Submission on Legal Empowerment Approaches and Practices to ensure Women’s Human Rights in Asia and the Pacific Region

Legal empowerment refers to the process of enabling people to understand and exercise their rights and access justice through legal means. In the context of women in Asia and the Pacific, legal empowerment is crucial to addressing gender-based discrimination, violence, and inequality. Women’s groups throughout Asia and the Pacific region have poured enormous energies into getting laws enacted that address their concerns and transform patriarchal power structures. Law and legal systems in itself can be an area for women’s struggle as many laws and legal systems in the past have caused and continue to cause the subordination of and discrimination against women and the social injustices that women of all diversities face. By engaging with the law, women groups can reasonably expect concrete changes for women’s human rights and a shift in power relations in family, society and state. Women’s experiences have often shown the inadequacy of laws, no matter how progressive they seem in truly serving women’s interest or benefiting them.

Even when progressive laws are implemented as substance, the structure of the legal system and biased socio-cultural factors allows the interpretation and application of such laws to work against women and their human rights and fundamental freedoms. In examining how the law contributes to women’s oppressions and in engaging with it as a strategy to improve the situation of women, it is important to see it not only as a system of rules or norms, but also as a social institution that is underpinned by three aspects: Substance, Structure and Culture. In APWLD we analyse how each of them is circumscribed by patriarchy, racism, heteronormativity, ableism and other oppressive ideologies, and how these aspects interact and affect the situations of women.

The substance of the law is reflected in legislations or statutes, case law or jurisprudence, customary and religious laws, and legal practices, procedures and rules which may be discriminatory to women either directly (e.g. the criminalisation of adultery committed by women or the prohibition against women’s inheritance of property) or indirectly (e.g. laws that do not address women’s needs and issues). The structure of the law refers to the players that interpret and implement the law such as courts, court administration, and law enforcement agencies. It may also refer to the processes, infrastructures and resources that affect women’s access to justice, such as limitations in location, physical accessibility, availability of protection for witnesses, cost of legal proceedings, availability of legal aid, and language accessibility. The culture in which the law operates is constituted by the social, economic and cultural conditions, and the beliefs and attitudes of judges, magistrates, lawyers, court officials, police and agencies and of people in the community as a whole. An example of the role that culture plays in the law is how despite the existence of laws against domestic violence in some countries, these cases are very often considered to be personal and private matters that must be sorted out within the family, thus resulting in survivors' lack of access to legal remedies.

Looking at all three aspects are likewise necessary when coming up with strategies or legal empowerment approaches. Adopting a view of only one part may result in missing opportunities, or negatively impacting other aspects of the law. Although we must undertake a holistic analysis, our strategies may differ depending on the primary aspect of law we are addressing.

Women’s rights movements in the region have continuously identified the weaponisation of laws in legitimising structural oppression of women and therefore have been critically engaging with different types of mechanisms of legal empowerment which are used to ensure women’s human rights among the marginalised communities. Such mechanisms range from the local community level, including the work of paralegals or engagement with non-state forms of dispute resolution and redress, to strategic litigation in high courts or international forums. Legal empowerment can also occur through a wider array of social and horizontal accountability mechanisms, such as administrative redress mechanisms, ombudsman and human rights commissions.

There are several approaches to legal empowerment for women in the region and some of these empowerment modalities have been proved to be useful for women’s realities.

**Capacity Building**

Capacity Building by enhancing the knowledge, skills, and resources of women to access justice and exercise their rights. This can involve regional, sub-regional and national level training on feminist legal theories and practices, advocacy opportunities, international laws and mechanisms and frameworks for community mobilisation.

APWLD has been organising Feminist Legal Theory and Practice (FLTP) training, which is designed to build the capacity of women’s human rights defenders, lawyers, paralegals and activists on analysis of women’s lives and realities; feminism and women’s movement; structural and systemic forces of oppression (patriarchy that intersects with globalisation, fundamentalisms and militarism); feminist development justice, feminist analysis of the Law, and developments in international law and feminist legal strategies and approaches to advance women’s human rights and women’s access to justice.

