Meeting on Women's Human Rights under Armed Conflict, and the Open Forum on Violence Against Women." The topic is a wide one, and I will try to address some relevant points to the subject matter from the perspective of the UNHCR – my focus will be on protection of the refugee woman. UNHCR, the United Nations refugee organization, is mandated by the United Nations to lead and co-ordinate international action for the world-wide protection of refugees and the resolution of refugee problems. UNHCR's primary purpose is to safeguard the rights and well being of refugees, to ensure that everyone can exercise the right to seek asylum and find safe refuge in another state, and to return home voluntarily. The root causes of refugee displacement are inextricably linked to conflict, persecution and the denial of human rights. The discussions in the expert meeting and in the open forum are therefore of prime importance for UNHCR, and we commend the organizers for this timely meeting.

The mission statement of UNHCR clearly states that "UNHCR offers protection and assistance to refugees and others in an impartial manner, on the basis of their need and irrespective of their race, religion, political opinion or gender." Having said this, the organization also recognizes that armed conflict, and resulting refugee life, affects different sectors of a population differently. For many, the word "refugee" still conjures up Cold War images of people fleeing persecution from dictators and totalitarian regimes. For many others, it is associated with legions of people flooding back and forth across African borders fleeing massacres, or through European ones on a smaller scale. But whatever the image, the refugee experience is widely perceived as a male experience and rarely conforms to the reality of the approximately 45% of women who with their dependants constitute 80% of the refugee population around the world. As we move continuously out of the shadow of the Second World War and towards the new millennium, UNHCR recognizes, and indeed we must all recognize, that today's refugee is more likely to be a woman, often alone or struggling to provide for her children.

Let me illustrate this point with statistics from some of our operations around the world:

Of the 241,040 Somali refugees in Ethiopia, 120,520 are female (50%).

Ethiopia similarly hosts 57,210 Sudanese refugees, of whom 27,750 are female (48.5%).

127,060 female Liberian refugees, or a total of 239,710 are in Guinea Conakry (53%).

There are 46,010 Bhutanese female refugees of a total of 93,670 in Nepal (49.1%).

And Pakistan, as another example, hosts 591,840 Afghan female refugees of a total population of 1.2 million refugees (49.3%).

An understanding of the composition of the refugee population is important. By recognizing that the majority of a refugee population often is female, and noting that conflict and life in exile affects women and men differently, UNHCR and States are better enabled to protect women through the refugee cycle – from the time of conflict, to the time of seeking and enjoying asylum, to the solution of repatriation to and reintegration back in the country of origin.

The refugee cycle unfortunately continues to be marred by incidents of violence against women. To learn from our history and experience, and to better understand the impact of conflict on women, one could outline the different stages of the refugee cycle and exemplify the need for a greater effort to better protect women through the various stages.

Let me begin with the time of the conflict itself, as the root cause of the refugee flow. While men predominate among armies and militias, civilians including women and children are increasingly targeted for attack. Violence against women in armed conflict, including rape and sexual violence, has been a widespread and persistent practice over the centuries. However, sexual violence and rape in the context of war have tended to be characterized as private acts or inevitable if regrettable excesses of the military in which women were the invisible victim.

The invisibility of women and sexual violence is ending – the optimists in us would say that it has ended. In 1993, UNHCR's Executive Committee, which is the advisory body of the UNHCR made up of 50 Member States, recognized that women often experience persecution differently from men, and that sexual violence has been a cause of refugee movements. The war in Bosnia and Herzegovina opened our eyes to the use of systematic rape in wartime, and arguably for the first time, caused it to be regarded not as something that simply takes place alongside the fighting and pillage, but as a crime against humanity. This war, and the genocide in Rwanda as another example, made it all too clear that violence against women including rape and sexual violence, far from being isolated acts, are more and more frequently used as strategic weapons of war.

How do we protect women against such violence at times of conflict? I will focus my remarks on the international legal framework. The starting point is international humanitarian law. The Four Geneva Conventions and their two Additional Protocols contain provisions aimed at preventing violence against women. Article 27 of the Geneva Convention Relative to the Protection of Civilian Persons in Time War (Fourth Geneva Convention) provides that "women shall be especially protected against any attack on their honour, in particular rape, enforced prostitution or any form of indecent assault." The two Additional Protocols also proscribe outrages on personal dignity which explicitly include rape, enforced prostitution and any form of indecent assault. However, these provisions are not free of problems.

Important among them is that, while these provisions proscribe rape and sexual violence,

these acts are not explicitly specified to be grave breaches of the Geneva Convention or their Additional Protocols. As a result, States are not obligated under these instruments to prosecute those who commit rape or other forms of sexual violence in armed conflict, or otherwise to ensure that they are brought to justice.

Important steps have however been taken over recent years to end the impunity of assailants and to enable better protection of women against violence. The Security Council established the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993 to prosecute war crimes committed during the Yugoslav conflict and the International Tribunal for Rwanda (ICTR) in 1994 to prosecute war crimes during the Rwandan civil war. For the first time in history, rape during wartime was explicitly stated to be a crime against humanity. Furthermore, although rape and sexual violence were not specifically termed as war crimes, or grave breaches, the Office of the Prosecutor has charged specific defendants with crimes of sexual violence in these terms. Convictions by both Tribunals on these bases have resulted. It is essential that the ICTY and the ICTR be given the resources to carry out their work, and governments and other organizations are urged to support these efforts.

Another promising development in international humanitarian law which also serves for the better protection of women against violence was the adoption of the Statute of the International Criminal Court, in Rome, in July of last year. Although not yet in force, this Statute is another important step in that it explicitly provides that rape, sexual slavery, enforced prostitution, enforced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity is a crime against humanity when "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." Governments should be urged to ratify this treaty.

While these remarks have focussed on the field of international humanitarian law as a means to protect women against violence, or to bring about justice, one should not ignore the fact that, as stated in the Beijing Platform for Action, "during times of armed conflict and the collapse of communities, the role of women is crucial. They often work to preserve social order in the midst of armed and other conflicts. Women make an important but often unrecognized contribution as peace educators both in their families and in their societies." Since the Platform for Action has called for women's participation in all aspects of conflict resolution and peace building in 1995, UNHCR has been working diligently with its implementing partners to ensure that these objectives are implemented. Recognizing that "aggression, foreign occupation, ethnic and other types of conflicts are an ongoing reality affecting women and men in nearly every region", UNHCR continues to implement activities that attempt to bring a gender balance to the decision making process in conflict resolution situations in Uganda, Rwanda, Liberia, Guatemala and a host of other countries.

Turning to the stage of the refugee cycle which brings the refugee woman to her country of asylum, the cycle of violence against women at times also continues through flight. In several parts of the world, women fleeing their countries have suffered particular indignities and threats, notably sexual violence, perpetrated by bandits, smugglers, combatants and sometimes even by fellow asylum-seekers or the officials who might reasonably have been expected to protect them. The violence, including rape, perpetrated against the women Vietnamese boat people by the bandits during their flight is only one dated, yet important

example:

The cycle of violence against women could follow the refugee woman not only during flight, but also into the country of asylum. UNHCR recognizes that women, particularly single heads of households and adolescent girls, face acute problems in asylum countries. Chief among them is a lack of personal security whether living in camps, collective centres or with host families. An atrocious recent example was the gang rape of over 50 Burundese refugee women in the vicinity of one of the refugee camps in Tanzania. Why were they raped? Because of the animosity by the local population against the refugee population. At times, refugee women thus are unable to enjoy asylum, and indeed safety from the conflicts and violence which exactly were the reasons for their flight.

How do we better protect refugee women against violence in the country of asylum? Sensitization of the local population often is an important step. UNHCR also recognizes that the way in which we implement our programmes in refugee camps can support or redress inequality and discrimination in refugee communities, enabling better protection for refugee women against violence. For example, the physical circumstances in which refugees are housed affect their safety, and these circumstances will differ from one population to the next. For the Vietnamese, separate housing for single refugee women in their own long-houses was deemed to be the most appropriate. However, this layout does not serve the protection needs of all single refugee women around the world. In Djibouti, this layout had a number of negative implications for the Somali single refugee women, who were left alone without the needed community protection, and their tents were subject to attacks at night. A camp layout which spread the single refugee women within the community best enabled the necessary protection for that specific population. Too often refugee women face dangers stemming from poor design of camps and housing accommodations. There is no-determined appropriate camp layout – it is only through the participation of the refugee women themselves in the decision-making processes that protection could best be ensured.

Protection of the refugee woman in a country of asylum is not limited to protection from physical violence. Legal protection is important in that it grants a status – to the refugee woman, giving her the necessary legal standing in that society, thus making her less vulnerable to abuses and violence. The refugee definition embodied in 1951 Convention relating to the Status of Refugees defines a refugee as someone who,

“owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of origin of [her] nationality and is unable, or owing to such fear is unwilling to avail herself of the protection of that country.”

It could reasonably be argued that the Convention itself, and refugee law generally, has been interpreted within a male paradigm, which tends to reflect the factual circumstances of male applicants, but does not always respond to the protection needs of women. The challenge is to make the refugee definition – or more important its application – gender sensitive to ensure that women's claims are appropriately recognized, and that women are appropriately granted the necessary protection through the granting of refugee status. Unfortunately, however, certain acts committed against women have traditionally been outside the realm of the application of the refugee Convention, being classified as a

regrettable act of human excess, rather than a violation of fundamental human rights, capable of incalculable if-invisible harm.

The drafters of the Convention did not reflect in words what has long been a reality – that crimes with a basis in gender are as persecutory in Convention terms as any other crimes when the harm inflicted is sufficiently serious and when it is committed for a Convention related reason. Proper protection of refugee women can only be ensured if this point is properly understood by adjudicators.

It is of paramount importance to refrain from approaching refugee claims by women along the lines of the more traditional and familiar situation of refugee men. For example, for some States reviewing asylum claims, unless the State itself is the sexual aggressor, the regime of refugee protection cannot be invoked. Proper protection of refugee women would require an understanding of the fact that where offensive acts are committed by the local populace, they can be considered as persecution in the terms of the refugee definition if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer protection. To protect refugee women, the nation of “public” – at the hands of State – and “private” has to be broken down.

Closely related to the problem of perceiving many of the abuses against women as somehow “private” matters is the feeling that certain practices are sanctioned through having a basis in cultural or religious beliefs. It has to be argued that this approach is inconsistent with the universality of human rights. Under the Declaration of the Elimination of Violence against Women, States are required to exercise due diligence to prevent, investigate and punish acts of violence against women perpetrated by the State or by private persons. Failure by the State to exercise that diligence, and to provide a secure environment for women, incurs State responsibility.

Proper protection of refugee women in the country of asylum not only requires a gender-sensitive interpretation of the refugee definition, but also a gender-sensitive asylum procedure. A female asylum-seeker can face particular difficulties in presenting her story, and very much so where that story involves acts of sexual violation:

- She may not always be given the necessary separate interview if she is accompanied by her spouse;
- Yet she may be reluctant to speak freely in front of her spouse or a male interviewer, either because cultural mores or past experiences;
- She may feel embarrassed or humiliated when relating information about sexual assaults she has had endure.

For proper protection of refugee women, States should ensure not only that due weight is given to the particularized experiences of women asylum-seekers exposed to sexual violence, but also that due sensitivity is paid to constraints women may experience in telling their story. Gender sensitive guidelines in this context exist to date in Canada, Australia, and the United States. Other States should equally undertake this responsibility.

The grant of refugee status is not in and of itself a durable solution. The refugee cycle which

could have begun with the conflict could find its end again in the country of origin upon voluntary repatriation. Refugee women also face particular hardships during this stage of the refugee cycle. Peace building process, and reconciliation, are important elements at the time of any repatriation. UNHCR activities concerning peace building can be seen world-wide. As one example, through the programmes of the Rwanda Women's Initiative, UNHCR facilitates, encourages and supports local and national governmental and non-governmental peace keeping initiatives involving returnee women. Reintegration in Rwanda is a difficult challenge. The repercussions of the 1994 genocide are still felt throughout Rwanda. The Rwandan government estimates that more than 70% of the currently population in Rwanda is female. Among them, an estimated 200,000 are female survivors of genocide. Many of the genocide survivors were victims of rape and sexual violence. Many are new female headed households, having lost their husbands. The difficult circumstances in that country have been exasperated with the return of some 2 million Rwandan refugees from Tanzania and Zaire. Targeting women in armed conflict, this initiative aims at enhancing the integration and active participation of women in economic, social and cultural development process, promoting women's rights and women's participation in political, legislative and justice arenas, engaging women in peace building and reconciliation activities, and combating violence against women.

