

PROTECTION OF VICTIMS, PARTICULARLY WOMEN AND CHILDREN AGAINST DOMESTIC VIOLENCE, SEXUAL OFFENSES AND HUMAN TRAFFICKING

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INTRODUCTION

We are at that period which President John F. Kennedy called as the age of interdependence of states. With myriad of issues ranging from political strife, armed conflict and human rights violations that various states undertake, regional cooperation has become a necessity.

Trafficking and Violence against Women are among the escalating challenges in the world today. At least one out of every three women around the world has been beaten, coerced into sex, or otherwise abused in her lifetime. Thus, not only has violence against women grown into epidemic proportions but has also turned into the most pervasive human rights violation.

It is however encouraging that there have been initiatives by governments, non-governmental organizations and alliances of professionals to address trafficking and violence against women. These initiatives that take on trafficking and violence against women review existing mechanisms or formulate new methodologies. It is also through these initiatives that best practices are shared, and responsibilities are identified to help subjects fully utilize available grievance machineries in their respective countries.

BASIS OF THE OBLIGATION TO PROTECT, PROMOTE, AND FULFILL THE RIGHT OF WOMEN AGAINST VIOLENCE AND THE RIGHT AGAINST TRAFFICKING

Gender equality is among the pillars of human rights. Its significance translates into the acknowledgment that all human beings are born free and equal in dignity and rights as provided in the Universal Declaration of Human Rights. The respect for and the observance of the said principle are integral in the efforts of all governments and nations of the world to progress.

At the onset of the new millennium, gender equality invited greater acknowledgment. In addition to the pronouncements in various international instruments reiterating the Universal Declaration on Human Rights, member-states of the UN through their respective chief-executives or heads of states adopted the Millennium Declaration and the corresponding Millennium Development Goals. In the Millennium Declarations, equality is reckoned as one of the Principles and Values. In particular, the member states were unanimous that equal rights and opportunities for women and men must be assured. The necessity to emphasize equality of women and men in development found importance in the reality that over the years, poverty all over the world has acquired a woman's face. This poverty that disadvantages women factors into challenges that confront them, viz.: Two-thirds (2/3) of the world's illiterate adults are women; more boys than girls attend school; women do twice the amount of unpaid work than men; women earn less than what men earn; violence against women is a global epidemic.

Women and Human Rights

On the basis of the Group Population Projection, the total female population of the world in the year 2005 has swelled to more than three billion. It is not however the astounding figure that directs respect for equal rights and dignity to be accorded to women. It is the symbiosis alone in the lives of women and men that articulates entitlement to rights, freedoms, and recognition. The equality that inheres in women and

men is quintessentially fundamental; it is incorporated not only in the UDHR but also in many other UN covenants.

In the preamble of the Universal Declaration of Human Rights, UDHR for brevity, an unequivocal pronouncement is to the effect that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world. Equality among all peoples is prized such that in the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) proclaims thus: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.

It is thus apparent that in all major international instruments, it is pointed out that rights cited in their respective provisions must be accorded to all the peoples of the world without distinction. It is thus incumbent upon all states that ratified them to respect and ensure the fulfillment of their treaty obligations to all individuals. The status of women all over the world while it is never debatable nevertheless has remained controversial. In situations of poverty for example, women and girl-children have the least access to health care, education, food, and employment. In many states, stereotyped roles continue to hamper the growth of the female population as members of the society. The large volume of literature on women's rights has so far been references to studies and the number of poor women continues to escalate.

Discrimination and the CEDAW

Among the great challenges that women and girls all over the world take on is discrimination. It is an issue often discussed in broad strokes. There often lies a necessity to expound details so as to effectively mainstream the mechanisms to combat it. The Convention on the Elimination of All Forms of Discrimination against Women, hereinafter CEDAW, is denominated as the International Bill of Rights for Women. The CEDAW defines discrimination thus: *any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of nullifying the recognition, enjoyment or exercise by women*

irrespective of their marital status, on a basis of equality of men and women of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

CEDAW and Trafficking

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) is the principal international instrument that provides the definition of discrimination. In the General Comments of the UN Committee on the CEDAW, discrimination includes gender-based violence. The said gender-based violence embraces trafficking against persons. Trafficking on the other hand under the Convention for the Traffic in Persons cites the following acts that constitute trafficking, to wit:

1. Procures, entices or leads away, for the purpose of prostitution, another person, even with the consent of that person; and
2. Exploits the prostitution of another person, even with the consent of that person.