APWLD as a regional network has acknowledged the mandate to organise the regional level of FLTP. However, throughout the years, there have also been our national and local members replicating the FLTP process and organising such training in the national and local levels. National modules were developed to respond to the needs of the members and considering national contexts such as those undertaken in Malaysia, Indonesia, and Burma/Myanmar. For the Malaysia National FLTP (2010) sessions on the Shariah Law were included; while the Burma National FLTP (2013) incorporated case studies of actual cases on land grabbing, militarisation and extractive industries and scenarios that happened in the country.

In 2011, one of our participant from FLTP, Honey Tan, who is a practising lawyer in Malaysia utilised her learning from FLTP training and [used CEDAW principles to support a case of a women](https://drive.google.com/file/d/1sFdWSdv--vdn-x2qQjDLTjsHgMiCZzM6/view?usp=share_link) who took the government to court to seek a declaration that pregnancy cannot be used as an excuse not to employ a person as a untrained relief teacher (GSTT) and the revocation of the memo on her placement to be declared illegal and unconstitutional. Honey Tan mentioned that the court recognised that the government had to commit to CEDAW, and to adopt the article regarding discrimination against women under its Article 11.

In 2019, the Philippines, for instance, the national FLTP provided the opportunity for the participants to review the draft bill on the Protection of the Rights of Human Rights Defenders and yielded a concrete recommendation that was taken up by legislators. The bill is still pending, however, in February 2023, a House of Representatives panel approved a measure seeking to promote and protect the rights of human rights defenders (HRDs).[[1]](#footnote-1) In 2021, the Indonesia national FLTP participants drafted and submitted a [policy brief](https://drive.google.com/file/d/1NOHpJyPRoExoMl_PD9DzXcGGcb5oo0jQ/view?usp=share_link) on the Sexual Harassment Elimination Bill which was later passed as the law in April 2022.

**Feminist Legal Strategies**

In APWLD we also support women human rights defenders (WHRDs) using Feminist Legal Strategies (FLS) such as a) Feminist strategic litigation; b) Trial observations; c) Fact-finding missions; d) Advocacy for legal and policy reforms and e) Women's/peoples' tribunal.

1. **Feminist Strategic Litigation**

Strategic litigation refers to the process of identification and pursuit of legal cases as part of strategy focusing on an individual or group case in order to bring about broader social change. Such a process helps to set important legal precedents by publicly exposing injustices, raising awareness and bringing about changes in legislation, policy and practice. Strategic litigation can have a lasting impact on a large number of people at the national, regional or international level by triggering reforms in national laws, policies and practices going against human rights standards.

APWLD supported the WHRDs in the Philippines through one of our member organisations Tanggol Bayi from 2020 to 2021. The human rights situation in the Philippines has been very deteriorating during this time and APWLD along with our member organisations prepared joint statements and press releases to support the WHRDs who were targeted by the government with false charges. APWLD also provided support for domestic and international lobby efforts to engage diplomatic missions and also through litigation support we were able to provide support for WHRDs to file suits/complaints at the domestic courts and made submissions to international mechanisms to be able to pursue justice-seeking and accountability steps at the national and international level.

Also, through the case studies and individual experiences we learned that legal aid services, assistance, providing enable schemes is a must such as psychosocial support, safe-house and physical health assistance. Without enabling schemes support, women's access to litigation is not a choice especially at community level.

One way to engage with the legal system to change the ground realities of women is to engage with Judiciary through strategic litigation which when effective can scale up the efforts from State and non-state institutions to respond to the needs of the grounds in light of socio-political and economic factors. Judiciary exercises the scope of discretion in the legal system to fill gaps in laws in order to be able to rule on a case before the court. Judges can use the said discretion in their choice of precedents to invoke to justify their decisions in the cases before them. Legal precedents can support advocacy for groups to make use of international human rights norms and standards into the domestic legal system regardless of the mode of incorporation.

In 2019-2020, APWLD extended support to the Land/Women Human Rights Defenders (L/WHRDs) of Ban Sapwai community. Ban Sapwai is one of the thousand villages in Thailand affected by the Thai Government’s “forest reclamation” policy to increase the forest-covered areas from 31 percent to 40 percent by evicting the peoples, mostly poor, small-scale farmers, who have been living and using the lands. The policy adopted through Military orders starkly resembled adoption of false climate solutions as only two percent of the cases have been filed and pursued against large business and investors, while thousands of villagers who have been living in those lands for generations have been targeted for forced eviction and losing their livelihoods. APWLD in consultation with Ban Sapwai community members, APWLD partners and lawyers submitted [Amicus Curiae briefs to the Supreme Court of Thailand](https://docs.google.com/document/d/19yRh9W73TehjpMpgjwLEeTzLTl-Uuqrk/edit?usp=sharing&ouid=101240554419217365525&rtpof=true&sd=true) calling for the Court’s attention to the international obligation of Thai Government to protect the land and women human rights defenders from the abusive litigation targeted against marginalised communities.