I would like to end by quoting a Sudanese refugee woman in Kenya, saying that "in Sudan, we keep silent until we die. Now we are here, we want to change our culture." It is an important quote in that it reflects the fact that at times, the hardship of exiled life for refugee women can be bitter sweet. Bitter sweet in that the hardship is accompanied by periods of empowerment and new roles. Through their organization, refugee women often realize important chances, not least of which could be a heightened sense of self-esteem regarding their potential to act as agents of change. Refugee women forced to take on new responsibilities as a result of exile can thrive on their increased status, and begin to assert their gender-specific rights to land, an education, work outside the home, reproductive choice and to be free of domestic violence. The process of return at the end of the refugee cycle, with its own hardships, should not downgrade women's hard-earned rights, and the cycle of violence, and indeed refugee life, cannot be repeated.



Summary of the Expert Meeting on Women's Human Rights Under Armed Conflicts

EXPERT MEETING ON GENDER PARTICIPATION

John Pace
Chief, Research and Right to Development Branch
Office of the UN High Commission for Human Rights, Geneva

1. The expert meeting was convened in Kyoto by the Asia Women's Fund from 13 to 15 September 1999. The theme of the meeting was "Human Rights of Women in Armed Conflict – Never Repeat the Violence".
2. The meeting was the fourth in a series of expert meetings related to the protection of women. The first expert meeting was held in [Japan] in 1996, and dealt with general issues relating to the human rights of women; the second was held in Manila in 1997, and the third was held in Bangkok in 1998. The last two expert meeting were dedicated to 'comfort women' issues.
3. The meeting was attended by the following experts: Meng Ho Leang (Cambodia), Anne Bunting (Canada), Rani Jethmalani (India), Nursyahbani Katjasungkana (Indonesia), Nisuke Ando (Japan), Musarrat Hilali (Pakistan), Saroja Siivachandran and Nandini Samarasinghe (Sri Lanka), and Doung Thi Thanh Mai (Vietnam).
4. The expert meeting was attended by John P. Pace, representatives of the Office of the High Commissioner for Human Rights of the United Nations (OHCHR) and by Shahrzad Tadjbakhsh and Chikako Saito, representing the United Nations High Commissioner for Refugees (UNHCR).
5. The participants invited John P. Pace, the representative of the Office of the High Commissioner for Human Rights, to chair the meeting.
6. The expert meeting covered the following aspects:
 - a. protection of the human rights of women in general,
 - b. their protection in armed conflict,
 - c. the role of women in reconciliation processes,
 - d. and the role of women in the peace-building processes.

Summary of the discussions

7. Professor Ando made an introductory statement, which included an overview of the principles that governed gender issues and the particular aspects of the protection of the human rights of women in law, and, more particularly, in armed conflict.

8. It was stated that in international human rights law, the protection of human rights of women had gone through an evolution. The protection of women was influenced by male-dominated concepts; subsequently, it had developed into an approach that took into account the need to ensure effective protection of women and to enable them, through empowerment, to fully participate in the development process.
9. Reference was made to the World Conference on Human Rights and the Vienna Declaration and Program of Action (1993), and to the United Nations Fourth World Conference on Women and the Beijing International Platform for Action (September 1995).
10. There was much work ahead in this respect. Most countries had development laws and legal systems to ensure the protection of women, but their application and the day-to-day realities left much to be desired. The same applied to constitutional provisions in several countries that reflected the highest standards of human rights protection but that were not applied. In several countries, women were the subject of persistent and serious violations to their most fundamental rights, such their right to life, and to their physical integrity.
11. Reference was made to such practices as wife-burning, forced marriages, as well as trafficking and forced prostitution of women. Several such practices were attributed to a perverse interpretation of customs wrongly attributed to religious beliefs. Others were the result of discriminatory traditions that had been allowed to develop over the years.
12. In most cases, similar consistent patterns of abuse of women resulted from economic hardship, and poverty. Ignorance among the victims, as well as among those who were in responsible positions in government and other parts of the establishment was considered a major cause of such situations.
13. It was said that such erroneous traditions and beliefs were part of a more general culture which discriminated against women. There was much that needed to be done to reverse such practices.
14. There was a need for mobilisation to bring about meaningful application of such laws and constitutional provisions. For this purpose, measures needed to be taken to encourage sharing of information among affected groups, on one hand, and the established of ad hoc institutions for the protection of human rights of women. Thus existing judicial structures might be supplemented by national institutions to protect women and to enable the process of the implementation of the law and where necessary, the promulgation of new laws.
15. The experts emphasised the fact that such inequalities were contrary to international human rights law. In some cases, national laws were themselves in violation, as were the practices erroneously attributed to religious precepts, referred to above. These crimes included several affecting the rights to life and physical integrity as well as the right of women to participate in the economic and social life of the community in accordance with international human rights norms.
16. There was a need to strengthen the protection of women against crimes affecting their person, including violence, rape and related crimes, through national, regional and international measures, such measures should be channelled, *inter alia*, through

education, the establishment of specialised institutions to enhance awareness of fundamental human rights standards, to enable women to assume a just economic role in the economic life of society.

17. These inequalities could also be addressed and redressed by adjusting the current role of women in society by eliminating laws and practices that are in violation of international human rights law and in particular, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).
18. The formation of women's groups, where experiences could be shared, and where awareness could be enhanced, was considered to be an important step. Such groups could better ensure the protection of victims of discrimination on the grounds of gender. In addition, the formation of coalitions among such groups, nationally and across national borders, was necessary in order to overcome discrimination against women and denial of human rights of women.
19. Within this context, reference was made to the role of international and regional organisations, where awareness building through training and cross-cultural sharing, is possible. International and regional organisations were considered to have a role to play in the protection of women world-wide. The strengthening of international human rights standards through ratification of international human rights conventions, and their realisation at the national and local level was a common aim.
20. The participating experts represented a wealth of practical, day-to-day experience in a wide range of situations, all of which demonstrated a real experience where women were particular victims or not protected.
21. **As regards the protection of women in armed conflict**, it was agreed that the existing international law governing conduct of war, including the Geneva Conventions and the related protocols, had been shown to be seriously insufficient. There was urgent need to provide for protection of women against violence, as well as rape, including the use of rape as a tool of war, systematic rape and related crimes. The inclusion of sexual violence as an offence in the statutes of the Ad Hoc Tribunals in the situation of former Yugoslavia and of Rwanda, albeit after special efforts were deployed, was cited as a positive development at the international level in the struggle to provide for protection against sexual violence.
22. Situations of internal armed conflict produced particularly severe problems for women. The forced displacement of whole populations affected the situation of women in several ways. In addition to being the subject of physical violence, they were often the ones left to re-build their homes and villages, and the basic infrastructures from scratch, where destruction had been massive and complete.
23. The plight of women refugees was also emphasised, and the need to ensure their protection whilst seeking protection and in refugee camps. Examples of insufficient protection in a number of conflicts were quoted. Such problems further exacerbated the situation of such women since many were trafficked, or, for their protection, forced into marriage within refugee camps; such marriages invariably led to more problems for the women concerned as and when they ceased to be refugees.

24. Post-conflict situations also produced other problems of discrimination against women. Examples were quoted of severe hardship suffered by women as a result of changes in the economic pattern resulting from the transition from one type of economy to another. Such adjustments to new and unfamiliar economic patterns resulted in problems of extreme poverty, further relegating women to situations of exclusion.
25. Despite being the victims of violations and abuse, and the widespread absence of protection, women played several important roles in situations of armed conflict. Women played a major role in providing support to victims of armed conflict, and in particular, children.
26. The experts agreed that it was essential to ensure a gender-sensitive interpretation of international and regional human rights law. The training of armed forces as well as civil police should also be made gender-sensitive. Women had a role to play in an international campaign to reduce military spending; where peace-keeping operations were undertaken, women in the armed forces had a special role to play as well.
27. Underlying these measures, was the need for the economic and social empowerment of women to enable them to participate actively in conflict resolution and in rule-making. It was agreed by the experts that strengthening the role of women in such areas would make a considerable contribution in the struggle against the elimination of armed conflict and its disastrous consequences on people.
28. **The experts agreed that there was an important role for women to play in reconciliation processes.** Participants referred to truth and reconciliation commissions, and similar institutions. The South African experience was quoted as an example. Such post-conflict institutions had great value in laying the ground for a more just and stable future situation. An expert referred to the experience made in that country, and shared the view that there were certain conditions that needed to be satisfied for such a process to be successful. These included the will by all concerned to participate in the process, the need to ensure that this included the will not to repeat the crimes of the past. Above all, in a "forgive but not forget" spirit, to keep present at all times, the lessons of the horrors of the past. Experts also invoked the dilemma that reliance on such institutions might present if they were abused as a means of gaining impunity for human rights violations in the name of reconciliation.
29. The experts agreed that the process of reconciliation provided an opportunity to lay down the foundations for the elimination of the causes of conflict. As such it was vital to take such measures to break the pattern of existing practices and ensure the protection and respect for the human rights of women under the existing - but not implemented - legal provisions already enshrined in fundamental laws and constitutions. This should be accompanied by a concentration on measures to include women or to enhance their role in all stages of the reconciliation process. This should start by ensuring the communication and exchange by victims and survivors, of their respective experiences, in order to lay the foundation of a common or shared platform. This would ensure the gender orientation of subsequent measures of reconciliation.
30. In regard to the role of women at the international level, it was emphasised that the participation of women in the international penal jurisdictions would constitute a major contribution to the effectiveness of these jurisdictions.

31. All these measures based on the principle of reconciliation, would contribute to the fundamental need to create a culture of tolerance. The creation of such a culture was essential in the efforts to neutralise the causes of conflict.
32. **In regard to the participation of women in peace-building measures**, the experts agreed that it was essential to adopt measures at the national, as well as the regional and the international levels. In addition to those measures aimed at the correction of problems of inequality attributed to tradition, etc., it was necessary to enable existing laws and constitutional provisions (as mentioned above) to be applied. This was particularly important in those - several - situations where traditions, customs and practices were invoked to justify blatant denial of the human rights of women. For this purpose, it was agreed that national institutions, such as national commissions, or commissioners, or ombudsman-type institutions, should be established. Such institutions would enhance awareness and provide protection of human rights of women.
33. The experts defined the basis of the role of women in peace-building processes in regard to the three basic requirements of awareness, participation, and empowerment.
34. In regard to creating awareness, it was felt that the media had an important role to play in enhancing awareness of gender issues, both in regard to international human rights standards and in regard to political processes. Education in general, and programmes aimed sensitising the public at large, were necessary in order to stimulate a culture of gender awareness.
35. The experts agreed that participation of all sectors of society was necessary to achieve the level of awareness required. Moreover, participation of women was essential in law-making and in the administration of justice, and in particular, in the judicial institutions, as judges and as members of juries or assessor panels. At the international level, it was important to ensure the implementation of the Beijing Platform for Action and for women to actively participate in the post-Beijing process.
36. These measures were only possible through the empowerment of women; this could be achieved through the formation of women's groups, their involvement in active lobbying of all parties in the political life of their society - across party lines - and the formation of coalitions among such groups in order to coordinate national action with international and regional fora. Such coalitions would also ensure and monitor gender-sensitive interpretation of international human rights law. This, in turn, would imply the empowerment of civil society, as well as the involvement of women in all levels of decision making.

Concluding observations

37. Finally, the experts agreed that the meeting had produced an excellent combination of experiences, and that there was much to be gained in building upon the agreements that had developed in the course of the discussions. Given the dynamic nature of developments in causes of conflict and the need to maintain and enhance vigilance among women's groups, the experts unanimously agreed to the suggestion that they

should maintain and develop contact among themselves in a network, which the Asian Women's Fund might wish to coordinate. Such a network would enable the participating experts to maintain contact among themselves and to share information on developments relevant to the situation of the participation of women in the context of armed conflicts, their role in reconciliation processes and in peace-building measures. This information sharing network (The Kyoto Network) could enhance the adoption of measures consistent with the reflections on which the experts had agreed.

38. The experts were unanimous in thanking the Asian Women's Fund and its Secretary-General Ms. Momoyo Ise, for having organised the meeting. They felt that this kind of meeting was both worthwhile and necessary in the search for enhancing the role of women in all aspects related to conflict and conflict resolution. They expressed the hope that the AWF would continue to convene such meetings and thus, to further strengthen the protection of the human rights of women in accordance with international standards.