According to the United Nations International Fund for Women, estimates on the number of trafficked women and girls range from 700,000 to two million per year. It may be supposed that the figure may escalate because of the factors that make up the avenue for trafficking. In the same avenue as violence against women, trafficking against women and girls may be attributed to both social and economic factors. ASEAN nations have acknowledged the challenge and made an unequivocal pronouncement in the Vientiane Summit to intensify individual and collective efforts to address trafficking. It bears stressing that the objectives of the ASEAN Law Association lean toward the same direction as the framework with which ASEAN states vowed to combat trafficking.

The relevant components of the ASEAN Declaration are the following:

1. To establish a regional focal network to prevent and combat trafficking in persons, particularly women and

children, in the ASEAN region;

2. To undertake regular exchange of views, information sharing on relevant migratory flows, trends and pattern, strengthening of border controls and monitoring mechanisms, and the enactment of applicable and necessary legislations;

3. To intensify cooperation among our respective immigration and other law enforcement authorities;

4. To distinguish victims of trafficking in persons from the perpetrators, and identify the countries of origin and nationalities of such victims and thereafter ensure that such victims are treated humanely and provided with such essential medical and other forms of assistance deemed appropriate by the respective receiving/ recipient country, including prompt repatriation to their respective countries of origin;

5. To undertake actions to respect and safeguard the dignity and human rights of genuine victims of trafficking;

6. To undertake coercive actions/measures against individual and/or syndicate engaged in trafficking in persons and shall offer one another the widest possible assistance to punish such activities; and

7. To take measures to strengthen regional and international cooperation to prevent and combat trafficking in persons.

Trafficking against women and girl-children is an exacerbating global epidemic very similar to violence against women. Sexual exploitation is a common place to both issues. Actions to combat and ultimately eradicate both universal challenges are however positive and achievable. The call is for

the commitment from institutions in the domestic and international community to utilize all available mechanisms and resources to achieve this noble undertaking.

CEDAW and Gender Based Violence

The Committee on the Convention on the Elimination of All Forms of Discrimination Against Women had concluded that gender based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on the basis of equality with men. In its comments, the definition of discrimination in the CEDAW has been made to include violence that is directed against a woman because she is a woman or that affects women disproportionately. Further, it incorporates acts that inflict physical, mental, sexual harm or suffering, threats of such acts, coercion and other deprivation of liberty.

In the enumeration of the rights and freedoms prejudiced by the commission of gender based violence against women, the CEDAW Committee cited the following: the right to life; the right not subject to torture or to cruel, inhuman, or degrading punishment or treatment; the right to equal protection according to humanitarian norms in time of international or internal armed conflict; the right to liberty and security of persons; the right to equal protection under the law; the right to equality in the family; the right to the highest standard attainable of physical and mental health; and the right to just and favorable conditions of work.

Notably, in the Beijing Conference (Fourth World Conference on Women, 1995) identified other acts of violence against women include violation of the human rights of women in situations of armed conflict, in particular murder, systematic rape, sexual slavery and forced pregnancy. The Beijing document further stated that violence against women also includes forced sterilization and forced abortion, coercive/forced use of contraceptives, female infanticide and prenatal sex selection. It is thus quite manifest that gender-based violence, VAW or violence against women in particular disadvantages women in many states.

VAW and the MDGs

Genuine development can only be accomplished if a change in power relations between women and men has been achieved. In the affirmation of their commitment and faith in human rights, heads of states unequivocally made the pronouncement in the Millennium Declaration to combat all forms of violence against women. In the said Millennium Declaration (which spawned the Millennium Development Goals) violence against women is listed as one of the practices under Human Rights, Democracy and Good Governance.

Violence against women which is one aspect of discrimination marginalizes women and hampers their advancement and progress. Discrimination pervades the lives of women and cuts across all of the Millennium Development Goals, viz.:

1. Eradicate Extreme Poverty and Hunger;
2. Achieve Universal Primary Education;
3. Promote Gender Equality and Empower Women;
4. Reduce Child Mortality;
5. Improve Maternal Health;
6. Combat HIV/AIDS Malaria and Other Diseases;
7. Ensure environmental sustainability; and
8. Develop global partnership for development.

