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Evading Strasbourg Jurisprudence on Domestic Violence: Recognising Institutional Sexism
By Dimitrina Petrova | 20 June 2013

As part of a broader feminist critique of the European Convention on Human Rights, it has been argued that Article 14 of the ECHR (freedom from discrimination) has not been useful in advancing women’s equality due to its reliance on a conception of formal equality. On the other hand, Article 3 ECHR has been more effective in addressing the substantive concerns of women because there is no need for any reliance on a comparator. This position should be revised in the light of the most recent decisions of the European Court of Human Rights, at least in respect to the adjudication of domestic violence cases.

The Eremia decision is an important milestone in domestic violence jurisprudence.

Four years after Opuz v Turkey (Application No. 33401/02, ECHR 2009), on 28 March 2013, the Strasbourg court, in the case of Eremia and Others v Moldova (Application No. 3564/11), made a step forward in recognising the gender discriminatory aspect of domestic violence against women, along with confirming the possibility of characterising domestic violence as inhuman treatment within the meaning of Article 3 ECHR.

The Eremia decision is an important milestone in domestic violence jurisprudence in several ways. First, the Court’s treatment of discrimination under Article 14 ECHR has moved forward and further away from a “formal equality” approach, and in the direction of recognising what I would call “institutional sexism”. The applicants, Ms Eremia and her two teenage daughters, claimed that the authorities’ failure to apply domestic legislation was the result of preconceived ideas concerning the role of women in the family, in violation of their Article 14 right to non-discrimination. The police and the social services had put pressure on Ms Eremia to drop the case against her abusive husband, and had made sexist and stereotypical remarks.

The European Court was persuaded by The Equal Rights Trust’s argument expressed in an amicus brief that domestic violence against women affected them differently and disproportionately and had to be treated as an issue of gender discrimination. The facts in this case meant there was a breach of Article 14 of the Convention. The Equal Rights Trust argued that failure to properly apply domestic violence legislation amounted to a failure to recognise the magnitude of the problem as well as the gendered nature of the assault on women’s dignity; and that the government had a positive obligation under Article 14 to prevent, investigate, prosecute and punish discriminatory violence.

The Court had already found previously that the State’s failure to protect women from domestic violence breaches their right to equal protection of the law and that this failure did not need to be intentional (Opuz, § 191). The Court stated that the authorities’ actions were not a simple failure or delay in dealing with the violence against Ms Eremia, but amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards her as a woman. It was clear from the facts of the case that the authorities did not fully appreciate the seriousness and extent of the problem of domestic violence in Moldova and its discriminatory effect on women.

The Eremia decision is important for several further reasons:

(i) it has now become more firmly established that the issue of domestic violence is not necessarily confined within the box of private and family life (Article 8) and that when reaching a threshold of severity it constitutes inhuman treatment (Article 3). While the domestic violence cases of recent years (Bevacqua and S v Bulgaria, Hadjouva v Slovakia, A. v Croatia (elucidary) considered under Article 8, Eremia has confirmed the breakthrough which took place in 2009 with Opuz, finding an Article 3 violation in respect of a battered woman.);

(ii) With respect to the positive obligations of the government to protect from domestic violence, the Court applied a test of effectiveness: while in Opuz the government had been inert, in Eremia the authorities had put in place a legislative framework allowing them to take measures against persons accused of family violence, and had taken a number of steps to protect the applicants, but these steps had not been effective, thus violating Convention rights. (iii) The Court considered that Ms Eremia was “particularly vulnerable”, as her husband was a police officer: the authorities had failed to see the danger to the public of a police officer not complying with the terms of a protection order issued against him, and had suspended the criminal investigation against him. (iv) Finally, by finding a violation of Article 8 in respect of the children of Ms Eremia, the Court recognised the impact of domestic violence on children forced to witness it.

Equality advocates can now rely on some of the relevant elements of the Eremia judgment in bringing domestic violence cases. Equality jurisprudence under the ECHR has also made one small but firm step in the right direction – toward an understanding of substantive equality and the need to recognise and address institutionally entrenched prejudice.

Dr. Dimitrina Petrova is Executive Director of The Equal Rights Trust.