**Open Forum
on
Violence against Women**

**September 15, 1999
Kyoto**

OPEN FORUM

DATE: September 15, 1999, 14:00-17:00

PLACE: Kyoto International Conference Hall, Kyoto, Japan

14:00-15:30 National reports on Violence Against Women

1) Women's Rights and Religion

Ms. Musarrat Hillali, Advocate, Vice Chairperson, Human Rights Commission Of Pakistan

2) Dowry – Domestic Violence in India

Ms. Rani Jethmalani, Advocate, Supreme Court of India, Director, Women's Action Research and Legal Action for Women

3) Military and Violence Against Women in Indonesia

Ms. Nursyahabani Katjasungkana, Director, Women's Legal Aid Bureau, Indonesia Women's Association for Justice

4) Women's Human Rights Under Armed Conflicts

Ms. Saroja Sivachandran, Director, Centre for Women and Development

5) Women and Genocide in Rwanda

Ms. Anne Bunting, Professor, York University

6) Political Rights and Women's Rights

Ms. Duong Thi Thanh Mai, Institute of Law Research, Ministry of Justice, Government of Vietnam

7) Refugees and Violence Against Women in Cambodia

Ms. Meng Ho Leang, Deputy Director, Cambodia Institute of Human Rights

15:30-15:45 break

15:45-17:00 Reports from International Community and United Nations

1) Mr. John Pace, **UNHCHR**

2) Ms. Shahrzad Tadjbakhsh, **UNHCR**

3) Mr. Nisuke Ando, Professor, **Doshisha University**

Facilitator Ms. Yoko Hayashi, Attorney-at-Law

Open Forum I

National Reports

Ms. Yoko Hayashi, Facilitator

Thank you very much for taking part in this Open Forum. On behalf of the organizer of this Forum, Ms. Momoyo Ise, Secretary-General of the Asian Women's Fund, is going to give you words of greetings.

Ms. Momoyo Ise, Secretary-General, Asian Women's Fund

My name is Ise, Secretary-General of the Asian Women's Fund. I thank you very much for coming to take part in this Open Forum in the middle of this rainy weather. I was born and raised in Kyoto and I went to Doshisha University in Kyoto. I feel very much at home here in Kyoto and very happy to have this Forum in the City. The theme of this Forum is violence against women. The panelists who are here today come from the countries with severe armed conflict and unstable political situations. And they have seen women suffering from dire conditions. They have tackled with the issue of promoting women's human rights under such difficult circumstances.

Japan is such a peaceful country and often the case we would not feel any danger to our physical stability or security and you might not understand what dire consequences, violence or armed conflict, might happen to women under such circumstances. But from that point of view, I am sure that the panelists today will give you a dire information to open your eyes towards women's issues under armed conflict, violence inflicted upon women, specially how women and children suffer, and what kind of dire sufferings they really experience under such circumstances, and how Japan and how effectively Japan can cooperate to those sufferings and people who suffer from such conditions. I thank you very much once again for your kind participation.

Our Fund was established in order to settle the issues pending from the past during the World War Two and also to cater to the current women's issues and also we are tackling with efforts to prevent the mistakes from being repeated. So with your kind understanding and cooperation, we would like to further our efforts to make the 21st century a happier place for all of us to live. I thank you very much for your participation once again.

Ms. Hayashi, Facilitator

Thank you very much. Now as Ms. Ise, Secretary-General, mentioned in her opening remarks, in 1995, this Fund was established in order to express the sense of atonement from the nation of Japan to former "comfort women" in the war. Besides such the major issue, the Fund is addressing the current women's issue, especially the eradication of

violence against women. That is an indispensable condition not to repeat the mistakes in the future. In cooperation with the Government we have been undertaking a lot of programmes and this kind of International Forum is the fourth of this nature. In 1996, on women's human rights, we organized a conference, and in 1997 in Manila and in 1998 in Bangkok. We discussed the trade of women or children, and today we are going to discuss violence against women for the first time in our series of international forum.

From yesterday, the experts and Prof. Ando of Doshisha University have taken part in the expert conference and meetings and they have deliberated on the status of women in armed conflict and whether reconciliation is possible between the victims and perpetrators, and what kind of role women can play in the peace-building efforts. We have had a very good discussions regarding the contents of discussions and also the papers presented by the speakers will later be made available to you in the form of a publication. So those of you who are interested in learning more about such publications, please get in touch with the secretariat of the Fund later.

Now as regard to the proceedings of this Forum, in a first part we are going to receive country reports on the current situation of violence against women and each expert is asked to give a presentation in 5 to 10 minutes each regarding the current situation of violence against women. Then after a coffee-break, we are going to have a second part and three panelists will come to the stage to discuss the efforts by the United Nations, international community, in this regard. So I would like to introduce to you the first speaker from Pakistan, Ms. Hillali Musarrat. At the backside of the brochure, you can find her profile. She is an attorney-at-law in Pakistan.

Women's Rights and Religion, by Musarrat Hillali (Pakistan)

The Constitution of Pakistan, as have a mentioning my people, gives full guarantee of equality of male and female in Pakistan and the Constitution was a friend under the principles laid down by the holly book, that is Koran and our Pakistani Constitution. And Article 227 of the Constitution says that all the existing laws shall be brought into conformity with injunction of Islam and Sonar - Sonar is sin of prophet. In this part of effort to as injunction of Islam nor law shall be enacted which is repugnant to such injunctions.

Again, Article 25 of the Constitution says that there will be no discrimination on the basis of sex alone. The law guarantees the rights for women and protection of women, as well as Constitution. But in practice everything is going all together on a different sight. The birth of a daughter is a bad, unfortunate event in Pakistan. She is considered as the second class citizen in the country. A daughter is discriminated by the parents themselves in the field of education, inheritance, and marriage and all other aspects. Poverty, illiteracy, and traditions have bound people-dom and have nailed them narrow minded as regard the

women's right, which is a very unfortunate event for a Moslem country.

A simple survey would reveal that 82 per cent of rural women and 52 per cent of urban women are fearing domestic violence in the shape of beating by husbands. The husband considers it as right to beat his wife and he would openly say it and would be feeling very proud of that. Family violence is not a crime in Pakistan. So, if one goes to a police station and reports the matter to the police, then they will not interfere and would turn them out of the police station, saying that this is not a crime, it is a family affair, so you deal it, the way you can do it.

A typical Pakistani woman grows up in a very traditional atmosphere and fairly sheltered environment. Most of the decisions affecting her life are made by the man and she is married at the age of 14 or 15 years. There is a law, restriction of child marriage act in 1939, and it restricts the marriage of a child and there is a punishment for that too. But in practice, it is not applicable and it has never been applied to any family where a child has been given into marriage. She would have seven kids normally at least, and her life expectancy is lower to that of man because of health condition she is having. She has no say on her marriage, and if she wants to exercise her right as the religion has granted her to choose a man of her own choice, then all the patriarchal coil forces joins hands together and would suppress the voice of that girl who wants to marry.

I was referring to one of the case, Samia Sarwar and Razma Abuz, two girls, this incident took place in one week. There might be so many other cases, but these are the two cases which we were informed that these things were happened. These were two girls and they were killed by their elders for wanting to exercising the right to marry the man of her own choice. In the first case, Samia Sarwar wanted to divorce from her husband, which the parents did not allow her and insisted that she was shot dead. She was a low school student and educated, and her father is an educated man and is the President of a Chamber of Commerce. Ironically, the press and the police supported him instead of arresting him. That started certain human rights activists not to pose their nose into this affair because it has become a political affair. So you do not have to interfere these affairs.

The religion has guaranteed women's right, as prophet Mohamed, prophet of Moslems said. He has clearly said that you should educate your children even if you are to send them to China. China was far away from Saudi Arabia where the prophet used to live. But in our country which is a traditional country and which is a province from where I come. That is on the border line of Afghanistan and is a complete tribal society where women have no voice. Women's education is out of fashion in that area. If you educate your daughters, then you will be considered as a very broad-minded man who has due respect in the society. The broad-minded in a sense is that you have no value.

Then we have, wherever there is a political war as I mentioned earlier, very traditional society. Whenever there is a political war between the Government and the opposition, the prices are normally paid by the women as in the last Marshall Law regime, General Haq's.

He imposed the Marshall Law and then he came out with certain laws which were absolutely against the principles of Islam. One of them is the "Hood Ordinance" and it is then "Qisa and Diyat Ordinance", and then we have Evidence Act. Under the Evidence Act, a testimony of a woman has been reduced to that for man, half for a man. Like the evidence for two female is equal to one male, which is not in the religion. And then it says that in "Abduld Ordinance," if a woman is raped, then she is to produce four male witnesses to support her case. And in case she failed to produce four male witnesses, then she will be booked under the "Abduld Ordinance" and she will be punished severely. There is Koran - the Koran has directed the man: if you charge honourable female for adultery for committing adultery, then you are required to produce four male witnesses to support your case. And in case you fail to produce four male witnesses for accusing a woman of committing adultery, then you will be punished with stripes. Here is in the law. Everything has been changed, and the law has been made for protection of male, instead of protection of female, and it has been mentioned in the law that it is for the female to produce four male witnesses that she was raped. The sole testimony under the law is not acceptable.

Under the "Qisa and Diyat Ordinance," if a person is killed, then there is an apply of tradition "Swara." "Swara" is given to female as compensation or gift to the deceased family by the accused family and that women who is given it as compensation will not be allowed to see her parents in her life time. But all these are, of course, very important. There are so many important issues which, because of short of time, I may not be able to explain. Only these issues should be taken seriously through strategy which involves women in the forefront of resistance to the Gregorian Laws, as well as those involved with women welfare and in non-governmental sector. The states and the society should give you recognition to the principle that women are also entitled to these rights on a equal basis and she should have the access to the decision-making sectors and family affairs.

Ms. Hayashi, Facilitator

I am sorry for this short time allocated to you.



Dowry-Domestic Violence in India, by Rani Jethmalani (India)

I would like to thank the Asian Women's Fund's initiative for inviting us here to have a dialog about domestic violence that is pervasive in all our countries. I also would like to congratulate the Asian Women's Fund for its rare courage and at extending its hands of friendship to try and redress the situation that rules this country because of what happened to the comfort women. I think this requires a great act of compassion and courage and I think it is women who will have to build bridges towards peace.

The previous speaker, Ms. Musarrat Hillali of Pakistan, spoke about military ordinances and military laws that have impinged on the rise of women in the domestic and private sphere. Recently her country and my country were in a state of undeclared war but at least as women we can sit here today and dialog about peace and I think more and more it will be women who will have to take a lead to start talking in terms of peace instead of war.

I briefly have to deal with what is considered and known as dowry which is very, very permissious phenomena in my country and deals really with law inferior status of women who are being oppressed because they are considered to be burdens and economic burdens on society and therefore it is considered that at the time of marriage a compensatory payment must be made to the groom's family by the bride's family to the bride groom's family. And these payments are made as compensatory payment to compensate for the uneconomic burden of the woman and this has caused a great deal of payment suffering and continues to terrorize women because throughout their marriage life, women are constantly being asked to give more and more payment the families are being asked to give more and more payments from refrigerator to telephone to scooters to cars which they cannot afford at all. The parents cannot afford and this consumer culture has now made it much more aggressive and permissious and women are exposed to this constant insecurity within the most intimate of family relations the marriage bond and within that particular bond we are witnessing the worst form of violence which has been prohibited by law.

As Mussarrat pointed out that in Pakistan you have constitution which gives rights to women, my country which is secular constitution gives women full rights to equality under the constitution both in Article 14 and Article 21 and in fact we have law which provides for affirmative action which says you can make laws in favour of women in order to see the women are brought into the national mainstream and there is great equality and inequality that is then the society can be bridged at an accelerated pace. But despite all these laws, the old traditions and social practices and cultural practices against women still continue and in which women are caught in a patriarch society to be inferior people and because of that compensation has to be paid.

Law has been inactive in 1961 which has prohibited dowry but problem with the law is that although the law says the husband's family owes husband himself should not demand property from women and gift and things from women, the law does not exclude some gifts being given at the time of marriage. Because no marriage can take place without warm

gesture of giving gifts to the bride at the time of marriage or to the bride groom and his family at the time of marriage. But how do you create a law which can try and make a difference between these two situation is very difficult when it comes to actually punishing people and to try and redress the wrong that has done to the woman.

Because normally what the husband says in court or what the bride groom's in-laws, mother-in-law, and father-in-law become to the court and say that this was a gift that was given to us, it was not a forced extortionately demand made by caution or pressure or by threats, we never did that, you gave it to us. So, to establish evidence with regard to whether dowry is really dowry as prohibited by the Dowry Prohibition Act of 1961 or not is a very, very difficult factor and that is why that so many prickles and lots of women gone bother to go to courts because they know that it is almost futile since that no evidence are really dealt with this particular situation.

But the problem of dowry is led to a lot of aggravated domestic violence and problem has manifested itself now with what is known as dowry-debts and bride-burning. Within the first seven years of marriage, women are known to have been burnt for dowry and it is not just a accident that a stove which is the methods by which women are cooking in India that has burst is normally what a husband's family says whenever police come to make an investigation. Normally it is that kerosene oil is thrown at woman and woman is ignited and burnt for dowry. This is a very, very painful method but there is a pattern about it and since we do handle cases we know that normal pain is that women are being burnt for dowry and that too as law has shown that within first seven years of marriage most of these dowry-gets take place. So the law has therefore once again had to deal with this particular situation and we have enacted now two new laws in 1983 and 1986 and we have made dowry-debts an offense under an Indian Penal Court. It is not merely a murder but it is a dowry-get and rules of evidence have been changed.

