

# Feminist Legal Theory and Practice

Asia Pacific Forum on Women, Law and Development

---

*I am able to re-look at how I have 'narrowly' been looking at the law as it stands. This training is an eye-opener to consider and look further beyond my 'bench'.*

ERITE AWIRA, High Court of Kiribati, Kiribati, 2009

## APWLD and Herstory

**T**HE ASIA PACIFIC FORUM ON WOMEN, LAW AND DEVELOPMENT (APWLD) is one of the three 'women, law and development' networks in the world focusing on advancing women's human rights using the law as a tool of change in the global south (Asia-Pacific, Africa, Latin America-Caribbean).

APWLD developed from dialogues among Asia-Pacific women lawyers, social scientists and activists, which began at the 1985 Third World Forum on Women held in Nairobi, Kenya. Women participating in the dialogue recognized that while law is used as an instrument of state control over resources, rights and women's bodies, it could also be used to help effect political and socio-economic changes in one's society. They also recognized that gaining the capacity to mobilize people to understand the social, economic and political dimensions of women's oppressions and take collective action for change required a clear focus and strong organization. The outcome of this was the formation of APWLD, the first regional response to the challenges raised at the Nairobi conference. Followed by CLADEM<sup>1</sup> in Latin America and WILDAF<sup>2</sup> in Africa.

APWLD believes that law can be transformative as well as repressive, seeking to dissect, engage with and transform laws, legal practices and the systems that shape and inform them. APWLD believes that the fusion of patriarchy with militarization, fundamentalisms and neo-liberal economic globalization is responsible for gross violations of women's rights. Equality, development and the realization of human rights can only happen when

women, particularly marginalized women, are empowered to lead policy and legal debates and articulate solutions. Finally, APWLD believes a transformative form of democratic leadership can bring about the structural changes required to claim and advance women's rights.

The larger objectives of such a forum includes enabling women in the region to use law as an instrument of change for the empowerment of women in their struggle for justice, peace, equality and development; and promoting basic concepts of human rights in the region as enshrined in the Universal Declaration of Human Rights, the United Nations Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, and other relevant international human rights instruments.

APWLD's programs and activities have focused on promoting women's rights as human rights as an analytical and strategic framework of engaging with the legal system to empower women. APWLD has primarily engaged in policy advocacy, education, training and other activities to address issues and concerns of women especially those belonging to rural, indigenous and other marginalized communities. It has lobbied at regional and international levels for the implementation of government commitments in international conventions and the integration of gender issues at regional and international forums. APWLD has developed partnerships with women's groups, human rights groups and development non-governmental organizations (NGOs) in the Asia-Pacific region to consolidate, expand and strengthen networks working on women, law and development.

This article outlines one of APWLD's capacity building programs called Feminist Legal Theory and Practice (FLTP), highlighting its process as a tool for human rights education.

### **Feminist Legal Theory and Practice – A Concept**

Feminist Legal Theory and Practice (FLTP) is a part of a broader program called Feminist Law and Practice (FLP), which focuses on building the capacity of activists and lawyers to analyze and critique laws from a feminist and rights-based perspective and build campaigns to advance women's rights in the region. While other workshops focus on 'gender equality' APWLD's program is explicitly feminist. The program does not simply look at existing laws and international framework. It looks at what is behind the law,

what social, political and economic systems prop up discriminatory laws and practices that marginalize women. The feminist framework also imbeds a commitment to solidarity and movement-building within the program. While a good legal outcome, using international law is a positive outcome in an individual case, APWLD looks at what broader impact it has and how it can be used to raise awareness and to build a movement of people demanding rights.

FLP is one of APWLD's longest standing programs. The training component evolved from 'Beyond Law', a recognition that law must be assessed from the yardstick of women's realities from a feminist perspective if it was to be transformative, to FLT (Feminist Legal Training) to FLTP (Feminist Legal Theory and Practice) that recognized practice and various forms of applications as being part of the feminist practice and engagement with the law. The first training was organized in 1994 and since then FLTP has continued to be an integral and dynamic part of APWLD activities.

FLTP signifies a shift to practice-related ethics and strategies. The range of practice covered explains the inclusion of lawyers with other actors, as litigation and law reform are not the only forms of legal practice. The definitions and scope are inspired by how activists in the field use law for a range of things, including advocacy, education, and so on. For many activists and feminist lawyers, this training has been the only space where they are able to acknowledge their politics openly. The title itself is quite empowering for women, to be clear about the political standpoint from which they speak to human rights and the law. This influences the composition of participants to include case workers, social workers, activists, and the element of lateral learning that such a mix generates.