Stealing Brides in Kyrgyzstan: Why Multicultural Policies in Women’s Rights Make Such Uneasy Bedfellows
By Liz Fouksman | 20 May 2013

Kyrgyzstan is a small mountainous country which once formed the edge of the Soviet Union, wedged between China, Tajikistan and Uzbekistan. It is a place of rich traditions, including felt making, yurts, and – according to some Kyrgyz – kidnapping women in order to acquire a bride.

This past winter, legal penalties for bride-napping in Kyrgyzstan provoked divisive parliamentary debate. According to Women Support Centre, a Kyrgyz women’s rights organization, there are at least 11,800 cases of forced abduction of women every year in Kyrgyzstan, and more than 2,000 of these women reported being raped. At the time of the debate the maximum sentence for kidnapping a bride was three years in jail. The maximum sentence for stealing a cow is eleven. And the main argument in parliament against toughening the sentence on kidnapping? The practice is Kyrgyz tradition.

This ‘tradition’ of kidnapping women to pressure or coerce them into marriage is a microcosm of the debate at the 57th Session of the UN Commission on the Status of Women (CSW57) this Commission, charged with a non-binding consensus document on the elimination and prevention of all forms of violence against women and girls, quickly ran into dissent. A number of countries, including Iran, Egypt, the Vatican and – startlingly – Russia objected to the document’s stance on reproductive rights, sexual orientation, or sex education. The main justification for such objections? Tradition.

How justified are the appeals to “tradition” in these discussions on women’s rights? In the case of Kyrgyzstan, the wide-spread belief that Kyrgyz bride-napping is tradition is not in fact rooted in historical reality. Before the Soviet period, non-consensual bride kidnappings were extremely rare. It was only in the mid-20th century, in response to the modernization policies of the Soviet Union, that kidnappings started to occur more frequently, and only over the last six decades has coercive bride-napping gained the reputation of ‘tradition’. This is the bottom line: tradition is a fluid, changing and constantly recreated thing.

One can see the same process occurring in Russia – one of the countries that reacted strongly to efforts to strengthen women’s rights protections in the CSW57 meetings. Russia once saw itself as bringing equality for women to the Soviet Union’s Central Asian Republics. Now not only does Russia not consider domestic violence technically a crime, but is using the excuse of religion to imprison politically-active punk bands, and the excuse of culture and tradition to put sovereignty and exceptionalism in the path of international agreement.

As Susan Okin pointed out in her controversial 1997 article Is Multiculturalism Bad for Women?, purporting to protect culture and tradition has long been a stumbling point for efforts to protect women’s rights. Protecting multiculturalism can ignore within-group inequalities of power, representation and voice – and thus act as an excuse to allow gender-based violence, discrimination or coercion.

The Commission on the Status of Women did (just barely) avoid including the loophole of cultural exceptionalism in its concluding document. And the Kyrgyz parliament did increase the penalty for bride-napping to ten years behind bars (still a year short of stealing a cow). But the debate on culture and women’s rights is not going away. This is not a question of one culture imposing on another, but rather that the recognition that tradition is a constantly evolving phenomenon, ever-shifting to accommodate a myriad of ideas and practices – including those of justice and rights.

Only with this recognition can we move beyond the multiculturalism stand-off, and continue the global conversation on women’s rights.

Liz Fouksman is a DPhil in International Development at the University of Oxford, currently based in Kyrgyzstan for field research.
Chapter seven

Gender-Based Violence and Human Rights

Silencing Rape on U.S. College Campuses: Evaluating the Clery Act
By Greer Feick | 9 May 2013

The Steubenville rape verdict a few months ago has sparked a broader conversation about the United States’ endemic “rape culture”, and the responsibility of innocent bystanders and institutions to address it. Many U.S. colleges report only 0-20 rapes in the past year, unlikely figures given that an estimated 20% of American women are raped at college (which would mean an estimated 50 rapes a year on a campus of 1,000 students).

Despite the expanding legal requirements, in practice, it has proved difficult to ensure that colleges are transparent about rape on campus. Fisher et al. have argued that the Clery Act is “symbolic rather than substantive” – it reaffirms values but lacks teeth. A quick glance at the statistics indicates that many U.S. colleges report only 0-20 rapes in the past year, unlike figures given that an estimated 20% of American students face on university-sponsored study abroad programs and on off-site research projects. A study by Kathryn Clancy of the University of Illinois, first discussed in this post are her own. She received her M.Phil. from Oxford as a Rhodes Scholar in 2008.