The burden of proof is now on the husband to show that he had not asked a dowry and had not resorted to cruelty and had not burnt the women. So we are trying to change the laws from our own experiences because our experiences in the private domain it is very difficult to get evidence about these atrocities. That is why we are grateful that at the international level the 1993 conference at Vienna has recognized most of violence against women is in their homes, in their families and in the most secret bond of the marriage die. That is why we are try now with through the Vienna Declaration of 1993 and a Rapportuer reports, as well as the Declaration on the Elimination of Violence against Women that governments will be responsible if they do not take actions in own countries to supervise and monitor the violations of women's human rights, because you cannot say we cannot do anything about it because if the husband are resorting to this form of violence and families themselves are resorting to this form of violence the state must be held responsible and accountable for not taking actions to implement such laws which will see that women are not omitted to terrorize and tortured within their own homes, because the dowry is nothing else but cruel torture which is prohibited and violation of dignity and rights of women.

So we are trying to build up a certain method by which we can go to the courts and women's coalition are coming together now in the courts through what is known as public interested investigation or social action investigation, whereas any women like I would run a NGO can come to the courts and tell the supreme court that here is a violation of human rights of women that torture and cruelty and the constitution prohibits any action against liberty of people and therefore something should be done. In that case, to supervise what is happening to women. Even in the field of criminal law, women's organizations and NGOs are coming to court and asking filing private comprehensive report on behalf of a victimized women asking the courts for redress and we will have some significant successes within the court. And I think that with collaborations of at national and international level we can move on to make world safer place for women.



Military and Violence against Women, by Nursyahbani Katjasungkana (Indonesia)

Firstly, I would like to thank the Asian Women's Fund and all of you for giving me this opportunity by sharing experience and information with you. I hope that we have a better understanding on the issue of violence against women in our region and strengthening our network in eliminating violence against women.

In Indonesian context, violence against women only can be understood through the history of military enforcement in Indonesia. Politics since 65 when General Suhart took power from Sukarno. Control and command are the key words used to consolidate political power. Among others by unifying also socio-political group that are potential to create social change. The Government's control of women was, among others, enforced by producing it was in 74. The state-motherhood policy that was reflected in our marriage law, state-guideline, family planning policy and women's organization policy. In short, primarily role of women in society is to be a wife and mother. This policy directly or indirectly is creating an unbalanced power between man and woman, and of course, since the Government controls all aspects of life also creating unbalanced power between State and society. And ensuring storage about gender oppression and injustices in all its forms including violence against women which was perpetrated by individual, community or by State.

Since the legal systems mostly are not responsive to the interest of women, it is difficult for woman to get justice. Most legal enforcers are men and also most our laws inheritance from our Dutch colonization. In the last few months there are some changing in political scene of Indonesia. We have much more freedom than earlier, including for our sisters or brothers in East Timor. As you may know that the President Habibie accepted all the reserves of the referendum there. But unfortunately, again the military still controls everything in East Timor. And because of internal arm conflict and also ethnic conflict in my country, and continuing political terrorism of state sponsored the island, the number of victims of violence against women is increasing. The majority of internally displaced people especially are Aceh and East Timor are women and children. They are experiencing physical, or mental or sexual violence.

Besides of creating how problem or human rights violations, internal arm conflict and other conflicts between different groups save the economic burden of carrying of the family different further onto women. Many women become widows, single household and find themselves carrying for their children are relatives who have been killed. In addition whose families moved to areas in the country to be safer where the move in the relatives already living there. This also increases the number of people to feed but usually without increasing the income. In East Timor's case, the burden moved to West Timor is people which also lack of resources. The local government closed most of the schools because their buildings were to be used by refugees. On behalf of the Indonesian people in general and Indonesian women in particular, I call you for your attention on the issue mentioned above. I think we need much more international pressure in helping democratization in Indonesia, especially from you or Japanese. Or we call you Indonesian people call you, Soda Le Tuor,

our elder sisters and brothers. Please give your heart to improve Indonesia and East Timor situation.

Ms. Hayashi, Facilitator

Thank you very much. As for the East Timor, information we have here a lot in the top news in the Japanese media. Well, culturally and historically we have a close relationship with Indonesia. So we would keep your words deeply in mind and we hope that we have to think what we can do as Japanese people to improve the situation. Now we have a fourth speaker from Sri Lanka.



Women's Human Rights Under Armed Conflicts, by Saroja Sivachandran (Sri Lanka)

I just want to express to you the situation under which we may not be living in Sri Lanka, not in Sri Lanka the war area in just now. The Sri Lanka's armed conflict is now in its 15th year and under this situation we may not live in affected by the war. The war started between the Sri Lanka Government and LTT, the militants group of the Tamil region. The Jaffna region is mostly populated by the Sri Lankan Tamils. They speak Tamil language and the conflict started by introducing the Singular only act of 1956 by Sri Lankan Government and it is the main cause for the conflict and there are other causes also but the conflict started because of this initiated. The Sri Lankan Government has tried so many times to bring the LTT to the negotiation table and negotiation has failed so many times. And now the Government has decided to intensify the war and it started and from 1995 the war started. Under that situation women who live there are badly affected.

And in 1995 under the intensified war the LTT had taken all the population of Jaffna to the other regions. Its mass exodus took place in 1995 and after that in 1996 the Government's military conquered Jaffna and after conquering Jaffna they brought all us back to Jaffna region. And to see the situation all destruction, buildings, strides, and whole infrastructures destroyed and women, not only the women though, the entire population they did not have anything at all. So, houses were broken and the entire population they did not have any place to live and economically they were very bad. Their agricultural lands were planted with landmines and all the infrastructures were destroyed. So, now the situation under this situation although the Government has conquered Jaffna the entire economic situation, there is to rebuild under this situation.

So the women now had a very difficult time in this situation. They have to revive their economy and they did not have anything to start with. There are no organizations to help them. The Government of Sri Lanka has imposed economic embargo and we did not have food; we did not have medicine even electricity without electricity we were living about for five to six years; we did not have telephone facilities; and we were living almost in the dark. So after conquering the Jaffna region, the situation is slightly improving and we are having electricity pockets, a pocket development. And there are still we have to do a lot for Jaffna region and women there are badly affected because a half of the population went to Bangi region that with militants they have gone. And a half of the population came back to Jaffna and the other half of the population went as asylum seekers to foreign countries, i.e., India and various other places. The whole family structure has been destroyed and women now living under widows, fatherless children, orphans and single women and we do not have many boys to get marry to our young girls. That is another problem for us and even isolated houses they may not be so scare to live in because of under the presence of the military. These are the problems we face at moment and the Sri Lanka Government they say they have conquered Jaffna and we are providing everything and almost security but we failed because we do not have security in that region.

Because there are human rights violations, rapes occur at checkpoints and they have

established bars we cannot cross closed-bars and there are checkpoints we have to get down at the checkpoints and we have to produce our identity cards and so many other things to prove that we are not engaged with militants. So at any moment if they are suspicious they can take us to the camp. So, there is Human Rights Commission established and things are slightly improving and the Government's war almost stopped,

But a silent war is going on. There are incidents of attacks and killings and murders take place, and I do think under this condition the women are very badly affected and we cannot live peacefully unless we restore peace, full peace, in Jaffna region. So women's organizations, there are a few women's organizations, I think our organization is trying to build up peace process, inviting so many other organizations. But we are handicapped with so many other factors because we do not have links with other organizations, because we are isolated and our funds are very limited. We have to convince both parties, at the Government and military offices as well as LTD. So we do not know which way we are going and sometime they may think that we are wrong and we may be get killed. So this is the situation and political participation is also very poor in our region. So we must empower the women to get themselves participated in the politics and then only the peace process can be initiated by women's organizations in Jaffna region. Thank you.

Ms. Hayashi, Facilitator

The armed conflicts are not accomplish just between nations and nations we also see conflicts happening within one nation. So they have just heard about the situation in Sri Lanka and what other roles the women in order to establish the peace are also the subjects that they have discussed since yesterday and we would like make a report of this in a documented form.



Women and Genocide in Rwanda, by Annie Bunting (Canada)

I want to reiterate the spirit of other speakers and thank the Asian Women's Fund for allowing me to participate in very rich two days and in particular I also want to note that I do not come from the land of armed conflicts and it is because of that privileges to a large extent that I am here.

I had a doctoral training in law and I have been able to do a number of human rights missions and research in area. So I stand at a different place. I want that sort of to feel where I stand. Let it be different. I am humbled in other words by this opportunity. I also want to take you on a slightly different journey. I want to take you from this room in Kyoto and your neighbours on ill side of view having background of the sisters with whom we have just shared something and I want to go to Rwanda and then want to go to Canada, my home, and return here to Kyoto.

The work I want to talk to you about concerns genocide in 1994 in Rwanda. Many of you will have read about this and will have seen the account and may have in your own work dealt with the issue of genocide in Rwanda. During the genocide there sexual violence, rapes, sexual slavery, forced prostitution, sexual mutilation was rampant. As in so many other armed conflicts that we have heard about, whether there be internal or international, women or the victims are very serious sexual violence. Rwandan women are also very strong as we know around the world and organized through their local non-governmental organizations after the genocide to try and survive and really is a matter of survival after the genocide. One anecdote which is interesting is that there are certain traditions about building a hatched roof in Rwanda. There is not to be done by women. But after the genocide they want man to do this. So the traditions had to change and women's roles had to change. I think that is very symbolic that we were talking about over last two days. Not only are women changing their gender roles within society during armed conflict out of necessity but also using a lot of imagination and creativity after armed conflict.

There is an organization in Rwanda that is an umbrella group called POFEM and they are actually one UNICEF awarded for peace in 1966. And around the same time, the International Centre for Human Rights in Democratic Development which is based in Montreal in Canada was also concerned about the treatment of gender crimes by the International Crime Tribunal that was set up for Rwanda. So local women's organizations in Rwanda can, together with this International Centre based in Canada, try and organize a larger coalition to address gender crimes at the International Tribunal. And this is a part of the story that I wanted to tell you about. Because this is an example of international coalition-building across oceans in fact but indeed cross cultures. And there were key organizations involved, International Centre for Human Rights in Democratic Development, mean thing one of them but also to American women's rights organizations, the Center on Constitutional Rights, as well as International Women's Rights Law Clinic. In Toronto we had a small organization. We gave it a name which is not terribly creative but it is called Working Group on Endangering in Rwanda Tribunal, as well as Kenyan Chapter of

International Federation of Women Lawyers.

All these organizations came together to try and address the needs of women survivors of genocide in Rwanda and try and jump up and down as we have been talking about over the last two days to make sure that the International Tribunal adequately address the need of the survivors and deal with this part of the history of genocide. Such that experience of women, the rape that they experienced, for example, was not forgotten when I was collective memory being created about the genocide in Rwanda.

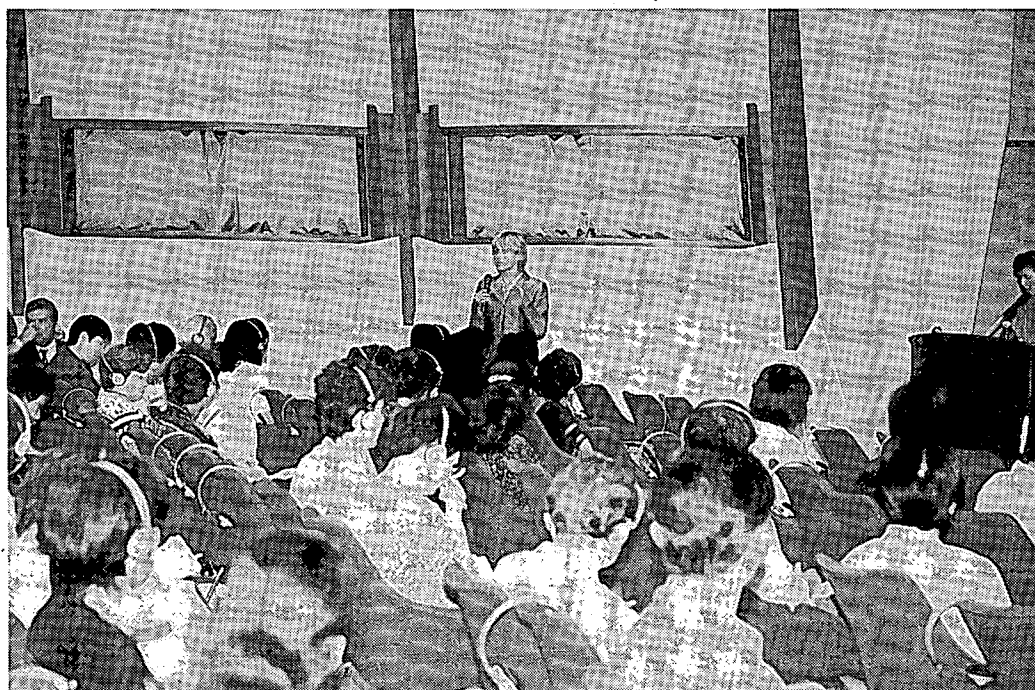
One of the people who came to be tried at the International Tribunal is a man by the name of Akeyasu. Now he was the head of prefect the Taba commune. And at the time of his indictment by the International Tribunal, there were no charges for sexual violence. When it became a parent by the courageous testimony of a woman to the Tribunal, as well as by other survivors in the community, they did not know in fact he knew about sexual violence in the commune and had encouraged it. And I would not detail it because I frankly think it too horrific to detail. But it was very clear as well that sexual violence was tied with racism. It is because Tussi women are Tussi women that it was also a combination of their ethnicity and their gender that match in this terrible way. So AMCAS brief was drafted and sent to the International Tribunal and AMCAS brief likely initiative we heard from India is a public interest brief thing brought to the International Court. In its attempt not because we were defending Akeyasu or representing the International Tribunal but rather we have different voice to bring into this debate. Forty-five organizations signed that AMCAS brief, arguing that rape had to be charged as a form of genocide, and that rape in particular in Akeyasu's case had to be an indictment.