FLTP draws on the experiences and perspectives of the groups and individuals in the APWLD network and those they work within the Asia-Pacific region. In doing so it is able to encompass concepts, approaches, insights and concerns around law, human rights and strategies from feminists in the region. It integrates the processes of learning, challenging, contextualizing and areas advocating for change in the program.

FLTP is a framework that brings together training in feminist legal theory, women's human rights and feminist litigation strategies, and is intended for lawyers, activists, paralegals, policy makers, members of judiciary and public prosecutors. It is designed to enhance the capacity of national groups to effectively challenge discriminatory laws and practices in their countries

by applying international conventions and precedents. It also encourages the use of feminist litigation strategies by demonstrating how national and international mechanisms can be utilized in innovative ways.

FLTP provides an opportunity for women, human rights activists and lawyers to explore how the application of a feminist perspective to the law can transform women's situations. It challenges the traditional notion that law is a neutral, objective, rational set of rules, unaffected by the perspective of those who possess the power inherent in legal institutions. It seeks to address the social, cultural and political contexts that shape the legal system and tries to develop a feminist perspective into legal practice. It also allows for greater understanding of gender, discrimination, law and human rights that are crucial when identifying and discussing issues and dilemmas encountered by rights or legal advocates in their use of legal strategies to address gender issues. Moreover, FLTP provides a venue for people from around the region to share experiences in using the law when advocating for women's human rights.

The FLTP framework, thus, presents feminism as its core and human rights as its foundation.

The capacity building program takes an activist through the following process:

- The starting point is the recognition of the intersecting oppressions of women because of their sex, ethnicity, caste, class, religion, sexual orientation and other status.
- Evolving feminist theories and principles and human rights standards are used in the analysis of women's situations, taking into account issues around feminism and human rights.
- Law, as an institution, at the national and international level, is examined for its role in women's oppression and for what it can contribute to addressing it. Given the plurality of legal systems in many Asian and Pacific countries, customary and religious laws are also examined.
- Theories, concepts and issues around feminism, human rights and laws are considered in framing, planning and implementing strategies.

FLTP is therefore, a political strategy that involves challenging and influencing the power dynamics and relationships involved in rule-making and,

therefore, can be similarly used as an outline and guide for analysis, planning and action. Based on this framework, activists can frame principles and rules they consider 'feminist' and agree to be bound by them in their processes and work.

## **Feminist Legal Theory and Practice – the Training**

### **Content**

FLTP trainings are organized at the regional and national levels and are generally a five-day course. The program is adapted or extended to suit the participant group's interests, priorities, contexts and time constraints. The training comprises five broad sessions. Session I focuses on understanding the lived realities of women. The objective is to develop a common understanding of the oppression and systemic discrimination faced by women and especially by women belonging to rural, indigenous and other marginalized communities.

Session II focuses on developing an understanding of feminism(s) as a lens through which women's realities can be understood and analyzed. While there may be different schools of feminism, feminism as an ideology says that women are oppressed because they are born as women and actions need to be taken to address and challenge that oppression. This session also addresses intersectionality and identity politics and the multiple impacts of the increasing trends of globalization, militarization and fundamentalisms on women owing to their multiple identities.

Session III focuses on developing an understanding of law by deconstructing it and viewing it as a tool of oppression for women. The institution of law comprises three components, its substance (written law), structure (procedures), and culture (socio-cultural milieu within which it exists). Law needs to be viewed from a feminist lens to understand and analyze how each of these components or a combination of these can contribute towards women's oppression. This session enables activists to see the link between law and feminism and develop strategies that enable an interface between the two such that it raises concerns of women in both the domestic and international human rights law arenas. This is based on the belief that any intervention to change the law to advance the cause of women must be based on feminism otherwise there is a danger that the intervention could deteriorate the situation of women.

Session IV goes beyond change in the domestic arena to looking at the international arena as one of potential engagement, where one can use the international human rights system to promote women's rights as human rights. The session enables activists to link domestic campaigns and advocacy to international human rights mechanisms; enforce state accountability to human rights within a country; and use international human rights to strengthen work at the community level.

Finally, Session V focuses on various strategies employed by feminist activists and lawyers to change and challenge the law. The session helps one to develop an understanding of legal and non-legal strategies. While law needs to be analyzed using human rights as its foundation, it ultimately needs to be scrutinized through a feminist lens. Towards the end of the session, activists and lawyers are able to apply the FLTP framework to their existing work.

### **Methodology**

FLTP is guided by feminist principles and goals and is premised on the tenets of participatory training and adult learning. The principles of adult learning recognizes that economic, political and educational structures are authoritarian, undemocratic and function in the interest of social, economic and political elites. As a result, those in disadvantaged groups are denied the opportunity to fully develop their potential effectively and critically participate. The adult learning approach is participatory, premised on the principle of 'dialogue', addresses the 'culture of silence' and fulfils the goal of 'social transformation'.