Weakening Protections for Victims of Gender-Based Violence in the United States?
By Chelsea Purvis | 24 February 2013

The Violence Against Women Act (VAWA) is the principle federal law addressing gender-based violence in the United States. But for the first time since its enactment in 1994, VAWA’s reauthorization faces substantial opposition.

In 1994 VAWA created a national framework for preventing and responding to gender-based violence (GBV), filling gaps in state laws and funding critical services for victims of violence. The original act strengthened criminal penalties for sex offenders. It provided funding to states, local governments and tribal governments to develop law enforcement responses to GBV. The act improved inter-state enforcement of protection orders. It authorized funding for victim support and established a national domestic violence hotline. VAWA also filled a major gap in existing immigration law: it allowed immigrant spouses and children of abusive citizens (or legal permanent residents) to apply for a change in immigration status without the support of their abusers.

Under VAWA, the US has seen intimate partner violence fall dramatically. But GBV is still pervasive. One major gap in federal law on GBV is the lack of protections for Native American victims of GBV. The vast majority of violence against Native women is perpetrated by non-Natives. But tribal courts lack jurisdiction over non-Natives, and US attorneys do not sufficiently prosecute crimes of GBV referred to them by Native authorities.

VAWA came up for reauthorization in 2012. The Senate’s reauthorization bill provided needed reforms to VAWA. The bill extended tribal jurisdiction over non-Natives in cases of domestic violence. It also improved protection for people in custodial settings, provided grants for reviewing backlogs of rape kits, expanded eligibility for immigrants applying for relief, and extended protections for LGBT victims of abuse. But House conservatives strongly opposed the reforms to tribal jurisdiction and to expanded protections for immigrants and LGBT people. The House produced its own reauthorization bill, stripped of these reforms. Because the House and the Senate could not agree on a bill, VAWA expired at the end of 2012.

The Senate drafted a new bill in 2013 which included most of the 2012 reforms. The bill passed in the Senate with bipartisan support in February. But conservatives in the House continued to object to the Senate’s version. UN experts spoke out against the House’s delay, urging Congress to reauthorize and reform VAWA.

On Friday the House released an updated version of its own VAWA reauthorization bill. While a modest improvement over the 2012 bill, it continues to lack crucial reforms. The bill does not reference LGBT people, and it curtails protections for abused immigrants. The bill requires that tribal courts be “certified” to try non-Natives for domestic violence, and it permits defendants to remove their cases to federal courts. The House is expected to vote on the bill Tuesday.

Chelsea Purvis is a Yale Law School legal fellow at Minority Rights Group International in London (the opinions expressed in this post are her own). She received her M.Phil. from Oxford as a Rhodes Scholar in 2008.

US Congress Reauthorizes Violence Against Women Act
By Chelsea Purvis | 1 March 2013

The United States Congress has for many months been debating the future of the Violence Against Women Act (VAWA). As I explained in my previous post, VAWA is the principle federal law addressing gender-based violence in the US. When VAWA expired in 2012, the Senate drafted a reauthorization bill (S.47) that provides needed reforms to VAWA. S.47 extends tribal jurisdiction over non-Natives in cases of domestic violence, and it expands protections for immigrants and LGBT victims of abuse.

Conservative Republicans in the House objected to the Senate’s bill. They drafted their own reauthorization bill, excluding most of the Senate’s reforms. But public pressure mounted on the House to drop its opposition to VAWA reforms. 1,300 American human rights organizations sent a letter to the House urging it to pass S.47.

By Tuesday it became clear that conservative Republicans in the House no longer had enough support to pass their alternative reauthorization bill. The House then agreed on Wednesday to vote on the House’s version and then, if that bill failed to pass (as expected), to vote on S.47.

Yesterday, the US House rejected the House’s version and passed S.47 in a vote of 288-138. President Obama will now sign the bill into law, reauthorizing VAWA and adding crucial protections for Native Americans, LGBT people, and immigrants.