Thus, it is essential that states focus on empowering women and providing for them durable solutions against the challenges that beset them so as to make progress a shared responsibility and shared experience.

Violence against Women and Girls and the ASEAN

The member-states of the Association of Southeast Asian Nations, hereinafter

the ASEAN, adhere to the principle that there has to be a universal application of the rights, freedoms, equality, security, liberty, integrity, and dignity. In the Vientiane Action Programme (hereinafter VAP) for the period 2004-2010, it was sternly noted in its preamble that ASEAN Vision 2020 envisions ASEAN as a concert of Southeast Asian nations, outward-looking, living in peace, stability, and prosperity, bonded together in partnership in dynamic development and in a community of caring societies.

In the same Vientiane Action Programme, among the goals identified vis-à-vis the realization of the ASEAN community is the ASEAN Security Community. The theme of the undertaking is "Enhancing peace, stability, democracy and prosperity in the region through comprehensive political and security cooperation." It is noteworthy that in the same undertaking, it is succinctly averred that the ASEAN members shall promote human rights and obligations. The said pronouncement is underscored in the particular Programme Area on the Promotion of Human Rights. Specifically, seven separate important measures are identified to accomplish the programme area, viz.:

- Completion of a stock-taking of existing human rights mechanisms and equivalent bodies, including sectoral bodies promoting the rights of women and children;
- Formulation and adoption of MOU to establish network among existing human rights mechanisms;
- Formulation of work programme of the network;
- Promote education and public awareness on human rights;
- Establish a network of cooperation among existing human rights mechanisms;
- Elaboration of an ASEAN instrument on the protection and promotion of the rights of migrant workers; and
- Establishment of an ASEAN commission on the promotion and protection of the rights of women and children.

The member-states are however cognizant that the principle of universal application of fundamental human rights leaves much to be desired. In South Asia one in every two women faces violence in her home. The said figure is not encouraging. Violence against women, erodes their fundamental right to life, security, bodily integrity, political participation, food, work, and shelter. Acknowledging that it is high time that the VAW issue be approached with new mechanisms, the ASEAN nations had unequivocally proposed in various declarations new mechanisms to combat VAW. Over the years, there had been significant programmes of action on VAW, to wit:

- Support for the active involvement of all sectors and levels of the ASEAN communities, particularly the women and youth, in development efforts.(Declaration of ASEAN Concord, Indonesia 24 February 1976)
- Promote and implement the equitable and effective participation of women whenever possible in all fields and at various levels of the political, economic, social, and cultural life of society at the national, regional, and international levels. (Declaration of the Advancement of Women in the ASEAN Region, Bangkok, Thailand 05 July 1988)
- Enable women in the region to undertake their important role as active agents and beneficiaries of national and regional development, particularly promoting regional understanding and cooperation and in building more just and peaceful societies.(Declaration of the Advancement of Women in the ASEAN Region, Bangkok, Thailand 05 July 1988)
- Integrate in national plans the specific concerns of women and their roles as active agents in and beneficiaries of development, specifically considering their role as a productive force to attain the full development of the human personality.(Declaration of the Advancement of Women in the ASEAN Region, Bangkok, Thailand 05 July 1988)
- Design and promote programmes involving the participation of the community and non-governmental women organizations towards

strengthening national and regional resilience. (Declaration of the Advancement of Women in the ASEAN Region, Bangkok, Thailand 05 July 1988)

- Strengthen solidarity in the region and international women forum by promoting harmonization of views and positions. (Declaration of the Advancement of Women in the ASEAN Region, Bangkok, Thailand 05 July 1988.)

The above are an on-going agenda in all the ASEAN member-states, and are indicators of the acknowledgment that women and girls are part of the great pool of human resources and skills. They serve as framework to mainstream gender-perspective in all levels of society. They focus for their objective on the empowerment of women by opening opportunities in the many areas such as those in political, economic, social, and cultural life of society at the national, regional, and international levels.

Violence against Women and the 1995 Beijing Conference

The participants to the Beijing Conference in 1995 made a reverberating proclamation to all nations of the world when they gathered to commemorate the fiftieth founding of the United Nations. Included in their statements is the commitment to eliminate and prevent all violence against women and girls. It is of great significance that

the statements in the Beijing Conference be restated as backgrounder for issues on gender based violence.