Methods adopted under this approach facilitate experiential learning and include role-play, group discussions, case study analysis, moot court, panel discussion, open space learning, feature films, and so on.

Feminist popular education was developed in the 1980s as a critique to male-biased popular education that was dominant at that time. It is participatory, democratic, and non-hierarchical. It is premised on women's experiences and lived realities and also encourages creative and critical thinking.

### **Learning material**

APWLD along with its network members have developed a training manual for the FLTP training. The manual is a resource book for FLTP trainers who can adapt the framework to suit the needs, priorities and context of the participants. The manual comprises a training module; session details

and facilitation tips for trainers; exercises for different sessions; films that can be screened to advance the learning process; and handouts that can be disseminated to the participants.

In addition, APWLD has also prepared two Readers for participants. The first Reader comprises articles and analytical papers on law, gender, feminism and human rights. The second Reader comprises international conventions and jurisprudence on women's rights.

APWLD also documents the process of FLTP trainings. While the broad framework may be the same, the experiences shared by each group of participants are diverse.

### **Outcomes of FLTP training**

The outcomes of FLTP have been manifold, from strengthening existing work on women's human rights to initiating campaigns on gender responsive legislations. It is difficult to say whether the link between FLTP training and the outcome has been linear because there is an understanding that multiple factors contribute to change and in that context, the FLTP framework has influenced the environment wherein people and groups have advocated for change. This is reflected in some quotes collected over the past few years.

FLTP has given me new understandings and perspectives on domestic law and international human rights law. I have used the FLTP framework and materials in a book which I co-authored on economic rights and rural women; in my work on a project on Human Rights of Muslim Women and Children in Detention and in all the training I conduct on the law introducing a feminist critique of law including at the University and the bar association of Philippines. FLTP has opened 'new vistas' for learning for me that I actively share wherever I can.

- Ma. Luz S. Raneses-Raval, Integrated Bar of the Philippines, Philippines, 2006

FLTP has been really useful to me personally and professionally. It has helped my work immensely to be able to analyze issues using feminist lens. I have used skills obtained in FLTP to write submissions, [and undertake] campaigns and advoca[cies] such as for the Fiji Family Law Bill to improve the law for women and fight discrimination and inequality. For the Employment Relations Bill I have used skills learnt in FLTP to analyze the bill

and see its impact on women such maternity allowances, equal employment and equal pay, sexual harassment and equal employment opportunities and then decided on appropriate strategies.” —VIRISILA BUADROMO, Director, Fiji Women’s Rights Movement, Fiji, 2006

The FLTP framework enabled me to conduct training on CEDAW and the MDGs [Millennium Development Goals] with deputy directors, lawyers and programme officers from 8 ministries such as the Ministry of Women’s Affairs, Ministry of Health, Ministry of Agriculture, Forestry and Fisheries, Ministry of Planning, Ministry of Justice, Ministry of Labour, Cambodia National Council for Women, member organizations of NGO CEDAW Committee, and so on.—Mr. MY SAMBATH, Gender and Development trainer, Cambodia, 2007

APWLD’s FLTP ToT [Training of Trainers] Plus trainings have been useful as they have taught us to be more critical and systematic in approaching law reform and advocacy issues from a feminist perspective. After the training, I managed to strengthen existing networks with other young Malaysian women activists working on popularizing feminism and on writing for women’s rights, and have formed new networks with local gender scholars through the Southeast Asian Gender Studies Association (SAMA).—KAREN LAI YU LEE, Malaysia, 2008

I plan to conduct a four-day workshop for the members of my trade union and potential leaders to prepare them to stand for national-level elections in their countries. I will also work with the Tongan government to sign and ratify CEDAW.—Mele Amanaki, Trade unionist, Samoa, 2009

This training reminded me again why I became a feminist.—Natesan Burnad Fatima, Society for Rural Education and Development, India, 2010

One common outcome of Regional FLTP training is follow-ups at the national and/or sub-regional levels. For example, participants from Malaysia have organized FLTP with the future leaders of the Bar, with women writers

to encourage them to write on issues of social justice from a feminist perspective; participants from Fiji conducted FLTP with the Fijian judiciary and a group of lawyers, and awareness-building with other human rights activists at the national level.

Within the last two decades, the FLTP training has enabled women's rights activists and lawyers to challenge constitutional laws and discriminatory customary practices and traditions such as child marriages, sexual cleansing of women, forced marriages, polygamy, and so on. The training has also provided women with legal aid services; trained paralegals so that more women gain knowledge of the law and apply it; and encouraged women to pursue litigation as a means of challenging not just the substance and structure of the law but also the culture that condition women to be silent recipients of punishment and abuse. Women's rights groups in Kiribati, soon after the FLTP training in 1997-98, successfully led the advocacy against the corroboration rule in rape cases.