Chelsea Purvis is a Yale Law School legal fellow at Minority Rights Group International in London (the opinions expressed in this post are her own). She received her M.Phil. from Oxford as a Rhodes Scholar in 2008.
The Justice JS Verma Committee Report on Amendments to Criminal Law relating to Sexual Violence in India - Preliminary Observations

By Dhvani Mehta | 24 January 2013

The Justice JS Verma Committee, set up by the Government of India after the horrific gang-rape in Delhi on December 16, 2012, submitted a 630 page report on 23 January 2013, setting out its recommendations for the reform of India’s sexual violence laws. The Committee received over 80,000 responses to its call for submissions. A copy of the report is available at https://docs.google.com/file/d/0B8cOm1kVR415X2xpa2tNeUdFTU0/view?pli=1&sle=true. Television coverage of the press conference releasing the report can be viewed here.

The report makes recommendations on a wide range of issues, confined not just to rape and sexual assault, but also to sexual harassment in the workplace, trafficking of women and children, child sexual abuse and honour killings, adequate safety measures for women, and the medico-legal examination of the victim.

Professor Sandra Fredman, assisted by members of Oxford Pro Bono Publico, submitted recommendations to the Committee, drawing upon best practices from Australia, Canada, South Africa and the UK as well as international law sources such as the Convention on the Elimination of All Forms of Discrimination Against Women and the United Nations Division Advancement for the Advancement of Women Handbook entitled Legal Instruments and Legislation on Violence Against Women. Some of these recommendations included:

(a) framing the issue as a violation of women’s human rights to autonomy, agency and integrity rather than a question of honour or decency

(b) removing the exception on marital rape by clarifying that the marital relationship does not constitute a valid defence against crimes of sexual violence, nor is it to be treated as a mitigating factor justifying lower sentences, and that the relationship between the accused and the complainant ought not to be relevant to the question of consent to the sexual activity

(c) retaining the separate offence of rape while redefining it to include all forms of non-consensual penetration of a sexual nature, while introducing separate offences of sexual assault and sexual harassment to prohibit other non-consensual and non-penetrative forms of sexual touching and unwelcome conduct of a sexual nature respectively

(d) shifting the burden to the accused to show that all reasonable steps were taken to obtain full and freely informed consent to the specific sexual activity

It is encouraging to note that the Committee has adopted these recommendations in its report. Thus, it recommends that Section 375 of the Indian Penal Code (which defines rape) be amended to clarify that that consent is not to be presumed in the case of existing marital relationships and that it means an unequivocal voluntary agreement when the person by words, gestures or any form of non-verbal communication, communicates willingness to participate in the specific act.

In keeping with its objective of ‘deconstructing the paradigm of shame-honour in connection with the rape victim’, the Committee also recommends the re-enactment of Section 354 and the deletion of Section 509, doing away with references to ‘outraging the modesty of women’. Instead, the Indian Penal Code then elaborates on circumstances that it means ‘an unequivocal voluntary agreement when the person by words, gestures or any form of non-verbal communication, communicates willingness to participate in the specific act.

The courts have clarified that these are two separate tracks to proving rape: ‘against her will’ means the woman has resisted and there was opposition while ‘without her consent’ would comprehend an act of reason accomplished by deliberation (State of UP v Chetotty Lal (2011) 2 SCC 550). The Indian Penal Code then elaborates on circumstances under which ‘consent’ is obtained by threats to the safety of a third party, where the victim is mistaken as to the identity of her husband, there is a lack of a conscious mind or the victim is under 16 years old.

The Commission then examines the law of consent in Canada and England & Wales. Under Canadian law, the accused when charged with sexual assault cannot argue he subjectively believed there was consent. Rather, he must demonstrate that he believed there was consent because he took reasonable steps to ascertain consent to the specific sexual activity. In England & Wales, a person consents if he or she agrees by choice and has the freedom and capacity to make that choice. The law in England & Wales statutory directly, in almost identical circumstances to India, where consent does not exist.

Appendix 4, the Verma Committee sets out draft amendments to the Indian Penal Code which clarify the nature of consent. First, penetrative sexual activity is rape when a man induces the victim to consent by impersonating another. This expands the previous definition which only confined mistaken identity to marital relationships. Second, consent cannot be presumed because of any existing marital relationship between the parties. Third, the Committee adopts the Canadian reasoning and recommends the law require unequivocal voluntary agreement, verbal or non-verbal, to participate in the specific act. Finally, consent cannot be presumed because the victim does not offer actual physical resistance to the act of penetration.