Now we would not take a credit for the indictment thing changed, but I will say that the indictment was a mandate and the charges of sexual violence were brought against Akeyasu positive and was that story is that Akeyasu was found guilty for sexual violence and we pushed, I think, with that we see a push in that decision of the international human rights law in the area. Because the rape was found to be in some circumstances a form of genocide. This is a very important development in this area. In fact, the rape is a part of process of trying to destroy an ethnic group, that we use women in this process of trying to destroy the spirit of the community.

Now the final theme of our days has been reconciliation and I think something I learned from my colleague at the United Nations High Commissioner for Refugees is that much of the refugee movement back into Rwanda was not accompanied by real reconciliation. I think this is something that we have to take out of the story in Rwanda as well, which is that we had a genocide in 1994. Survivors are now trying to rebuild their lives, rebuild their communities and their country. However, without true reconciliation, we do not have the underline causes remain. Women's lives remain challenged by that fiber.

So we have to continue to push the peace-building and reconciliation if we hope that it will not be a repeat. And you will all know that violence in Rwanda is continuing and women

continue to be at that violence. So, this, I hope, has taken you maybe a little bit away from Kyoto through Rwanda to Canada and back. I thank you for bringing me here.



Political Rights and Women's Rights, by Duong Thi Thanh Mai (Vietnam)

My topic is political rise of women in Vietnam and equal rights of Vietnamese women. As you know, the Vietnamese are the people who suffered from great losses in life and property during the northern-southern war.

Nowadays, our people is under transition of process from central management economy to market economy. So, everyone in Vietnam is facing lots of difficulties, and among them, women and children are most vulnerable group. So our Government and people try their best to help assist women to fulfill their rights. According to the Vietnamese Constitution, men and women have equal rights before the law. But, as you know, in the war time all men went away to the fight. So their own jobs in the farms, in the factories, as well as in the families, were put in on the shoulders of women. So women had less and less chances to participate in the political life of the country. Many, many girls had to give up learning at schools, universities.

So in the years right after the war the women in Vietnam had less chances to be members of the National Assembly, as well as the People's Council at different levels. Under our Constitution, our citizen who are 18 years old had right to vote and who are 21 years old had a right to be a votee as a member of National Assembly and of a different local council. But because of the consequences of the war women were facing the difficulties to be fulfilling their rights. So our Government and women's union of Vietnam adopted many specific measures to have women to have chances to participate in the political life of our country. For example, Vietnamese Women Union with National Committee for Women's Advancement launched a big campaign to become to be women candidates to the National Assembly. For example, for the tenth National Assembly, for addition to the tenth National Assembly, more than 150 National Assembly candidates or ten by the Government or the Women's Union.

So, as a result of this campaign, we have now more than 118 women as members of the National Assembly. It now makes Vietnam as the first ASEAN country and the second in the Asia and the Pacific Region in terms of female membership of the National Assembly. In this year or in these elections of the People's Council's year, but at different levels in Vietnam, provincial district and commune and we now try to have humans from different levels to be members of the People's Council. In economic life, in our Vietnamese Constitution, women have equal rights as men, such as, land-use right, right to sign civil and economic business contracts. But as it is ironic that more rights hit women, some of them became poorer. Why? Because, they won't be educated nor trained how to exercise the rights. So our Government and Women's Union took many specific measures to have women use new rights in the market economy. For example, we have established a bank for poor women and established a credit group among women, and established national programme for the poor and national fund for investment.

As a reason of these measures, incidence of have and poverty was reduced from 23.3 per cent in 1994 to 70.7 per cent in 1998. And investment in the Looking Asia increased from 8 in 1994 to 15.8 per cent in 1998 and, among them, female figure is 5.5. I think they are some figures for

you to know the situation of Vietnamese women today. I think that we are now facing many many difficulties but the wisdom that we are getting from our today's meeting in Kyoto where we are discussing about women's participation in peace-building is the first step in Vietnam to build the peace after the long-term war in Vietnam.

Ms. Hayashi, Facilitator

Thank you very much. The participation of women in political stage was the major theme. I think many Japanese women are having high education but still the participation in political scenes are not so high in case of Japan. And we have to think what are the causes and also when we think about improvement of the situation and also that peace-building we also have to think how we can make more participation by women and I think this is a good opportunity to think again about this possibility with the experts from Asia. Now, we have the last speaker for the first half of the today's session. We would like to ask Ms. Meng Ho Leang from Cambodia to make her presentation.



Refugees and Violence Against Women in Cambodia, Meng Ho Leang (Cambodia)

I feel very proud to be associated with this conference. The theme of this conference is "never repeat violence in the future". This is a great hope for all of our countries, specially for Cambodia. So, again I feel very honour to be closely associated to it. All of us live in a society where the culture of violence rules and where women suffers the most.

I comment the organizers of this conference for the initiative. The Cambodian Government has pledged itself to the Platform for Action, and the Stockholm Declaration, both of which followed within the conference. The Cambodian Government has therefore agreed to take all measures to ensure the rights of women, their freedom from sexual exploitation and freedom from violence of any form. My organization, the Cambodian Institute of Human Rights, and many NGOs in Cambodia, especially the women's groups, support every action taking to prevent violence, whether initiation is armed conflict or endanger after the armed conflict. We consider violence against women as a grave violation of women's rights and women's dignity.

The conflict is over now in Cambodia. We enjoy peace, but this peace is very fragile and we have to make all efforts to sustain this peace. More inter-country dictates of conflict have left its mark in the mind of our people. Today's fractural society of Cambodia has emerged products of war and tyranny with the complete breakdown of social order, the loss of so many educated people, including Buddhist monks, our spiritual leaders, distractions of pagodas, schools, the entire fabric of our decent society. Interstate and internal conflict during more than two decades business were mostly cleared up and carried out by women and girls. Groups rapes were common violence. Even Buddhist monks were victims. Girls were forced into arrange religions and even arrange marriage. Educated girls were forced to marry to peasant boys. They never met each other. Women and girls who escaped to sit refugee in neighboring countries where rape by Vietnamese or government soldiers during the exodus. And in refugees' camps, apart from day-to-day hardship of living in primitive conditions for dears, women and girls continued to suffer. Here, I would like to ask this conference to make fervently the United Nations authority and the international community: When people living in a large refugee camp, please make sure that there is proper full external, international supervision in day time and in night time. Usually resources are insufficient for this. So what happen? The host country's militaries are used for security combined with representative of the people in the camp. All I can say to you are these people were the perpetrators of further inhuman acts on girls in the camp in which I worked for the United Nations. Unscrupulous people with power exploit the vulnerable. We must stop this happening in the cause of war in Sierra Leon or wherever refugees emerge. Families in camps took all kinds of precautions to prevent their abuses for their daughters. Some adolescent girls live for years in a secret hole, deep below back inside the shelters. Others were married to a few men available, just to give them that small degree of protection. And here are again there were more forced marriages. Sometimes, mother or older daughters sacrifice themselves to protect young one. Groups of young girls who went beyond the barbwires to search for firewood were victims of gang rape.

Other women were submitted atrocity and humiliation. All of this were under protection of the United Nations and the international community represented by NGOs. There are hopeless to stop it. In camp, in the resistance group, my sisters married or girls were at the mercy of burrowed or powerful military or civil chiefs.

Now I would like to address the present situation of violence in Cambodia after the armed conflict. You know that two out of this curfew girls became women and mothers and new generations grew up in this frightening world. It was war to aware only one thing for mothers: survival. The strong took all the good in the drive for starvation. The weak did whatever was good: just to survive. Serve dignity, serve respect was sacrificed by my sisters. It did not seem no matter, women were the weakness, the victims at the bottom of the file. Their sense of survival, the value they place on themselves is low. This is the key issue that must be addressed.

Very many of those forced marriage did not last. Many women to this day have remained single. Bringing up children, children who are stigmatized by the way they were brought into this world, were hooked not just in set pieces of battles but in every aspect of the daily living where adversary sets to establish supremacy over the others. Everyone becomes and everything In Cambodia polarized society. They become conditioned to it. If they do not get harden to it, it affects them profoundly. And so many are traumatized. We now see a new phenomenon in Cambodia or the second generation trauma. The children of the far generation's victims generating attitudes and behaviors from parents based on fear indeed of whole sets of negative social norms that create in them similar levels of personnel inadequacy. Cambodia has developed a culture of violence and here again the most vulnerable groups are women and children. I recall here the 1993 United Nations Declaration on the Elimination of Violence against Women. Violence against women is defined as any physical, sexual, or emotional harm, denying to basic freedom and rights to women or economic dominance over women.

The following describes the most prevalence harm affecting Cambodian women and children, in particular, girls. Thousands of women and girls are being trafficked from rural area, neighbouring country, to the cities for prostitution. We estimate that over 14,000 women and girls are working as sex workers in brothels, bath massage clubs, private accommodation, and hotels in Phnom Penh, the capital alone. A recent survey shows that there are roughly 50,000 to 55,000 prostitutes in Cambodia, and 35 per cent are under the age of 18. The alarming statistics of the HIV/AIDS epidemic in Cambodia is significant and affect a large number of women and children. The National Committee against HIV/AIDS has estimated that around 180,000 are HIV positive in 1999. And 6,689 persons died of AIDS in 1998 and these were only the cases that were reported. Contracting HIV/AIDS is largely attributed to men visiting prostitutes and then taking the infection back homes. However, culturally influenced brief attributes contamination from women prostitutes not from men who, therefore I do not feel, have education message. I would also state the case of thousands of other Cambodian women and girls who were trafficked to Thailand, Malaysia, and Taiwan to be forced into prostitution, bigger construction workers, or servants.

Before I left Cambodia we had 300 children who were sent back to Cambodia by Thai Government as illegal immigrants. One crucial issue I would like to raise here is the culture of violence that Cambodia developed during more than two decades of the conflict, conduct to actual domestic violence. Domestic violence is defined as any act or acts of any family members to physically, sexually and emotionally harm the other family members. It takes various forms, such as polygamy, carouse, battery, confinement, treats, curse, incest, pulling, burning, forced abortion, marital rape, shooting and killing. We notice that one of six women in Cambodia are subjected to domestic violence. Domestic violence is regarded as a private family problem. People outside the family, including the authorities, have no right. It is believed to intervene. Nowadays, the Cambodian community is beginning to perceive domestic violence as a significant problem. However, a few independent surveys perceive it as illegal even if they agree that any violent action or conduct, including domestic violence, is franked and an acceptable behavior in the society. The most tragic situation is that the future generation will continue this violence.

I also would like to raise the issue of young women workers in Cambodia who are also victims of bad treatment from the factory owners. I think conference like this is better. The work of commission on status of human rights is so important. We have to lobby the entire international community and all national governments to equality of the sex to be real and to be part of all cooperative, like bilateral donation, multilateral donation, the UN itself and inter-country initiative like Asia, etc. Many donors have sections in proposal guidelines that ask for us assessment of impact on women. So, the time is over now and I hope that I can catch something due today. We hope that in the future the violence will not happen again for our children and for our future generations.

Ms. Hayashi, Facilitator

Thank you very much for the presentation. In Japan, regarding the settlement after the armed conflict in Cambodia, the dispatch of PKO was discussed - whether it was constitutional or not constitutional. But having listened to the presentation, violation of human rights of children and women, especially human trade, embodied against the vulnerable including women has been the main focus of the activities carried out by women in Cambodia. Regarding the issues and the situations in Cambodia, we, the Fund, will continue to take us to attention to, and we hope we will be able to do something to the system. The speakers are very good at time management and this is a very good opportunity for us to act to entertain some of questions from floor.