1. **Trial Observation**

To further support the land rights defenders, APWLD and Indigenous Women’s Network of Thailand (IWNT) also went for the trial observation in June 2019. After the trial observation APWLD released [a statement](https://apwld.org/press-release-drop-all-charges-against-land-and-human-rights-defenders-from-ban-sapwai-thailand/) highlighting the important aspects of the case, specially mentioning that the government should take into account the communities living there and respecting their Free, Prior and Informed Consent. APWLD also built advocacy strategies around the case to provide more support to the group.

Trial monitoring/observation enables direct, first-hand observation of legal proceedings and can also serve multiple purposes beyond reinforcing the right to a fair and public hearing. It can help assess strengths and weaknesses in the system, identify and counter biases and stereotyping by judicial actors, foster transparency, engage local legal professionals, feed into capacity-building resources and training, and at times it can prompt judicial actors to comply with international human rights norms and standards.[[2]](#footnote-2) Trial observation is also an information-gathering mechanism that can lead to empirically based recommendations for systemic improvements to the justice sector.

1. **Fact Finding Mission**

Fact finding missions could be a useful legal empowerment approach. Fact finding mission means a visit, a mission or an activity carried out by a non-government organisation to discover the relevant facts relating to a situation of human rights concern, whether allegedly committed by the State or non-State actors. The activity or the mission will be documented, and a report will be made of it.

APWLD has supported its members to carry out feminist fact finding mission which focused about women’s human rights centred on the lived realities, experiences and concerns of affected women. Our members tried to identify and investigate the matters which are concerning.

In 2007, As a part of ‘Food over Gold’ campaign, APWLD’s women and environment task force conducted a fact finding mission on [the mining situation of some communities in Mongolia](https://drive.google.com/file/d/1Xi4EGtj51FdNAyEu1ifGBx1kwLGUKTvj/view?usp=share_link). The mission revealed that many lakes, rivers and springs through Mongolia were polluted and dried out due to the gold extractions.

In August and September of 2021, APWLD’s partner organisation National Indigenous Women Forum (NIWF) conducted a [fact finding mission in Ramechhap district of Nepal](https://drive.google.com/file/d/15CdjVi628_RXA2MiIv3Pq3YoWTI2NYdQ/view?usp=share_link), where a second water storage hydro power project has been intended for construction. The study was conducted to understand the situation of the human rights of indigenous communities in coordination with district networks. Consultations and focus group discussions were conducted during this mission and the project was voiced as not benefiting their community and future.

NIWF assisted the community group to draft a memorandum where it was stated to stop the project as soon as possible due to the disruption and destruction it caused to the indigenous culture, way of life, livelihood and erasing of the identity of the indigenous groups in that area. The memorandum was submitted at the municipality of Ramechhap and also in different ministries of the country.

1. **Advocacy for Legal and Policy Reforms**

Advocacy for legal and policy reforms that promote gender equality and women's rights is another important approach. This can involve lobbying for amendments and changes to laws and policies that discriminate against women and advocating for the adoption and implementation of new laws and policies that protect women's rights.

APWLD has been supporting Women Human Rights Defenders (WHRDs) in Burma/Myanmar particularly in the context since the military coup took place in February 2021. With the arduous content in Burma, APWLD’s member Women’s League of Burma (WLB) had manoeuvred their advocacy utilising feminist analysis of law and addressing military coup exercising on injustice law against HRDs and WHRDs and journalist, terrorist act against civilians, increase of sexual violence in conflict and social-economic impact in general result of coup attempt. For instance, the majority of HRDs, WHRDs and journalists were charged and imprisoned with 505 which is violence of state stabilities and 17/1 Unlawful Association Act. The coup soldiers are weaponising sexual violence against women in conflict area and committing crimes against humanity by burning down civilians’ properties. In general, the commodity price skyrocketing had also full force affecting people in both urban and rural.