The Verma Report’s recommendations substantially improve the legal protection on consent. However, there are two remaining anachronisms which should be modified when the Indian government reforms the law. The pronoun ‘her’ should be replaced with gender neutral language in recognition that men can be victims of rape and sexual assault. Similarly references to ‘man’ in mistaken identity should be reframed in gender neutral terms. The Report continues with the two track approach to consent (i) against her will and (ii) without her consent. In spite of the specific recommendation that consent does not require physical resistance, also defining rape as ‘against her will’ continues to reflect ideas that victims of rape must behave in a certain manner for the offence to be made out. This should be removed in recognition that respect for sexual integrity and autonomy does not require the victim to fit into any stereotypes on how he or she should behave. The inconsistency in these two positions could create confusion and undermine the strong position the Verma Report takes on requiring positive consent to penetrative sexual activity.

The Verma Report makes some very important recommendations to reform the law and cultural attitudes regarding rape and sexual assault which hopefully will guide the Indian legislature when reforming the definition of consent.

Clariﬁcation on Consent in The Verma Report

By Meghan Campbell | 31 January 2013

After the tragedy of the gang rape in Delhi on December 16, 2012, the Committee on Amendments to Criminal Law (The Verma Report) has submitted recommendations to the Prime Minister of India on reforming the laws on rape. The definition of legal consent to rape and sexual assault raises many challenging issues on the roles of men and women with respect to sexual activity.

The Verma Report provides a useful summary of the current state of Indian law on consent and draws on the comparative analysis contributed by Professor Sandra Fredman, Oxford University and Oxford Pro Bono Publico to make its recommendations on how to reform this challenging area of criminal law.

To make out the offense of rape under section 375 of the Indian Penal Code, rape must either be (i) against her will or (ii) without her consent.

The courts have clarified that these are two separate tracks to proving rape: ‘against her will’ means the woman has resisted and there was opposition while ‘without her consent’ would comprehend an act of reason accompanied by deliberation (State of UP v Chetotty Lal (2011) 2 SCC 550).

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The Verma Report makes some very important recommendations to reform the law and cultural attitudes regarding rape and sexual assault which hopefully will guide the Indian legislature when reforming the definition of consent.

Meghan Campbell is a DPhil in Law Candidate at the University of Oxford and contributed to OBP’s submission to the Verma Committee.
Disappointing Departures from the Verma Committee Report
By Chintan Chandrachud | 3 February 2013

The Union Cabinet of the Government of India has cleared an ordinance making changes to India’s rape laws. This comes a few days after the Justice Verma Committee submitted its report (discussed here and here) recommending comprehensive changes to the criminal law in the light of the horrific gangrape in New Delhi in December. The ordinance, which will become law when promulgated by the President, would need to be passed by Parliament within six weeks of reassembling. Although the government’s demonstrable urgency is welcome, the ordinance makes some disappointing and some would say, disturbing, departures from the Justice Verma Committee Report.

First, the ordinance extends capital punishment in cases where rape results in the death of a victim or leaves the victim in a persistent vegetative state, inspite of well-documented arguments that the gravity of the death penalty might result in over-cautious judging and lower conviction rates for rape. Coupled with the familiar argument that death penalty does not serve as a greater deterrent than life imprisonment, this provision of the ordinance is regressive. If the ordinance (and a law on similar lines) comes into being, it won’t be long before the capital punishment provision faces serious constitutional challenge, on grounds similar to those in Coker v Georgia and Kennedy v Louisiana before the US Supreme Court.

Second, the ordinance is silent on the issue of eliminating the ‘marital rape’ exception. The Verma Committee provided detailed reasons for which Sir Mathew Hale’s affirmation that a wife’s consent is irrevocable is inconsistent with the values of an egalitarian society. This marks the failure to recognize the Indian woman as an independent, rights-bearing citizen as opposed to the property of her husband.

Third, the ordinance bears no mention of the Armed Forces Special Powers Act (AFSPA), which provides sweeping powers to security personnel in conflict zones, including immunity from prosecution in regular courts. As the Verma Committee observed, the AFSPA has lead to ‘deep disenchantment and alienation’ of people in these areas.