The outcomes seem most obvious at the domestic level but activists and lawyers have accessed international human rights mechanisms to strengthen their campaigns and have also utilized the framework to enforce state accountability to human rights. The impact of the intersection of globalization, fundamentalisms and militarization with patriarchy on women has enabled women's rights activists, across the global south, to raise and include rights and its violations at the international level. For example, activists are advocating for sexuality and reproductive rights and the exercise of choice as a part of international law with an objective of limiting state control over women's sexuality and morality.

### **Challenges Experienced**

Challenges are experienced at the stage when activists and lawyers attempt to translate the FLTP framework into practice. Challenges are again viewed from the perspective of the substance-structure-culture framework, which makes it difficult for activists not just to advocate for a new law but to also build awareness in the community about the need to change the existing law. Some of the common challenges recorded are:

- Women fear litigation, especially in cases of divorce, and end up being forced to 'compromise'. The socio-cultural pressures and taboos around a 'divorced woman' prohibit women from using the law to exercising their rights;

- Litigation is perceived as reactive more than proactive;
- Some laws, in their written code or substance, are themselves discriminatory against women, such as the law against rape, which defines rape as penile penetration and specifically requires corroboration;
- The structure of the legal institution, that is, the procedures and law enforcement bodies are male friendly. Even in cases where a written law may support a woman's right, the procedures such as delays, apathy, counter questioning, insensitive behavior, corruption, misapplication and subjective application of laws, etc. contribute to creating an environment that makes it increasingly difficult for women to access justice;
- Legal aid meant to be provided by States does not reach out to women and survivors of violence;
- Society constructs and reinforces negative perceptions about women engaging with the law. Most women who fight domestic violence are branded as 'home-breakers' and 'husband-eaters';
- Mediation mechanisms, in most states, are governed by religion;
- Lack of safe spaces for women survivors of violence;
- Lack of lawyers who are sensitive to facilitate women's rights cases;
- Legal language is alienating and not easily understood;
- Lack of understanding of, resistance to or hatred for the term 'feminist', which makes women reluctant to use the term and concept;
- Lack of preparation of the women's movement to support women who face backlash when they exercise their rights in the community;
- Claiming and strengthening women's human rights means protecting against the erosion of rights the women's movements have already fought hard to establish.

### **Strategies and Responses Used**

Some of the strategies employed to respond to the challenges include:

- Translation of legal documents into major languages used in the communities. In addition, simplifying the concepts and theories such that women from all backgrounds are able to comprehend and apply what they understand;
- Workshops with women from marginalized communities to become familiar with the law and understand how to access the law;

- Workshops with law enforcement bodies such as lawyers, judges and the police to be sensitized about women's human rights and laws;
- Raised awareness particularly of the result of some significant cases so that women are able to adopt the same strategies when they experience similar situations;
- Addressing challenges, questions and problems in making law as a tool for getting people to be more aware of what they are entitled to, and how they can be useful for their own benefit.

### **APWLD's Vision**

APWLD believes that the FLTP offers a model that brings feminist insights and perspectives into legal practice. Through FLTP, APWLD has been able to reach out to many activists and lawyers who are attempting to utilize the framework to transform women's situations.

APWLD wishes to use the FLTP framework to further analyze the growing impact of globalization, militarization and fundamentalisms on different arenas of women's rights such as political participation and decision making; rights of rural, indigenous and migrant women; labor rights; reproductive and sexual rights; rights of women from religious minorities; rights of women in conflict situations, and so on. The integration of FLTP with other initiatives on women's rights will enable an all encompassing analysis of violations and strategy development to address those violations.

The framework of FLTP requires it to be a living, evolving program. APWLD is in the process of formalizing its monitoring and evaluation system to evaluate not just the impact of the program but also the efficacy of its strategies to be able to continually respond to women's rights issues in the region. As such the program shifts to analyze, critique and identify rights regressions. FLP has most recently shifted to provide greater space for campaigning. APWLD members saw the need to recognize legal strategies as one of their strategies to claim and advance women's rights. Awareness-raising, movement-building, constituent and government advocacy and lobbying are equally important and should be complementary to their legal strategies.

FLTP remains a core part of APWLD's work as women from the region continue to shape it, breathe it and practice it.

**Endnotes**

1. CLADEM (Comite de America Latina y El Caribe para la Defensa de los Derechos de la Mujer) is a women, law and development network in Latin America and the Caribbean; [www.cladem.org](http://www.cladem.org).

2. WiLDAF (Women in Law and Development in Africa) is a women, law and development network in Africa; [www.wildaf.org](http://www.wildaf.org).