INTER-AMERICAN HUMAN RIGHTS SYSTEM
AND
VIOLENCE AGAINST WOMEN

International Human Rights Clinic
May 22, 2014
OUTLINE

I. Scope of Research

II. Norms

III. Compliance Mechanisms

IV. Jurisprudence

V. Implementation
I. Scope of Our Research

Part A:

- Identify relevant norms within the IAHRS
- Identify relevant compliance mechanisms within OAS
- Identify landmark decisions by IACHR and IACtHR
- Describe facts, holdings, reparations ordered, and level of state compliance
- Begin to identify concerns and success stories in the implementation of Inter-American norms and decisions on VAW (expert interviews)

Part B:

- Provide in-depth analysis of implementation of norms and decisions in specific countries
- Identify gaps in current VAW legal framework in the IAHRS
- Critique effectiveness of compliance mechanisms
- Provide recommendations for improved effectiveness of state compliance
II. VAW Norms in the IAHRS

- Rights to life, equality, personal integrity, personal liberty, dignity, privacy, family, and access to justice
  - American Declaration on the Rights and Duties of Man
  - American Convention on Human Rights
  - Inter-American Convention to Prevent and Punish Torture
  - Inter-American Convention on Forced Disappearance of Persons
  - San Salvador Protocol* - Arts. 8(a) and 13

- Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women “Convention Belém do Pará” (BDP)
  - Defines VAW
  - Recognizes more specific rights, as well as positive and negative obligations for State Parties
Belém do Pará Convention

- Adopted in 1994 (20 years)
- Entered into force in 1995
- First intl. treaty to cover VAW specifically
- Almost universal ratification in the OAS
  - 32 out of 34 OAS Member States have ratified it
  - Canada and U.S. have not
III. VAW Compliance Mechanisms in the OAS

- **Inter-American Commission of Women (ICW)**
  - 2004 - Statute of the Mechanism to Follow-Up on Implementation of BDP (known as MESECVI)
    - Conference of Members States
    - Committee of Experts

- **Inter-American Commission on Human Rights (IACHR)**
  - Rapporteurship on the Rights of Women
  - Thematic reports/hearings
  - Country visits/reports/hearings
  - Individual complaint mechanism (Art. 12 BDP)
    - Issues reports on merits and recommends reparations
Inter-American Court of Human Rights (IACtHR)

- Advisory Opinions (Art. 11 BDP)
- Contentious Cases
  - Interprets and applies any Inter-American human rights treaty (ratified by the State in question)
  - Binding judgments
  - Supervises compliance with reparations ordered
IV. Jurisprudence on VAW

Inter-American Commission on Human Rights (IACHR)

- Pre-BDP
  - 1996 - Raquel Martin de Mejia v. Peru
    - Facts: Rape by military personnel
    - Holding: Viol. of rts to personal integrity and dignity
  - 1996 - X and Y v. Argentina
    - Facts: Vaginal inspections when visiting relative in prison
    - Holding: Viol. of rts to personal integrity, privacy, and family

- Post-BDP
  - 2001 - Maria da Penha v. Brazil
    - Facts: Domestic violence and failure to investigate
    - Holding: First case to find violation of BDP – Art. 7(b), (d), (e), (f), (g), “in relation to” Arts. 3 and 4
Maria da Penha v. Brazil (cont.)

- **Reparations**
  - Investigation
  - Reform of domestic norms and practices to eradicate, investigate, and punish VAW
  - Education on VAW

- **Compliance**
  - 2006 - “Maria da Penha” Law
    - establishes criminal sanctions for DV
    - creates a call center
    - increases previous punishments for committing acts of domestic violence
    - requires health facilities to inform police officials "regarding cases in which a woman [is] harmed physically, sexually, or psychologically"
    - creates special courts and police force for DV cases
  - 2008 - Monetary compensation
  - 2011 - Hearing before IACHR on barriers to implementation of this law
Jessica Lenahan (Gonzalez) v. United States of America

- **Facts**
  - Police failure to enforce a restraining order for DV led to death of children

