Examining the Legal & Implementation Gaps in the Global Framework on VAW

Initiative on VAW, Carr Center for Human Rights, Harvard Kennedy School
Featured Panelists:

- **Simi Kamal**, Chief of Party, Gender Equity Program, Pakistan
- **Dr. Ruth Aura**, Chairperson, Federation of Women Lawyers (FIDA)-Kenya
- **Marina Pisklakova-Parker**, Director, Centre to Stop VAW, Moscow, Russia
- **Ramona Boodoosingsh**, Center for Samoan Studies, National University of Samoa
- **Kelbie R. Kennedy**, University of Oklahoma, College of Law, International Indigenous Human Rights Clinic
VAW - Legal and Implementation Gaps - South Asia and Pakistan

- Simi Kamal, Chief of Party, Gender Equity Program, Pakistan
The Region – South Asia

- South Asia has distinct gender-based norms and types of VAW
- India, Pakistan, Nepal, Bangladesh, Sri Lanka, Bhutan and Maldives
- Pakistan is not part of Central Asia or the Arab world
- Within the Region: similar attitudes, practices and behavior
- Diverse religions: Hinduism, Islam, Buddhism, Christianity, Other
History, Legal Systems, Exclusion of Women

- Impact of Colonialism
- Plural legal systems, religious laws, codified, un-codified norms and traditions
- Interplay of formal and customary laws
- Complex nuances – uninformed assertions
- Systematic exclusion of women from social, political, business, and public life
- Perpetuation of VAW
Pakistan example – factors that contribute to violence

- Uncontrolled Areas: Federally and Provincially administered territories
- Tribal and Feudal systems: Strengthen patriarchy, exert power outside legal systems
- Plethora of laws allow interpretation that degrades and incites violence
- Parallel ‘swift’ Justice System (Jirga/Panchaayath) is choked with a backlog
Women and the Government

- Patriarchal government despite pro-women legislation
- Women are socialized to believe they are powerless and subservient
- Yet Pakistani women have blazed a trail and shown what they can do if they put their minds to it
- Recent pro women laws and what they mean
- The huge work needed to convince men and women that equal rights are just, fair and ‘normal’
A Global Treaty on VAW

- Similar issues across South Asian Region
- Binding treaty needed to fight the battles in South Asian countries
- The struggle for equality and ending violence against women must be on the basis of a unifying global norm, not based on piecemeal references
- A global binding norm on violence against women, would provide the women’s movement with leverage to pressure their government
SELECT LEGAL AND IMPLEMENTATION GAPS IN THE MAPUTO PROTOCOL

- Dr. Ruth Aura, Chairperson, Federation of Women Lawyers (FIDA) - Kenya
The United Nations on VAW

**Timeline:**
- 1985: The UN Resolution to Domestic Violence.
- 1993: Declaration on Elimination of Violence against Women.
- 1995 Beijing Declaration and the Platform For Action, BPFA.
- 2003: UN Resolution on Elimination of Domestic Violence against Women

- VAW is rampant even where legal systems and institutions are working
- States mostly perpetrate or tolerate VAW

- This is the most prominent Framework in Africa.

- It recognises culture, traditions and customs as impediments to realising HR of women.

- Obligates SP to modify social and cultural patterns to eliminate harmful cultural and traditional practices.- FGM; abortion; forced marriages; bride fattening.

- Some countries that have started domesticating the protocol.
Maputo Protocol - Weaknesses

- No specific committee to monitor its implementation.
- No reporting mechanisms.
- Increased insecurity and conflicts in some African countries.
- Culture of impunity.
- It offers no new ideas on how to combat cultural issues e.g. FGM.
- Reservations make it holistically in-actionable.
A Global Treaty on VAW

- Sets standards which states have to adhere to in order to comply

- Universal – obligates SPs to modify law, culture and religion.

- Avoid fall backs to other pieces of legislation.