WLB has been advocating at regional and international level on the issues of women peace and security, international accountability on current situation in Burma/Myanmar by collecting data and documenting [monthly briefing](https://drive.google.com/file/d/1D3lcmXPc4D2xGE9kzPjP6ULUpuF0ChV6/view?usp=share_link) on military coup human rights’ violation and issuing statements and press releases. APWLD engaged with WLB by providing urgent support, technical assistance in advocacy opportunities at regional and international levels and supporting with statement writing. WLB is still working to ensure women’s human rights by calling international organisations and different UN offices requesting their support to import targeted sanction, to institute comprehensive global armed embargo, not to legitimise State Administration Council (military coup group), to refer human rights situation in Burma/Myanmar to the international criminal court.

**e. Women’s/People’s Tribunal**

Another useful legal empowerment approach could be organising Women’s Tribunals. A women’s tribunal is a tribunal of conscience created by and for women to draw attention to critical issues affecting women. It is a space where [women can speak out about injustices they have experienced, and be heard](https://drive.google.com/file/d/1R8pD4Z9b0V3nXiafqIczK4WcX-Bx3S46/view?usp=share_link). Though not a formal judicial process, a women’s tribunal is a powerful tool for seeking the truth, acknowledging and condemning human rights violations, raising public awareness, fostering solidarity, challenging oppressive paradigms and advocating for change.

In 2000, [The Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery](https://docs.google.com/document/d/1Qo9leoLWlhW7giKwiNkX4ySZtAAZj0oi/edit?usp=share_link&ouid=101240554419217365525&rtpof=true&sd=true) took place in Tokyo, Japan. The tribunal was a peoples’ court established by activists to seek redress against the Japanese government for acts of sexual violence perpetuated against comfort women during the Asia-Pacific War but were not prosecuted by the International Military Tribunal for the Far East (IMTFE) which was constituted to try military offenses after the war. APWLD’s member Heisoo Shin took the leadership position and organised this space for women survivors where they could amplify their voices.

In 2014, APWLD’s member organisation Women's Rehabilitation Centre (WOREC), organised [Women’s Tribunal On Sexual Violence On Women During Conflict in Nepal](https://www.worecnepal.org/camp/33). APWLD secretariat participated in this tribunal as juror. During this tribunal the Jurors and other representatives perceived the voices of the survivors and presented the verdict (recommendations) to provide justice to the survivors of sexual violence during conflict to the Honourable chairperson of National Human right Commission. The chairperson committed to take necessary initiations to address these issues with the Nepal Government based on existing laws and policies.

In 2021, women’s groups in Malaysia created their own court, [Malaysia’s first Women’s Tribunal](https://www.womenstribunalreport.com/) to reimagine justice, holding space for 26 courageous women who came forward before a panel of judges and with an audience of with an audience of 3,850 online; compelling testimonies on gender discrimination and violations they had experienced and sought justice for themselves and for every woman in Malaysia.

**Challenges**

Lack of feminist analysis and deeper understanding of existing law from law enforcement agencies had further oppressed women and marginalised community access to fundamental rights. At times, law enforcement agencies had violated existing policies from having little knowledge of human rights practices especially countries with a history of conflict. At the same time, the legal approach is unable to be exercised at the national level when the nation’s rule of law is unstable.

In India, the Citizenship Amendment Act (CAA)2019 is a burning example of religious fundamentalism. The act is inconsistent with rule of law principles and international law, including the right to equality before the law and the right to non-discrimination, protected under human rights treaties such as the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

The rise of authoritarian governments in the region had also threatened judicial and legal systems and the enacted laws became weapons against human rights defenders. We have seen how the Military Junta took over in Burma/Myanmar and threatened every movement of the WHRDs and has been carrying out extra judicial killings, detentions and abductions daily.[[3]](#footnote-3) In the Philippines under the Duterte government many WHRDs were illegally abducted and killed. In Indonesia, women had to fight to pass the Sexual Harassment Elimination bill and even after passing the law, a new Criminal Code was passed by the government which could be used to oppress women’s rights and their movements.[[4]](#footnote-4)