- **Holding**
  - Domestic violence is a human rights violation
  - States have an obligation (under ADRDM) to protect victims of DV
  - Failure to enforce a protective order in a DV context, and failure to investigate the deaths, is a violation of the State’s obligation not to discriminate and to provide for equal protection before the law and of the right to judicial protection

- **Reparations**
  - Investigation
  - Legislation making mandatory the enforcement of protection orders and other precautionary measures to protect women from imminent acts of violence
  - Education of general public, and training programs and protocols for police
Compliance

- Commission has criticized lack of information from USG
- U.S. has found no mechanism to make payments ordered by the Commission
- U.S. does not consider IACHR recommendations to be binding
- State Department is working on creating a Federal Advisory Committee that hopes to work with other federal agencies, as well as state and local governments, to promote the implementation of IACHR recommendations
- City resolutions declaring that freedom from domestic violence is a fundamental human right and that government has the obligation to secure this right
- DOJ investigated New Orleans; Maricopa Co, AZ; Missoula, MT; and PR police departments and found that all engaged in a practice of gender biased policing, by failing to respond adequately to allegations of sexual assault and DV
  - DOJ is trying to develop national protocols for non-gender biased policing
- Colorado mayor held a tribute ceremony for Jessica Lenahan, which mentioned the case before the Commission and recognized that DV is a human rights violation
Inter-American Court of Human Rights (IACtHR)

- **2006 – Castro-Castro Prison v. Peru**

  **Facts**
  - 1992 - Peruvian military and police personnel killed dozens of prison inmates and injured several hundred others
  - Injured women left naked for days at hospital while watched by armed guards
  - At hospital, hooded men carried out finger vaginal “inspection” of injured woman

  **Holding**
  - Court is competent to find violations of BDP
  - Sexual rape can constitute torture
  - BDP and CEDAW can be used to interpret obligations under ACHR
  - Subjecting women to prolonged detention while being semi-nude and watched by armed men was a form of sexual violence in light of BDP
  - Peru violated right to personal integrity under ACHR, and it failed in its obligation to investigate and punish acts of VAW with due diligence under BDP
Inter-American Court of Human Rights (IACtHR)


Reparations and Compliance

Court Order of March 31, 2014 (7 years after judgment and 20 years after massacre)

- **Obligation to investigate**
  - No information on how the State is investigating acts of violence against women

- **Training on human rights standards for treatment of detained persons**
  - Partial compliance, but no specialized training on prevention of VAW (which the Court never ordered). (Missed opportunity)

- **Medical and psychological treatment for victims**
  - Partial compliance, no specialized treatment for victims of VAW (which the Court never ordered). (Missed opportunity)

- **Guarantees of non-repetition (monument, public act)**
  - No compliance

- **Monetary compensation**
  - No compliance
Inter-American Court of Human Rights (IACtHR)

- 2009 – Gonzalez et al. (“Cotton Field”) v. Mexico
  
  **Facts**
  - Feminicide and forced disappearances in Ciudad Juarez. No investigation.
  
  **Holding**
  - Mexico violated the rights to life, personal integrity, personal liberty, and the rights to access to justice and to legal protection recognized in Arts. 4, 5, 7, 8 and 25 ACHR, “in connection to” the obligations under Arts. 7(b) and 7(c) BDP.

  **Reparations and Compliance**

  *Court Order of May 21, 2013 (4 years after judgment and 10 after homicides)*
  
  - Partial Compliance:
    - Investigation of facts by properly trained experts with a gender perspective and that focuses on sexual violence, and punishment of those responsible
      - Investigations are ongoing, but Court required more information about how these investigations are taking into account the context of VAW
      - Investigation of state officials for their negligence in the investigations
Partial Compliance:
- Development of protocol to search for missing girls and women
- Creation of genetic database with information about missing girls and women in the state of Chihuahua. (Technical details still being worked out)