QUESTIONS AND ANSWERS

Question to Prof. Annie Bunting

I was very impressed with your remarks that rape was admitted as a formal genocide in

your activities and I like to elaborate a bit more on this point and could you explain us a bit more about the background and also process of its recognition. And I also would like to ask whether it is legally recognized as such.

Answer by Prof. Bunting

Thank you. There is a genocide convention and there are also international humanitarian laws that apply during times of armed conflict. And historically sexual violence against women has not been adequately addressed to in the international humanitarian laws. So, what we are always fighting against or coming up against is the problem of the international humanitarian laws only seen violence against women, and sexual violence as being a violation of honour. And so instead of being a violation of her personal dignity, in international humanitarian laws, rape has been seen as a violation of honour which really translates to community honour, not personal dignity. So, that is a little bit of the background. Then we have a genocide convention which is another prone or another element of international laws governing armed conflict. And in the genocide convention, also was not adequately addressed. But ad hoc tribunals for both former Yugoslavia and Rwanda put in there the Statutes, that creates their jurisdiction, sexual violence and that you can be charged with sexual violence. This was the new development. So ad hoc international tribunals for the former Yugoslavia and Rwanda both have rape and other forms of sexual violence in their Statutes. So this was the first step forward and Akiyasu, the man, I spoke about, was the first person to be found guilty in that way. And the development was to be able to see a sexual violence as a form of genocide was particularly important and people, women, had advocated to say it was how they experienced it that they were being told you were Tucci women and that was the hate propaganda that went along with and let up to their experienced rape during the genocide. That informed this construction of importance of seeing rape as a form of genocide. I hope that answers some of your question.

Question to the Asian Women's Fund

Ms. Hayashi, Facilitator

Actually, the next question was geared to the activities, the use of the Fund by the Asian Women's Fund, and I would like to turn to Hashimoto of the Women's Fund, who is a Professor at Jumonji Women's College, and she teaches women's studies and she was the chairperson of the 1998 Advisory Committee of the Asian Women's Fund.

Prof. Hiroko Hashimoto

Our activities of the AWF come in twofold: One is the atonement projects to former "comfort women", and the other activity is to address contemporary issues of women faces such as violence and human rights violations of women. For atonement project, we gather funds raised from the Japanese general public. The atonement money together with the letter of apology by the Japanese Prime Minister will send to former "comfort women". And there is also the medical care services for former "comfort Women" are being conducted by

Japanese Government allocated money. With regard to the second activity is like this Kyoto conference directly addressed to current women's human rights issues. Since 1996, we have continued to organize international conferences in different issues. In the first year, we handled women's human rights in general. And for two consecutive years later on, we addressed the trafficking in women and children. In 1997 it was held in Manila and last year the consultation was held in Bangkok in cooperation with ESCAP. We issued a Bangkok Declaration, at the end of the conference. And an extension of that outstanding series of the national experts' study group, we are now having this Forum today on the issue of violence against women.

Besides organizing international conferences, there is a programme for NGO assistance. We are providing assistance to NGOs. There are actually rules to follow because the money to be spent for assisting NGOs is to be disbursed from the Ministry of Finance in Japan, and the money is usually given to domestic NGOs in Japan. But Japanese NGOs certainly work in collaboration with the other NGOs and not the case the money can be sent for their activities which are to be done in cooperation but Japanese NGOs and Asian NGOs. Maybe you have not gotten - do you have the list of activities? I think you can see the rest of the NGOs we have assisted. I can give you all the names of NGOs but we have provided assistance money to many NGOs. Of course, there are NGOs who are against our Fund and they are criticizing our use of money for assisting NGOs in this manner. But this activity for assisting NGOs was not really part of our original objective to provide 'comfort women.' But actually, the most important background for our Fund is to address the current women's issue not to repeat the mistakes such as for 'comfort women.' Did I answer your question?

Question

Do they have any fund for using for their activities in their own countries?

Answer:

No. In order to make it happen to fund for activities outside of Japan, we have to have counter-part NGOs in those countries. So, in your country if there is a domestic NGO who acts as a partner to Japanese NGO working under the umbrella of the Fund, there would be a possibility for our funds to be allocated for such activities. But, actually for the use of the funds or for allocation of funds, there is a screening process conducted at our committee. So, after going through such a screening process, the funds will then be allocated to activities in those countries. Did it answer your question?

Concerning the publications issued from Asian Women's Fund, we have put out copies of publications available. But, they are very popular and we are running out of the stock. If you try to purchase a copy, please let us know later. We would like to mail the publication to you. Then we would like to move on to the second part of the Forum, but if you really want to ask a question, please raise your hand. Ok, we see no hands raised. We like to start the second part.

Open Forum II

Reports from International Community and United Nations

Ms. Yoko Hayashi, Facilitator

Thank you very much for taking part for this Open Forum on Violence against Women. We would like to start the second part of the Forum about the efforts being made by the international community, the United Nations, in order to deal with the issue of violence against women under military conflicts. All of the speakers are experts, as a refutation after listening to their presentation in the first section, if you want to do, please make a comment to country reports. The first panelist is Dr. Pace. He is the Head of the Research and Right to Development Branch in the Office of the UN High Commissioner for Human Rights in Geneva. He used to be as a Councilor, so that for the UN and UNHCR in order to protect the right of refugees, women and children. Over the past two days, Dr. Pace served as the wonderful chairperson and he was very instrumental in activating our discussions. Dr. Pace, so that, would you give us the report about the efforts made by the international community in order to deal with an issue of the violence against women. I am sorry to say but would you limit your statement to 10 to 15 minutes?

Dr. John Pace

**Chief, Research and Right to Development Branch
Office of the UN High Commission for Human Rights, Geneva**

Thank you very much indeed. It is indeed a pleasure to be here. I have had a good fortune of working with Japanese human rights institutions in the past, and this particular meeting has been yet another excellent experience in the process with which I am involved, in my profession. Very briefly, since the Moderator has given me only 25 minutes (laughing of the audience), I shall be brief. Very briefly, I shall attempt to give you overview, a kind of backdrop of the international action in regard to human rights and, in that context, in regard to specific questions of women's human rights and, in particular, violence against women.

My presentation will be for sure of more general nature since my colleagues and rests, Shahrzad, will address clearly humanitarian law and practice from the protection of refugee angle and Professor Ando is, of course, as you very well know, an eminent member of the fracture human rights body in the UN system, which is the Human Rights Committee that has the job of monitoring the implementation of the International Covenant on the Civil and Political Rights.

My job is a part of the Secretariat, whose task is to enable governments individually to come together and, by coming together, to form international human rights political will and

international human rights political platform. And as you can well imagine, if you take each individual government by itself singly, he will realize that that is simply impossible. But if you have to take them collectively he will realize, as the history has shown, that it is indeed possible to identify international human rights political will. And it is 51 years since the United Nations has been involved in human rights. We have seen emerging such an international political will. And in that context, on the basis of that political platform, it has been possible over times to formulate standards and to formulate methods for implementing those standards. However, because of the divergence that this sum total of 185 Member States that we have today compose it has, by definition, taken very very long time. It took at least 25 years to bring the provisions of the Universal Declaration of Human Rights to an international binding human rights law. It took from 1948 to 1978 for the provisions of the Universal Declaration of Human Rights to be turned and accepted by States Members of the UN to constitute the so-called International Bill of Human Rights. The International Bill of Human Rights is made up of the Universal Declaration of 1948 and the two Covenants that will eventually be legislated over the succeeding years. And divorce between Civil and Political Rights and Economic, Social and Cultural Rights, in other words, the abandonment by the United Nations in 1952 of pursuing the original idea of having a sole unitary covenant on human rights has cost, up to recent years, a major obstacle to the realization of human rights and, in particular, to the human rights of women as you will see in this brief expose.

The international political will was slow in emerging, sufficient to quote the historical reality that it took no less than 10 years to obtain the ratification by 35 Member States to enable the Covenants to come into force. In other words, after the long years of drafting up to 1966 when the texts were approved by the Assembly and opened for ratification, it took another 10 years to find 35 Member States who are ready to undertake this obligation as an international legal obligation. So you realized from that already, it is a symptomatic of the slowness with which this international political will emerged. But once did, the acceleration commenced which so around the late 70's, emergence of the conventional procedures which I will not address because there are experts more than I on this issue. In other words, the procedures by which the honouring of obligation is monitored by treaty bodies so-called, but also at the same time, emergence of extra conventional procedures that is investigations, fact-finding missions, to look into situations in specific countries considered by the Commission on Human rights to be hosting the situations are so negative to human rights that they needed an ad hoc attention. Subsequent to that development transition from a country approach to a thematic approach. In other words to look into to investigate, not hold some countries but phenomena such as disappearances, such as summary executions, and so on. So these extra conventional mechanisms, whose ultimate objective is to strengthen the implementation of the backbones of human rights which are the treaties, became a part of this process that international community developed, of indicative nature, of accusatory nature, of denunciatory nature, in order to force to shame, to embarrass if you like, but in order to push governments into respecting international human rights obligations. So that by the middle 80's, we saw emergence of shift in addition to the extra conventional procedures we started to see an increasing request from governments for support for

cooperation to enable them to create conditions to avoid recurrence of negative human rights situations. So we saw at the mid-80's coming into being, what we call today is technical cooperation programme, which is if you like other side of the indicative medal, that is the support preventive approach.

Today, we administer programme of technical cooperation in more than 50 countries and we administer voluntary funds of order of \$50 million every two years, which we directly or through NGOs or through partners deliver to as many countries. With that came shift again which enabled us to address the original divorce between civil and political rights and economic, social and cultural rights because as we addressed preventive mechanisms we realized that you could not single, you could not address independently, civil and political questions from economic, social and cultural questions. So early 90's we saw emergence of the so-called right to development. The right to development is human rights that most of people either laugh about or at best are most charitable, at least express curiosity. That makes me easy. The right to development is under league declaration of 1986 he will see that it is no more or no less than a convenient formula, political formula, that enables the international community to address human rights as a totality. And it is based on three main principles which the international community agree to, which is the principle of self-determination, which was the reaffirmation of the de-colonization process and emergence of independent states, as well as the affirmation of the rights of certain groups. The principle of popular participation, not only in the civil and political process, not only in regard to taking part in elections and government, but also taking part in the economic, social and cultural life of the society and of the country. And the third principle is the principle of sovereignty over natural resources. This is the third principle that, although it is enshrined in the civil and political rights covenant, is still yet to come, or about, I say, to be addressed.

The phenomenon of globalization that we hear so much about today, the involvement of private sector in human rights the same transnational corporations that were said personified to the human rights community not so long ago. During the apartheid days, for example, suddenly become willing potential partners and process of realization of human rights through this formula of integrated approach to human rights. Where does the human rights of women come into all this? Under the Convention of procedures there is a Convention on the Elimination of All Forms of Discrimination against Women. It is one of the earlier ones. It was also slow to take off and it is only recently, I think last year, if I am not mistaken, when a protocol was adopted, adoption of protocol. And evils and individual complaints by individuals who feel that the rights under the Convention have been violated, to address the treaty body under that Convention directly.

Since 1994 we have a Special Rapporteur on violence against women. What does she do? She is Ms. Radhika Coomaraswamy, but she could be somebody else, because the change is every so many years now. What she does is she looks into situations of violence in several countries. She reports to the governments concerned, she reports to the Commission on Human Rights, to the General Assembly, on the basis of her report, situation of specific and overall nature are addressed. There put into focus. Her role is a

complementary role to the Convention and ultimately, there is again, to make sure that human rights of women are addressed.

Finally, during the last phase of the evolution that I mentioned and the human rights of women, like human rights in general, were slow to take off - I would say slower to take off than the human rights in general. So we are talking of early 90's, we are not talking about a decade ago. In the context of preparation of the World Conference of Human Rights that took place in 1993, which started in fact in 1989, the coalition of women's organizations took upon themselves to lobby for the reintegration of human rights of women into the mainstream human rights programme. Historically, what had happened is that in the early 70's status of women issues, as we used to call them then, which were a integral part of the programme of activities of the Human Rights Division at that time, in a misguided effort to retrospect to focus attention on women's rights as they called at that time. We separated and made a subject of different bureaucratic Secretariat, or bureaucracy, etc. What was the result that this separation served neither human rights nor the status of women issues. And therefore as of the late 80's this process of reintegrating human rights of women started, calumniating what you see the enshrined in the Vienna Declaration and Programme for Action, which contains a major chapter dealing with human rights of women. Since that time we could come a little bit further and we can identify gender and human rights of women issues. I will stop now but I would like to underline that a) that we are talking about a evolution; b) that this evolution is the product of a collective political process involving not only governments but also importantly so non-governmental organizations and civil society, because it is through this interaction between these two sectors that it has been possible for the international community to develop this platform of independent international political will on which we can build. We still have lots of obstacles, especially when we talk about the right to development and realization of human rights. We talk about corruption because problems that we have because it is alright to get together with the rest of the system to develop good programmes but if it does not come to the people who are to benefit, you are not only depriving those people who are not receiving it but you are creating yet another human rights problems along the line. So finally, we have seen emerging in the last couple of years, a focus on the problem of corruption as obstacle to the realization of human rights, in particular, the economic, social and cultural rights. And that, of course, goes hand-in-hand overall constant problem of ignorant.