The salient statements of the Beijing Conference in regard to violence against women are as follows:

1. advance the goals of equality, development and peace for all women everywhere in the interest of all humanity;
2. the status of women has advanced in some important respects in the past

decade but progress has been uneven, inequalities between women and men have persisted and major obstacles remain, with serious consequences for the well-being of all people;

3. reaffirm our commitment to the equal rights and inherent human dignity of women and men and other purposes and principles enshrined in the Charter of the United Nations, to the Universal Declaration of Human Rights and other international human rights instruments, in particular the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, as well as the Declaration on the Elimination of Violence against Women and the Declaration on the Right to Development;
4. ensure the full implementation of the human rights of women and of the girl child as an inalienable, integral and indivisible part of all human rights and fundamental freedoms; and
5. women's rights are human rights.

The Way to Move Forward

The Commission on Human Rights of the Philippines acknowledges with uncompromising respect the value of human potential. It has seen through its many interactions with government agencies and non-governmental organizations the huge contribution that the said human potential is able to provide. It had entertained, accommodated, and supported the cause of many concerned citizens' groups, including individual efforts that lobbied for recognition and human rights. The CHRP through its many years of existence in the Philippines has been consistent that human rights are not finite commodities that can be traded or appraised. If at all, the CHRP esteems human rights as a system of rights and freedoms that constantly offers reforms to governments and peoples of the world. Violence against women and their children is a global epidemic. It pervades the lives of women and girl-children all over the world with effects incongruent to human rights.

It is high time that the pronouncements made in the Beijing Conference, those in the Millennium Declaration, and the Vientiane Action Programme, as well as all the ASEAN Declarations in the various regional conferences conducted in the previous years be channeled to concrete mechanisms that can be made available to women in all levels of society. Specifically we who are in the position to effect change and institute reforms must endeavor for the following:

1. Review or identify existing data or studies that distinguish the causes of violence against women and their children;
2. Tap and fully utilize the resources of government to establish a system of information in regard to the trends of violence against women;
3. Demand the strengthening of mechanisms that offer services to VAW victims in the areas of health care, social re-integration, and self- recovery;
4. Advocate for effective and immediate measures to protect victims of violence against women;
5. Strengthen cooperation among government entities and non-governmental organizations with the common goal to eliminate violence against women;
6. To include women by way of public consultation, whenever practicable, in the sensitive issues on policy formulation where health is at issue particularly in the sexual and reproductive health rights, it being related to HIV/AIDS;
7. Encourage public fora on violence against women apart from undertaking Focus Group Discussions and lectures on violence against women;
8. Integrate human rights education in the academe so as to oversee the social and psychological development of future generation;
9. Incorporate the programmes of action crafted by the ASEAN in its endeavor to help women and girls in the region enjoy all the rights and freedoms that inhere in them;

10. Strengthen networking in the ASEAN in the programme areas in the Vientiane Action Programme; and
11. Promote women's economic independence so as to provide them an environment that respects human dignity.

Equality is the cornerstone of human rights. Human rights established the United Nations. In its many years of operation, its invitation to work with its systems to advocate for the recognition of the principle that everyone is born free and equal in dignity and rights remains hopeful. We who proclaim faith and commitment to fundamental human rights must therefore agree to establish the aforementioned mechanisms and be steadfast in our support to the cause of ending discrimination. Women's rights must be given the chance to achieve full recognition so as not to waste the pool of human resource and potential that is women.

The ASEAN commitment to advance and empower its women and girls is an ongoing agenda. Over the years, it has been a progressing partnership that continues to narrow the barriers that leave women and girls marginalized. Boundaries of power that discriminate women and girls and affect them as victims of physical exploitation had been the subject of national machineries of the member states. Thus far, the results have been encouraging. These developments may be attributed to the programmes of action by the ASEAN itself and the steps identified to mobilize resources for women empowerment. It is after all manifest that the action programmes and the past declarations are aimed at overcoming the stagnation of development. Given the special attention that ASEAN extends to issues on violence against women and children, including trafficking, the goal to mainstream gender-perspective in all levels of society is an increasingly positive reality.

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