Applying the Due Diligence Principle in Asia Pacific
Lisa Pusey

Introduction

This chapter is drawn from the Report of the Asia Pacific NGO Consultation entitled Realising Our Rights: Holding the State Accountable for Violence Against Women in the Asia Pacific, with the UN Special Rapporteur on violence against women, Yakın Ertürk, on 5 and 6 October 2005. The Consultation involved 30 women’s NGOs from 16 countries around the region including: Australia, Burma, Cambodia, India, Indonesia, Japan, Kyrgyzstan, Malaysia, Mongolia, Nepal, Philippines, Pakistan, Republic of Korea (South Korea), Sri Lanka, Thailand and Tonga.

The Consultation was designed to facilitate the provision of input from these women’s organisations into the 2006 thematic report of the Special Rapporteur on violence against women to the Commission on Human Rights on the due diligence standard. The Consultation facilitated discussions on the critical issues in Asia Pacific surrounding states’ failure to meet their due diligence obligations with respect to violence against women – to respect, protect, fulfil and promote women’s rights – with an aim to proposing strategies to address these gaps. While the success of the international women’s movement in challenging the public/private dichotomy and calling on states to exercise due diligence to prevent, investigate and punish acts of violence against women, whether such acts are committed by state or non-state actors, was a significant achievement in broadening state responsibility and protection for violence against women, there continues to

---

1 This report was authored by Lisa Pusey, Programme Officer for Violence against Women and Women’s Human Rights Programmes at Asia Pacific Forum on Women, Law and Development (APWLD) and Mary B., volunteer with APWLD from July–November 2005.
remain difficulties in ensuring state’s compliance with obligations under the due diligence principle.

This chapter highlights the key points from these discussions, providing an overview of the effectiveness of state responses under their due diligence obligations in the region. It starts with explaining the context in which violence against women occurs in the Asia Pacific region. It examines some of the factors which have a determinative impact on the manifestations of violence against women: neo-liberalism, militarism and fundamentalism. The chapter then examines the intersectionality of women’s different identities and how this reality requires particular address in applying the due diligence principle. The next part moves on to examine the common areas where states are failing the due diligence obligation and looks both at addressing violence where it occurs and prevention. The following part provides an insight into the particular challenges and obstacles the region is facing in the implementation of international human rights standards. In light of the gaps and challenges recognised, the conclusion identifies some strategies to address the failure and gaps of effective response to violence against women.

The Context: Violence against Women in Asia Pacific

The last decade has seen some important developments at the international level in the struggle to free women’s lives of violence, including: the creation of international standards and mechanisms to address violence against women perpetrated by both state and non-state actors; the recognition of violence against women as a form of discrimination; and the recognition of the multiple forms of violence. Despite this, violence against women continues with impunity in many parts of the Asia Pacific region and continues to be one of the most visible manifestations of the unequal and unjust power relations between men and women in our societies.

While there remains no regional human rights mechanism in the Asia Pacific, at a national level measures have been taken to address violence against women. In her last report as UN Special Rapporteur on violence against women in 2003, Radhika Coomaraswamy undertook a survey of countries around the world and found that in nearly all countries at least some efforts had been made by governments to enact laws to address violence against women since the creation of her mandate in 1994. Yet, violence against women has not decreased, but is in fact emerging in new and dangerous forms in the Asia Pacific. This occurs as globalisation and transnationalism result in the globalising of some harmful cultural practices and the increase of other practices such as trafficking and vulnerability to violence of migrant and displaced women. Thus, while a legal framework is useful in establishing normative standards, it is of little value if they are not implemented effectively, if mechanisms are not created for enforcing rights and re-

---