If the President promulgates the ordinance, one can only hope that political pressure within government and outside it results in a course correction to the proposed reform of rape laws.

Shreya Atrey is a PhD in Law Candidate at Magdalen College, University of Oxford.

Rape and Reform in India: No Legal Fix for a Systemic Problem
By Shishtir Bail and Sudhir Krishnaswamy | 25 April 2013

The brutal rape and mutilation of a 5-year-old girl in Delhi last week has sparked fierce protests reminiscent of the national outrage invoked by the December 2012 gang-rape. The ordinance to insert a provision on aggravated sexual assault or rape perpetrated on the grounds of the complainant’s religion, race, caste, place of birth, age, disability, sexual orientation or any of them, which will become law when promulgated by the President, is unlikely that we will make significant progress to prevent sexual violence in India. If the Parliament decides to insert a proviso on the uniformity and deflates the differences in women’s experience.

The possibility of having this ‘other’ narrative recognized in the language of law seems no brighter than it was several decades ago. Bhanwari Devi, the rape survivor from the case of Vishaka v State of Rajasthan was gang-raped because she was a Dalit woman working as an Anganwadi saathi, trying to convince her village against child marriage and hence challenging the authority of the upper castes. The outrage over her gang-rape gave all women the Supreme Court guidelines on the prevention and protection of women against sexual harassment. What went unnoticed was her own personal fight for justice or the collective fight of Dalit women for emphasizing that their intersectional identity is itself a reason of sexual violence against them. We lost an opportunity then (and much before in the case of Mathura, the tribal minor who was gang-raped in police custody) and we will lose one now if we continue without redefining the terms of the rape debate. Our response must both be intersectional and feminist – we must come together as women and we must then reflect the realities of all women.

Thus, if the Parliament decides to insert a proviso on aggravated sexual assault or rape perpetrated on the grounds of the complainant’s religion, race, caste, place of birth, age, disability, sexual orientation or any of them, we would have reflected our realities as women through intersectionality. And there can be nothing more feminist than that; that we lift those below us as we advance the ladder of gender equality.

Shreya Atrey is a DPhil in Law Candidate at Magdalen College, University of Oxford.
To Whomsoever it May Concern? The Case of Criminal Law (Amendment) Act 2013
By Shreya Atrey | 3 April 2013

The Criminal Law (Amendment) Bill 2013 was passed by the Indian Parliament and now awaits the sanction of the President before it replaces the Criminal Law (Amendment) Ordinance 2013. The Bill can be termed as the third wave of women’s movement in India, the law disengages with the national and feminist consciousness which has emerged post the December 16 Delhi incident. Although the law introduces some useful provisions like defining ‘consent’ for the purposes of section 375 and criminalizing stalking, acid attacks, voyeurism and sexual harassment – the overall message remains regressive in both what the law has chosen to address and omit. This post discusses how Chapter II of the approved Bill concerning the amendments to the Indian Penal code betrays the feminist agenda in its content and context.

Using Public Interest Litigation to Combat Acid Attacks in India
By Vinrda Bandani | 11 August 2013

Although there are no official figures on the number of acid attacks in India, estimates by activist groups range from three acid attacks every week to 1,000 a year. Most of these horrific attacks are carried out by jilted men, seeking revenge. They have easy access to acid, which was until recently, available for purchases in any general store. The Central Government, despite repeated assurances to the contrary, has not regulated the sale of acid despite clear voices against it. In reducing the response to gender-based violence to enhanced sentences (rigorous imprisonment and in some cases extending to life imprisonment for life without the possibility of release), the law confirms allegiance to patriarchal forms of sentencing, which do not find any resonance with the theories of reformation and correction.

Neither is there any mention of creating a robust structure of rehabilitation, counseling, support and assistance for rape survivors, nor is the amendment couched in the language which sees sexual crimes as a breach of bodily integrity and sexual autonomy. In fact, the Amendment Act leaves untouched Sections 354 and 509 of the Indian Penal Code, which are not very effective in providing redress to survivors, nor is the amendment couched in the language that reinforces the legal paternalism for protecting women and their constitutional rights. The content of the law is focused on harsher punishments for new or existing crimes. The death penalty is introduced despite clear voices against it. In reducing the response to gender-based violence to enhanced sentences (rigorous imprisonment and in some cases extending to imprisonment for life without the possibility of release), the law confirms allegiance to patriarchal forms of sentencing, which do not find any resonance with the theories of reformation and correction.