- Establish a specific independent monitoring body and reporting mechanisms.

- Take a holistic approach covering prevention, protection and prosecution.
Legal & Implementation Gaps in VAW - Russia

- Marina Pisklakova-Parker, Director, Centre to Stop VAW, Moscow, Russia
Overview

- CEDAW, Declaration on Elimination of VAW, Beijing Platform are not binding
- National Machinery on women's rights often does not fully reflect its initial mission
- Additional effort of NGOs required for accountability
- NGO is challenged by providing support for survivors and pushing states for change
CEDAW not focused on VAW

- The system of recommendations by CEDAW is not fully effective
- The mechanism of complaints to the CEDAW Committee takes a long time before it can be used
- Special Rapporteur - another good idea without real power;
- The mechanism of complaints on existing cases is important but again it is a pressure without real obligation from a state
Article 5 on cultural traditions and prejudice

- Backlash on gender equality as threat to "tradition"
- Cultural tradition: honor killings, bridal abduction, forced and early marriages
- DV law in Kyrgyzstan has an elder council as a mechanism
- Blaming women for provocation of violence is common in the region because it is a part of education in criminology (victimology)
A Global Treaty on VAW

- Unacceptable for women and girls to die because existing international measures do not ensure their safety
- Time for existing treaties to be used to develop a next step of global action where States have to demonstrate a real commitment
- End of "politically correct" steps for ensuring safety of women and girls
Plural legal systems in Samoa

- Ramona Boodoosingh
- Center for Samoan Studies, National University of Samoa
Overview

- Violence against women estimated at 46.4%
- The Traditional System: village council, penalties, traditional apologies
- Unique village rules
- Women excluded in village council and clergy
- Culture of subservience and obedience
- Proposed changes in law
Traditional vs. State System

- Legal framework
- Ongoing projects
- Rapid and differing access to justice
- Family Court vs. Village Fono
- Traditional apology considered in sentencing
- Differing severity of penalties
Many Positive Changes

- Improved Legal Framework
- Village Bye Law consultations
- Changes in attitude
Why a Global Treaty

- Equity in penalties at the village level
- Consideration of the impact of “Traditional Apology (Ifoga) on sentencing
Violence Against Indigenous Women in Guatemala

- Kelbie R. Kennedy, University of Oklahoma, College of Law, International Indigenous Human Rights Clinic
History of Violence

- Invasion of the Spanish conquistadors in 1525.
- Civil War: 36 years of armed conflict where women and girls were constant targets of violence. (1960 - 1996).
- State law allowed men who raped women to avoid punishment if he married his victim.
- In 2009 the law was changed to criminalize sex with women below the age of 14.
Violence against indigenous women today

- Guatemala currently has one of the highest rates of Femicide in the world.
- **Femicide**: 2011 – 705 reported, 2012 – 560 reported.
- Convictions under current laws (The Act Against Femicide and Other Forms of Domestic V.A.W.) are rare.
- **Domestic Violence**: 2013 – 32,918 reported.
- Ombudsman Office reports that 9 of 10 cases end with no conviction.
Access to Justice

- Currently there are no laws that guarantee the right to an interpreter in Guatemalan courts.
- Language barriers are a major road block to justice for indigenous women.
- Discrimination against indigenous languages in the court room.
  - The case of Ms. Maria Trinidad Gutierrez.
Legal Framework

- The Act Against Femicide and Other Forms of Domestic V.A.W. (Decree 22-2008).
  - If convicted a person will serve 25 to 50 years in jail & pay reparations.
  - However, the convictions rates are low under the laws.

- Anti-Discrimination law: Article 202.bis.
  - In practice the law has a very high burden of proof and provides no attorneys fees.
  - Convictions for crimes is less than 5 years in prison can be erased.
Why a Global Treaty on VAW

- Laws on Femicide & protection of self.
- Translators & equality before the law.
- Equal pay for equal work.
- Individual Complaint Mechanism
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