Civil society spaces such as freedom of association, freedom of peaceful assembly and freedom of expression for women human rights defenders and advocates are shrinking every day. Civil society organisations (CSOs) in Asia have been curtailed by governments that use restrictive laws and criminalise actors of social movements who speak out in defence of their basic rights. In China, we have seen the increasingly dire situation for human rights activists and lawyers, with many disappearing, persecuted, and questioned for their work advocating or defending labour rights, women’s rights, or religious freedoms.[[5]](#footnote-5)

The draconian legacy of the 2014 coup d’état continues to haunt the exercise of fundamental rights in Thailand. Although the junta’s restrictions on civil and political rights including bans on political gatherings had been lifted to facilitate the 2019 General Election and relevant electoral campaigns, the government retained criminal laws with severe penalties such as the Computer Crime Act, and sections pertaining to Sedition and Royal Defamation. These laws were used as the government’s principal weapons against its critics and their exercise of rights to freedom of expression and freedom of assembly, especially during the 2020-2021 uprisings.[[6]](#footnote-6) Further in this vein, the Government has introduced a new draft law on the Operations of Not-for-Profit Organizations (NPO law) at the beginning of 2021, which includes intrusive provisions to track the activities and resources of civil society organisations (CSOs) and seeks to impose new controls over civic space. The logic of this proposed legislation has grave implications for civil liberties and the effective implementation of human rights and humanitarian work, not only in Thailand but also in countries served by the range of regional and international organisations that are hosted in Thailand.

In Pakistan, the government amended the Pakistan Electronic Crimes Act, 2016 (PECA) to threaten human rights defenders. Activists who write pieces critical of the government, judiciary or the military are threatened with charges under this Act.[[7]](#footnote-7) To map out the regressive laws which are impacting the movements of human rights activists and WHRDs in the region, APWLD conducted a desk research on the digital security and surveillance laws and made a database of these laws ([Digital Security Laws](https://docs.google.com/spreadsheets/d/1IG8EaGl-5rdM3225D54xMyJgjZfg-oqn/edit?usp=share_link&ouid=101240554419217365525&rtpof=true&sd=true), [Data Privacy Laws](https://docs.google.com/document/d/1_LS4TH1OmxlQJt6bg4KUMaGtrfXGKO9i/edit?usp=share_link&ouid=101240554419217365525&rtpof=true&sd=true), [Cyber Crime Laws](https://docs.google.com/document/d/1UlUE2zZZM-x0WbqqCmZv6be5Z-yF7MCU/edit?usp=share_link&ouid=101240554419217365525&rtpof=true&sd=true)).

Now it is more important to innovate and utilise different legal empowerment approaches to amplify the voices of those of the most marginalised, both nationally and regionally. To hold the states accountable for the violation of rights and curtailing fundamental freedoms, it is crucial that the women human rights defenders and women rights advocates use feminist legal strategies and legal empowerment approaches for reclaiming their spaces.

APWLD would like to make these following recommendations and would request the Special Rapporteur to take these into consideration:

* To hold a consultation with grassroots women human rights defenders on access to justice, where systemic issues such as structural barriers, lack of political willingness and its impact on national courts’ decision-making processes, compensation mechanisms for the WHRDs, state violence and other relevant issues can be discussed.
* To consider a report focused on the nexus of macro-economic systems and the independence of judiciary. Especially highlighting those countries where trade and investment agreements prevail over domestic law and legal systems.
* To conduct country visits to the region in countries like the Philippines, Cambodia, Thailand or Myanmar.
* To have a consultation with civil society organisations in one of the locations in Asia and the Pacific.
1. https://www.pna.gov.ph/articles/1196282 [↑](#footnote-ref-1)
2. https://www.ohchr.org/sites/default/files/Documents/Publications/MonitoringChapter22.pdf [↑](#footnote-ref-2)
3. https://aappb.org/?lang=en#:~:text=Updated%2014%20February%202023,crackdowns%20following%20 pro%2d Democracy%20 movements [↑](#footnote-ref-3)
4. https://time.com/6166853/indonesia-sexual-violence-law/ [↑](#footnote-ref-4)
5. https://www.theguardian.com/world/2016/apr/28/china-passes-law-imposing-security-controls-on-foreign-ngos [↑](#footnote-ref-5)
6. https://www.hrw.org/world-report/2022/country-chapters/thailand [↑](#footnote-ref-6)
7. https://www.hrw.org/news/2022/02/28/pakistan-repeal-amendment-draconian-cyber-law [↑](#footnote-ref-7)