Here, I will stop, I promise, the Moderator, we come to the essential key to all that which is education and awareness building, sensitivity to these international norms and to the real needs to represent for us in our day-to-day behavior. My boss is a lady. She is the first lady boss of human rights. She is Mary Robinson. I give you on her behalf her sincere congratulations and she is the ninth head of human rights since Eleanor Roosevelt. So here we go - the future does not look as bad as all that! Thank you.

Ms. Hayashi, Facilitator

Thank you very much, Dr. Pace. This year marks 20th year's anniversary of the Convention

on the Elimination of All Forms of Discrimination against Women, so that the selective protocol was adopted, so the individual persons will be given right to indict under this provisions. Of course, these provisions should be approved by the General Assembly. But victims can make a report to the authority. This is quite a new to us. So I am very happy to see the evolution of the international law, so that Dr. Pace mentioned about the evolution of international law. At the beginning, actually, I gave a wrong information about CV of Dr. Pace. Dr. Pace is the Head of Research and Right to Development Branch in the Office of the UN High Commissioner for Human Rights in Geneva.



Ms. Hayashi, Facilitator

Next panelist is Ms. Shahrzad Tadjbakhsh. She is from UNHCR and is Legal Councilor to female refugees. She is from the U.S. but was originally from Iran. She had been very active in women's organizations and then she moved to UNHCR located in Geneva. Would you start.

Ms. Shahrzad Tadjbakhsh

**Executive Assistant to the Director
Department of International Protection, UNHCR**

Thank you very much. I would also like to begin by expressing UNHCR and indeed by adding my voice of thanks to the Asian Women's Fund for organizing this meeting and by giving us opportunity to come together to discuss this very important topic.

The topic, I think we have heard from previous experts or participants, is a very wide one, and covers a large domain of issues. I will try to address some points as most relevant to the area which my organization for which I work focuses and that I will focus my comments on the protection of refugee women. UNHCR which is the United Nations refugee organization and actually headed by compatriot of yours, Madam Sadako Ogata, is mandated by the United Nations to lead and to coordinate actions for worldwide protection of refugees and resolution of refugee problems. Now the root causes of any refugee movements are very much linked to conflicts to prosecution and indeed to the denial of human rights. So the discussions that we had and indeed Mr. Pace's intervention is very important to the work of UNHCR. We recognize, I think all of us should do it, armed conflict and resulting refugee life effects different sectors of the population differently.

For many, the word "refugee" still conjures up Cold War images of people fleeing from prosecutions from totalitarian regimes. For many others, it is associated with legions of people flooding back and forth across African borders fleeing massacres, or through European countries simply looking for better life. But I like to emphasize that the reality is whatever the image of refugee is, it rarely conforms to the reality of approximately 45 per cent of women who are with dependents constitute 80 per cent of 21.5 million refugees around the world. As you move continuously out of the shadow of the Cold War towards millenium, we recognize, I think it is important for all of us to recognize, that today's refugee is more likely to be women, often alone or struggling to provide for her children. I can illustrate this point simply by giving you one example from one of our operations in Guinea Conakry in Africa where Guinea hosts Liberian refugees. They have closely 240,000 Liberian refugees, of whom 127,000 are women. That is 53 per cent of the that refugee population, and they are women refugees.

Now I thought that because the conference theme is violence against women and my focus

is on refugee women, I would focus on refugee cycle and talk about every stage of the refugee cycle and how violence can affect refugee women at every stage. And I search report that has seen violence does affect refugee women, indeed every cycle of her refugee life.

So, if I could just begin with the first stage of the refugee cycle which actually begins with the time of conflict itself, as root cause of refugee movements. While men predominate in the armies and militias, civilians, and specially women and children, are increasingly targeted for attack. So, women are increasingly being actual victims of these armed conflicts, even though we may think of armed conflict is men and armies being predominated by men, women tend to be very much implicated as survivors of victims. Now, violence against women in conflict, including rape and sexual violence, has been widespread and has been persistently practiced over many centuries. However, sexual violence and rape in the context of war have tended to be characterized as private acts or inevitable excesses of the military situation that is happening.

Now, I would like to think that the invisibility of women and sexual violence in times of armed conflict is ending. In 1993, the UNHCR's Executive Committee which is the advisory body for our organization made up of 50 Member States, recognized in a conclusion that women often experience persecution differently from men, and that sexual violence has been indeed a cause for refugee movements. The war in Bosnia and Herzegovina opened our eyes to the use of systematic rape in war time, and arguably for the first time, caused it to be regarded not as something that simply takes place alongside the fighting and pillage, but as a crime against humanity. This war, and indeed the genocide in Rwanda, as our colleague, Anne, touch upon earlier on, made it to all clear that the violence against women, including rape and sexual violence, far from being isolated acts, are more and more frequently used as strategic weapons of war.

How, how do we protect women against such violence during conflict? I will focus my remarks on the international legal framework and I will start where, I think, the starting point is, which is at the international humanitarian law. Now, international humanitarian law - I would not go into too much detail but - is made up of four Geneva Conventions and two additional protocols. They do contain the provisions aiming at preventing violence against women during armed conflict.

We had the occasions of discussing humanitarian law in the last day and a half and some have argued that humanitarian law is far from the reality. Really how can one regulate the war? I think this is a very valid question to ask and that I believe that the humanitarian law is indeed important. I think the important steps have been taken to bring it a little bit more into the reality. I think the important steps have been taken over recent years to end the impunity of assailants and to enable better protection of women during times of conflict. We already heard about the fact that the Security Council established International Crime Tribunal for the former Yugoslavia in 1993 to prosecute war crimes committed during that war, and then the International Tribunal for Rwanda in 1994 to prosecute war crimes during

the Rwanda genocide. Now, for the first in history, rape during wartime was explicitly stated to be a crime against humanity. The Office of the Prosecutor has, as we heard, charged specific defendants with crimes of sexual violence. They have been convictions in both Tribunals on these charge. I think it is important step because, in the additional protocols, they deal with outrages on personal dignity which explicitly include rape and forced prostitution, while these acts are not explicitly under the Four Geneva Conventions and the Optional Protocols referred to as grave breaches of the Geneva Conventions or the additional Protocols and therefore the States were not obligated under these instruments to specifically prosecute those crimes. With the arrival of the Tribunals, we have seen the actual prosecutions have taken place, and have recognized crime against women as indeed crime against humanity.

I think another promising development in the context of humanitarian law is the adoption of the Statute of the International Criminal Court in Rome in July of last year. Now, although this Statute is not yet into force, it is important step in that it explicitly provides that rape, sexual slavery, enforced prostitution, enforced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity is a crime against humanity when committed as part of a widespread or systematic attack directed against civilian population, with knowledge of the attack. Now I think governments should be urged to ratify this treaty because it is important step and making humanitarian law reality for us to protect women against violence.

Now, these remarks have focused on the international humanitarian law as means to protect women against violence and to bring about justice. But one should not ignore the fact that, as stated in the Beijing Platform for Action, during times of armed conflict and corrupts of communities, the roll of women is crucial. The Beijing Platform for Action goes on to say that they often work to preserve the social order in the midst of armed and other conflicts. Women make an important but often unrecognized contribution as peace educators both in their families and in their societies. Since the Platform for Action has called for women's participation in all aspect of conflict resolution and peace-building, UNHCR has been working with this implementing partners, the types of non-governmental organizations which are represented here with the we heard from previous participant to implement activities that attempt to bring in a gender balance to the decision-making processes in conflict resolution and we are working the situations in Uganda, Rwanda, Liberia, Guatemala and a host of other countries.

Now we started with the refugee cycle by armed conflict, at the stage of armed conflict. If I could go on to the cycle of violence against women in a country of asylum. We also heard a little bit about types of violence that women face by our colleague from Cambodia, Meng Ho. We certainly recognize that women, particularly single heads of households or adolescent girls, face serious violations in their country of asylum as well. She, among them, is lack of security, personal security, whether they are living in camps, in collective centres, or with host families. I can give you a torsion, recent example with a gang rape of 50 Brundi women outside one of our camps in Tanzania. The reason why these women

were raped was simply because of animosity by the local population against the refugee population who are living in that community. So, it is a terrible example, but I think it is important for one to make because it shows that the refugee women often cannot enjoy asylum and that they can not be free from violence against which they actually fled their own country and sought asylum in another country.

How do we protect women in the country of asylum? As Meng Ho earlier said it is not easy task and often all of us find ourselves powerless against many obstacles. But I think our programmes are not perfect, but I think we are learning. And I think the refugee women are best teachers that we could have because it is the refugee women themselves who can tell us best how their protections can be ensured in the camps where they are living. So UNHCR is very eager and has actually made it as part of its mandate to ensure that women refugees participate in the camp situation and in everything that affects their life. If I can just give the housing situation in refugee camp as example, the camp layout of the refugee camp affects security of refugee women significantly. Some years back no spot was given to how the camp should be set out. But through experience, we have seen that we have to engage with refugee women and ask them how a camp set up can best ensure their security. For example, I used to work in Malaysia before and Vietnamese women, single refugee women, felt that their security in the camp could best be ensured if they were kept together as a group in a long house. Now that camp layout worked for them. But for the Somali women in Djibouti where they had attempted that layout before actually made these women targets of attacks at nights because all houses were together. For the protection of the Somali women and that culture, that could be best ensured if they were spread out across the camps so that the refugee community could protect them.

But I give you an example because it shows that we can not assume that we know best how to protect the refugees and refugee women against violence that they are facing in the country of asylum as well. It is our responsibility to talk to refugee women. It is our responsibility to ensure that their voices are heard and that we learn from them how it is that we could best protect them in the country of asylum. Because that is our responsibility as the UN organization is mandated to protect refugees and refugee women. But it is also the responsibility of the country of asylum, the government, to also facilitate this task.

I am running short on time but I would like to indulge a little bit more if I may. And touch upon just two more quick topics if I could. One of them is we talked about physical protection of the refugee women and I feel the responsibility toward to emphasize that the physical protection is needless to say that it is extremely important, but we should also test focus on legal protection of refugee women. Because as we can well imagine, if you do not have legal status in a country of asylum, then your physical protection is also insecure. If you were attacked, you do not have standing in court, you cannot go to the police station because you do not have legal status in that country, and therefore, the legal protection also is very much linked to physical protection and it needs to be ensured as well. The reasoning that the way the legal status for refugee women is given is through the recognition of being a refugee. Now a refugee as defined in the 1951 Convention is someone who,

owing to well founded fear being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion, is outside the country of origin and is unable or owing to such fear, is unwilling to avail herself of the protection of that country. This is the definition, it is legal definition, and does not mention a man, does not mention a women, does not mention child below 18, or someone above 18. It is a neutral definition, but I would argue that the Convention has been interpreted basically within a male paradigm which reflect the factual circumstances of a typical male refugee but does not always respond to the protection needs of women.

I think the challenge is to take this definition and, more important its application to ensure that it is interpreted in a gender sensitive way that appropriately recognizes that the types of persecution that women face, the types of persecution that we heard about from our colleagues before are indeed recognized as persecution in the definition and judicatures understand this point and in fact grant a refugee status to women fleeing. The types of claims that we heard from our colleague in Pakistan and that we heard from our colleague in Cambodia, these types of claims are recognized that women are given international protection under the Convention and are able to enjoy asylum. It is not easy task. States often, for example, think that some of these matters are private matters and that, unless the State has undertaken the sexual acts or violence against women, the refugee convention does not apply to this. We have a very clear answer.

Now, I refer back to the Declaration on the Elimination of Violence against Women, which is already referred to. It says that States are required to exercise due diligence to prevent, investigate, and punish acts of violence against women perpetrated by States or by private person. It says failure by the states to exercise that diligence and to provide a secure environment for women, it incurs States' responsibility. This is an important point because it will bring out these private acts of domestic violence or dowry, bride burning, out of the private round and allow for international regime of protection for these types of cases.