Further, there is no introduction of a broader provision on sexual assault or aggravated sexual assault committed against women with intersex identities. The retention of section 377 despite the judgment of the Delhi High Court in the Naz Foundation decision, age of consent at 18 and the continued legality of rape in marriage remain problematic despite the stance of the Justice Verma Report. Lastly, the strategy for protecting women by excluding men from the protection of these laws is a clear violation of right to equality and non-discrimination.

In the several hits and misses of this Amendment Act, the question which remains is this: to whomever does this law concern? Neither does it seem to address the ilk of 16 December Delhi incidents nor does it seem to be emancipatory for all women and men. The Parliament then, really seems to have created a law unto itself.

Shreya Atrey is a DPhil Candidate in Law at the University of Oxford.
Sexual Harassment in the Indian Legal Profession
By Jayna Kothari | 3 April 2013

Two big sexual harassment complaints have sent shock waves in India this month— one by a legal intern complaining of sexual harassment from a retired Supreme Court judge and another by a journalist in a well known media house, complaining of harassment by her employer.

The complaint by the legal intern is timely because it raises the real problems of sexual harassment that women lawyers and legal professionals face. The Supreme Court has set up a 3-member committee to inquire into this complaint, but it is rather shocking that this committee is not in accordance with the Supreme Court’s own guidelines in the Vishaka judgement. The Vishaka guidelines and the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 mandate that every committee dealing with sexual harassment should have at least 50% women, should be chaired by a woman and should have one external member who is familiar with issues of harassment. The present Committee set up by the Supreme Court has only one woman member instead of two and it has no external member as mandated. The external member is required, in the words of J. Verma of the Supreme Court, “to prevent the possibility of any under pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.” When the complaint is against a former Supreme Court judge, and the committee consists only of sitting Supreme Court judges, it is a very serious concern. It was precisely for such cases that the external member requirement was made in Vishaka and in the new legislation. It is being flouted by the Supreme Court.

The legal profession the world over is male-dominated. Women face sexual harassment of varying degrees and sexual harassment laws need to be interpreted to keep in mind such instances. First, sexual harassment laws usually address harassment at the workplace. For women lawyers, the ‘workplace’ is often the courts. However, lawyers practising in the courts are not ‘employees’ of the judges, and therefore the definitions of workplace, employers and employees in sexual harassment law needs to be interpreted broadly.

Secondly, it is extremely difficult for women lawyers to complain of harassment. Women lawyers would face sexual harassment in various ways – from co-lawyers; senior lawyers; judges; co-workers and their employers. Law students, legal interns and paralegals are particularly prone to harassment as well as others who access the system such as clients or litigants. In India, women, especially those who do not adhere to conventional norms are at risk of sexual harassment in the form of sexual gossip and comments by male lawyers in the courts. The court corridors become a hub where almost every woman lawyer is observed and discussed by male lawyers, as to their dress, mannerisms, relationships. This gossip often gets carried to the judges, court staff and clerks. Women lawyers face sexual harassment from senior lawyers and judges where sexual comments are often made openly in the courts, making it impossible for the woman to speak out publicly. Requests for sexual favours are made. In one case a woman lawyer in Andhra Pradesh even committed suicide due to the sexual harassment she faced. Complaining against a senior lawyer or a judge has huge repercussions on the woman’s future legal career because of the power that judges and senior lawyers wield in the legal profession. Additionally, because the ‘workplace’ is so broad, making a complaint would make the woman conspicuous in the entire legal community of the city/town where she practices.

The recent complaint has prompted the Supreme Court to set up a 10-member Gender Sensitisation and Internal Complaints Committee to receive complaints against sexual harassment. Most high courts all over India however do not have complaints committees which would take up complaints of sexual harassment. Even if they do, they are largely non-functioning.

Setting up the complaints committees is one part of the battle. The real challenge lies ensuring that these complaints are inquired into seriously and action is taken against the perpetrators, even if they are judges or senior lawyers. Only then will the high courthouses begin to function.