Full Compliance:
- Monetary compensation
- Nationwide publication of the judgment
- Public act recognizing state responsibility
- Public monument in memory of women victims of homicide in Ciudad Juarez
- Creation or modification of protocols to investigate VAW
  - Almost every state in Mexico adopted such protocols
- Creation of webpage with information about missing girls and women in Chihuahua
- Education programs on VAW and on adequate investigations of crimes of VAW aimed at public officials
- Education programs on VAW aimed at the general public

No Compliance
- Medical and psychological treatment. (Still in planning stage)
Inter-American Court of Human Rights (IACtHR)

- 2009 – Las Dos Erres Massacre v. Guatemala

**Facts**
- 1982, military personnel massacred 251 people, raped the women and girls, committed other acts of sexual violence, and beat and stomped on pregnant women, causing forced abortions

**Holding**
- Guatemala violated the obligation to investigate under ACHR, “as well as” (not “in connection to”) Art. 7(b) BDP
Inter-American Court of Human Rights (IACtHR)

- 2009 – Las Dos Erres Massacre v. Guatemala

Reparations and Compliance
Court Order of September 4, 2012 (3 years after judgment and 10 after massacre)

- Partial Compliance:
  - Investigation of facts in light of the differentiated impacts violence had on women
  - Public act of recognition of responsibility
  - Monetary compensation

- No Compliance
  - Human rights education for military personnel
  - Monument
  - Medical and psychological treatment
Inter-American Court of Human Rights (IACtHR)

2010 – Rosendo Cantu v. Mexico, and Fernandez Ortega v. Mexico

Facts

- Rape of indigenous women by armed military personnel, followed by inadequate health care and failure to investigate

Holding

- Rape constitutes a paradigmatic form of VAW, and sometimes it may also constitute torture
- Mexico violated rights to personal integrity and private life under ACHR and IACPPT, and failed to comply with its obligation to refrain for engaging in acts of VAW under Art. 7(a) BDP
- Rape is not a military crime, and should not be judged by military jurisdictions
- Mexico violated its obligation to investigate (right to access to justice) under ACHR and under Art. 7(b) BDP
Reparations

- Investigate rape in common (non-military) jurisdiction
- Reform and limit military jurisdiction to exclude rape prosecutions
- Perform public act of acknowledgment of responsibility
- Publish the judgment
- Provide medical and psychological treatment
- Modify rape investigation protocol, in light of Istanbul Protocol
- Train on diligent investigation of VAW (include ethnic and gender perspective)
- Provide human rights education for armed forces
- Establish a Women’s Center in indigenous community
- Provide adequate and safe schools for indigenous girls
- Provide better services for women victims of sexual violence
- Pay monetary compensation

Compliance

- To date, the Court has not issued an order analyzing State compliance of reparations ordered 4 years ago. But Mexico has complied with many of these.
V. General comments on implementation of Inter-American norms and decisions on VAW

• Concerns
  • BDP is not directly applicable in all State Parties. Confusion about application of international law in domestic courts.
  • Impunity and ineffectiveness of justice administration systems.
  • Lack of access to justice, particularly of vulnerable groups like indigenous and afro-descendant women.
  • Lack of sufficient funds to provide specialized services and implement national plans to prevent, sanction, and eradicate VAW.
  • Difficulty in changing socio-cultural norms underlying VAW.
  • Insufficient attention paid to prevention.
V. General comments on implementation of Inter-American norms and decisions on VAW

• Success stories
  – The work of all three organs (ICW, IACHRS, and IACtHR) has resulted in domestic legislation and public policy reforms to provide greater protection of women.
  – OAS Member States have harmonized domestic laws and practices with international standards under norms like BDP and ACHR, and jurisprudence from the Commission and Court.
    ● BDP has promoted uniformity of definition of VAW in the region.
  – Educational campaigns on VAW use BDP and IA jurisprudence framework.
  – Development of national plans and protocols to address VAW.
  – Trainings of justice sector to improve access to justice.
NEXT STEPS

Part B:

- Provide in-depth analysis of implementation of norms and decisions in specific countries
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- Critique effectiveness of compliance mechanisms
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