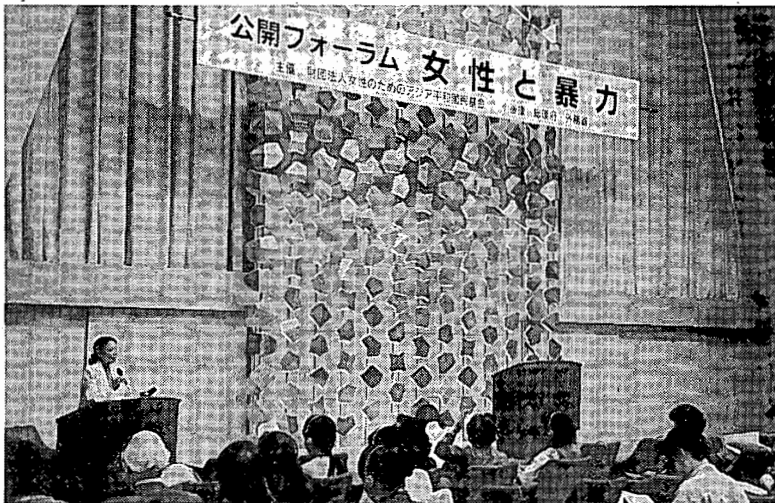
I would just end by taking us to the last stage of the refugee cycle which is their repatriation. We started, the refugee cycle starts with the situations of armed conflict in the country of origin and it ends once again in the country of origin. Because granting a refugee status is not durable solution for refugees, now, peace-building processes and reconciliation are important elements during any repatriation. And UNHCR has a wide range of activities that focus on this element. One example is Rwanda women's initiative and Anne had talked to us about a little bit some of the problems facing in Rwanda and through this programme where we have repatriated close to 1.5 million refugees from neighbouring countries back into Rwanda. It was a big challenge to try to ensure women's participation and ensure that women are reintegrated back into a broken society. So we have initiated Rwanda women's initiative. That aims at integrating women and ensuring their participation in rebuilding that society.

I would just like to end by quoting actually a Sudanese refugee in Kenya saying that "in Sudan, we keep silent until we die but that now we are here and we want to change our

culture.” It is an important quote, I think, in that reflects the fact that at times, refugee life for women can be bitter sweet. It can be bitter sweet in that hardship of exile is times accompanied by period of empowerment and by new rules through women’s organizations. In their refugee life they realize important chances and a high tense sense of self-esteem. Refugee women are forced to take new responsibilities and strive on it and begin to assert their gender-specific rights to land, to education, to work outside the home, to reproductive choice, and to be free from domestic violence. The process of return at the end of the refugee cycle, with its own hardships, should not downgrade women’s hard-earned rights, and the cycle of violence, and indeed refugee life, cannot be repeated. Thank you.

Ms. Hayashi, Moderator

Thank you very much. Well, I think the discussions on whether human women’s right can stand as was human right. I think that sacrificed women have to suffer a different from sacrifice for the men. So that means we should have a point of view that protection for women should be something specific for women.



Ms. Hayashi, Facilitator

Well, we do not have so much time left. So, very sorry for Prof. Ando, but we have asked you for the keynote speech yesterday in the expert meeting, so probably you will be the right person to give the closing for today's discussion. Professor Ando is currently a Professor at Doshisha University and also he is a member of the Human Rights Committee, a treaty body under the International Covenant on the Civil and Political Rights. Well, I am sorry that time is so short, but could you please summarize the discussions we had. Thank you.

Professor Nisuke Ando

**Doshisha University
Expert Member of the UN Human Rights Committee**

Well, I would like to speak in English. Probably that way I can communicate my intention better, if I speak in English and delivered by simultaneous interpreters from English to Japanese than the other way round. Let me start with thanking the Asian Women's Fund for organizing this very important gathering. I also like to thank the participants from abroad. Most of them are from Asian countries, but some from Geneva and Canada to make our gathering more meaningful. I would also like to thank the audience for coming here despite "very good" weather we have today. (It was a stormy day!)

Now, Mr. Pace already introduced the Committee that I am serving for the last 13 years. As you know, the United Nations' one of the aims is to promote human rights through social and economic cooperation. However, it was only in 1948 when the General Assembly adopted the Universal Declaration of Human Rights and when we came to know what exactly human rights to be promoted through international cooperation should be. But as Mr. Pace also pointed out, it took 18 years nearly ten times longer to make the Declaration into a treaty which binds any contracting parties. It took still 10 more years for this International Covenant to come into force. Because we needed 35 States Parties to ratify it. However, again, Mr. Pace pointed out, from then on, the participation of States Parties speeded up very fast. Now we have 145 States Parties to the International Covenant on the Civil and Political Rights. That covers almost 70 per cent of the total world population. Now China has signed - not yet ratified, but when they ratified, it will cover more than 90 per cent of the total world population. Therefore, now we know international human rights protection is spreading now we have to make it more effective.

Well, I can just give you some ideas in terms of our current theme that is violence against women or more participation of women into human rights field. When I joined the Committee 13 years ago, among 18 experts, there was only one lady. After 13 years, we have four ladies. On top that, two ladies consecutively chaired our Committee. That means that, as far as my Committee is concerned, women's participation is really substantive.

Now, our Committee's work is to see how the provisions of the International Covenant,

mostly equated with Japanese Constitution or with the Universal Declaration. How those rights or provisions are implemented through domestic means, national legislation or national practices. This is a sort of day-to-day issue. Of course, we heard so many on-spot stories, how women suffer under the conditions of armed conflict. In comparison in that, my stories may be a bit dull. But this is a day-to-day issue, and I think as far as human rights protection is concerned we need both, day-to-day approach, as well as on-spot approach.

Now, our Committee has two main works to do. One is to examine States Parties' reports. Now the States Parties are 145. After one year of the entry into the Covenant, they must submit their initial report. Thereafter, every five years they submit their periodic report. When the situation is rather urgent like the case of Rwanda, then we ask a special report to be submitted and we examine it. After we examine it we adapt what we call concurring observations. That is the Committee's view of how we evaluate the report and adopt some recommendations to the government. Now there is another job part of our jobs, that is individual communications. That is when the States Parties ratify not only the International Covenant but Optional Protocol attached to the Covenant, individuals within the jurisdiction of the States Parties can submit their complaints directly to our Committee. The Committee examines it, and if we find violations by States Parties, then again we make recommendations to remedy the situation.

So let's start with the State Parties' examinations. There are many physical, as well as psychological or emotional violence against women. By violence, I mean any sort of pressure, which prevents her from enjoying her human rights, but also there are many institutionalized violence and mainly, those institutionalized violence, I am going to refer now.

Our friend from India talked about dowry. This is wife's family has to give some gift before they get marry. But there is also a "saty" which is burning of wife after her husband died. There is also very young child's marriage. There is a different kind of punishment for adultery to men and women. There is less right to inherit property from parents between men and women, less usually matrimonial system, women much less privilege than men. Transfer of her nationality to her children, again men are usually in a better position. Now all these indicate that it is established its systematized or institutionalized violence against women. And to cure that, to remedy that, perhaps we do need more participation of women into norm creation when we legislate there should be more voice of women to be respected. Of course, women have particular burden - I use the term burden it may be privileged to somebody but to bear child, to give birth to a child, and then to raise them - but these burden are seldom appreciated by institutions. Say, my wife often asks me, "hey, think all the domestic services I am giving you, can you afford it by your earning?" Certain not. That means there is already injustice - a sort of twisted form of violence against the appreciation of women's contribution to the human society. And unless they cooperate with men, we perish and I do not think there must be some more fairer appreciation of the women's contribution for the future of the mankind.

Now, let's come to individual communications. I give you only two cases and then I try to

finish. There is a case of Canadian American-Indian - a very strange expression but - she is a lady living in Canada of American-Indian's origin. She used to live in her plantation but she got marry to a white man. As a result she had to leave her plantation. Now they got divorced. She wanted to come back, but customary law of the tribe prevented her from re-entry. Now, if she were a man, if a man get marry to a white girl or maybe a yellow girl, after their divorce the man is entitled to come back under the customary law. Now in Canadian Supreme Court she took the case all the up to the Supreme Court. In Canadian legal system, particularly Constitutional provisions, these native laws of minority people should be given preference than the ordinary provisions which provide the equality between men and women. As a result, she came to our Committee. Our Committee was very clear. It is a clear violation of the equality of the sexes, as well prevented her from enjoying minority right which men can enjoy.

There is another case. This is a case from a developed country, Dutch, a social security pension case. In the Netherlands, it used to be that a married woman, if she loses her job, can get only 70 per cent of the social security pension which jobless man or jobless single women can get. She also came to our Committee. She said that this was a discrimination based on social status, whether married or not, as well as on sex. There was a heated discussion in our Committee. But we finally came to a conclusion that it was a discrimination, in violation of the International Covenant. Therefore, although on a day-to-day basis, not eye-catching space, our Committee in its own way try to get over sort of any types of violence against women, particularly institutionalized violence.

I would like to end my remarks by the following: Now when we speak of human rights, I think, if we lose the sight of half of the human beings or not, or even majority, if they think their human rights enjoyments are handicapped, well, we are not entitled to speak of human rights protections. It is only when 100 per cent, or at least majority, of human beings can say, "my human rights are protected," that we can speak of the protection. That is why, as I pointed out, more participation of women at the stage of norm creation, as well as monitoring of the implementation, is essential.

Let me finish by touching on the role which Japan can and should play in this particular respect. In our Constitution, we decided not to use force to contribute to the human species. Perhaps, instead of the use of force, we can contribute by developing and participating more actively for the promotion of human rights. Thank you.

Ms. Hayashi, Facilitator

Thank you very much Professor Ando. Whenever we hear a word, like United Nations or International Covenant, it sounds like something that is far away from our ordinary life. But, listening to what he just mentioned now, we are having the Human Rights Committee consider about day-to-day cases that we often are observing in the daily life when this is not

being protected. We understood that this place can be discussing the Human Rights Committee.

Well, I think we were supposed to have a discussion time for people in the audience. But we have so many speakers in a very limited time and therefore we are now over the schedule. From the point of view of us living in Japan, genocide, prostitution, rape, dowry, and all these problems are being discussed. That sounds like a problem that is far away from the reality that we Japanese women are experiencing. But we also have a strong interest coming up here in Japan, for example, the problem of domestic violence. This used to be considered as a problem as a very private problem just between family members, or between husband and wife. But this is just a part of the problems that came into the surface that lies behind and those women are now giving up their voices that also the Government should consider these problems. Everyday when we read newspapers, in a daily newspapers that most of Japanese people read, there are advertisements everyday with nude photographs of women for magazines. So we are exposed to that kind of media in our daily life. So, violence to the women takes lots of different shapes. And I think many people in not Japan but also in the world are acting very actively, and I think all Japanese women also should participate very actively to change the situation. And 21st century will be the century of human rights. I think it depends on how much we are very actively promoting this idea as citizens. For this, we need the power of NGOs and also the efforts of each individual and also international cooperation. I would like to close my remarks with this wish. Thank you very much for your attention for long hours.



The List of Participants

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- **Saroja Sivachandran (Sri Lanka)**
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- **Nandini Samarasinghe (Sri Lanka)**
Coordinating Secretary, Ministry of Foreign Affairs
Consultant at Law and Society Trust
- **Mussarrat Hillali (Pakistan)**
Vice Chairperson, Human Rights Commission of Pakistan
- **Duong Thi Thanh Mai (Vietnam)**
Vice Director, Institute of Law Research
- **Rani Jethmalani (India)**
Advocate, Supreme Court of India,
Chairperson and Trustee Women's Action Research and Regal Action for Women
- **Nursyabani Katjasungkana (Indonesia)**
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- **John Pace**
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■ Momoyo Ise
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■ Mizuho Matsuda
The AWF

■ Toshisada Iijima
The AWF

■ Tomoko Manaka
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Asian Women's Fund

The Asian Women's Fund was established in July 1995 by prominent citizens who were concerned about continued suffering of the former "comfort women" victims by Japanese military during the World War Second, with the support of the Government of Japan. The primary aim of the Fund is to extend atonement and support to those victimized women. The victims have suffered in silence for so long and are now of an advanced age, and it is therefore the Fund's sincere wish to act urgently, in accordance with their needs, to alleviate their pain in whatever small way it can. At the same time, recognizing that prevailing attitudes of discrimination and violence against women is a part of the background to the suffering inflicted on the "comfort women". The second pillar of the work of the Fund is to actively address contemporary issues of violations against the dignity and rights of women.

The Fund's activities include:

- hosting international forums on contemporary issues on women;
- financial support to NGO projects addressing contemporary women's human issues;
- research and analysis into the causes and prevention of violence against women, and other contemporary women's human rights violations, and;
- training and development of new counseling approaches for women victims of violence and human rights violations.

For further information, or a list of publications, please contact the Fund at the address below, or visit its site on the world wide web.

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