CSW57: Violence against Indigenous Women and Girls
By Claire Overman | 12 March 2013

At the 57th session of the UN Commission on the Status of Women in New York, one topic which was considered on March 6 as part of the broader discussion on violence against women and girls was the situation of indigenous women in particular. The panel was comprised of Agnes Leina (representing Kenya’s pastoralist women), Marthe Muhawenimana (representing Rwanda’s Batwa women), and Shimireinchin Luhuahu-Emi (representing India’s Naga women).

The fact that violence against indigenous women was discussed as a separate issue highlights the danger of treating violence against women as a universal problem requiring broad brush consideration: rather, the panel emphasised the unique situation of women in their countries. In Kenya’s pastoralist community, female genital mutilation is the biggest problem, with female circumcision rates at almost 100%. In contrast, in Rwanda, Batwa women are subjected to domestic violence and rape due to myths that sexual intercourse with these indigenous women has medical benefits. Yet another form of violence exists in India, where land-grabbing and development projects have led to militarisation of geographical areas, with military agents engaging in rape and torture.

The unique status of indigenous women is compounded by the fact that they are often subjected to a double burden of discrimination – on the ground of being female, and also on the ground of being part of an indigenous population. This was highlighted by Luhuahu-Emi, when she pointed out that although only the Naga community are seen as insurgents when they object to development projects, but women within those communities are seen as inferior by men. For instance, preference is given to boys in matters of education.

However, despite these differences, some common themes can be seen in relation to the violence experienced by indigenous women in these communities. For instance, all three members of the panel highlighted the role of the lack of educational opportunities afforded to these women and girls. Leina noted that, for a pastoralist girl in Kenya, the only way to alleviate her family’s poverty is to be circumcised and married, rather than to have a job. As such, all the members of the panel emphasised that the way to improve the situation of indigenous women was through education: both short-term, in respect of teaching them about their legal rights, and long-term, through women’s increased participation in governmental decision-making bodies.

The panel’s discussion therefore highlights the fallacy of treating violence against women as a universal problem, and of ignoring the cultural and social context. In particular, the increased vulnerability of these women, as part of communities which are already marginalised, means that the immediate threats they face are often very different from those faced by women in more developed countries. Nevertheless, the root causes of this violence are remarkably similar – despite the differing cultural situations of these women, a lack of educational opportunities has been identified as an overarching problem. By tailoring broad solutions to the specific needs of indigenous women, the panel hopes to improve the unique plight of this particularly vulnerable subgroup.

Claire Overman is currently reading for the BCL at the University of Oxford and is a regular contributor to the OxHRH Blog.
Gender-Based Violence and Human Rights

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The Agreed Conclusion of CSW57 — Reaffirmation of the University of Women’s Human Rights

By Frances Raday | 10 April 2013

The Agreed Conclusions of the 57th Session of Commission on the Status of Women (CSW), on the theme of “The elimination and prevention of all forms of violence against women and girls”, represent a considerable achievement for the women’s universal human rights focused Member States, in particular most of the European countries. In addition to the well-constructed provisions on domestic violence, two themes which are particularly welcome are the reaffirmation of the universality of women’s human rights and the recognition of the public dimensions of violence against women. Skilful organisation by the CSW Bureau and its Chairperson and forceful argument and side events by numerous women’s civil society organisations resulted in the inclusion in the Agreed Conclusions of important issues that had not appeared in the earlier draft.

The reaffirmation of the universality of women’s human rights is a crucial rejection of the attempt in recent years to restore traditional values to the interpretation of human rights. This attempt has been promoted by a cross-regional group, which variously includes Russia, Syria, UAR, Malaysia, Kuwait, Libya, Indonesia and Bangladesh Egypt, Tunisia, Qatar. States from this group have succeeded in having resolutions on traditional values adopted by the Human Rights Council and were pivotal in pre empting agreement by the CSW in 2003 on the theme of violence against women and, in 2012, on the theme of women’s empowerment of rural women. The issues which are contentious for the traditional values block are, inter alia, women’s reproductive rights and services; minimum marriage age of 18 in accordance with art. 1 CEDAW and art. 16 CEDAW and CEDAW GR 21 on equality in marriage and family relations; protection for women involved in prostitution; protection of “vulnerable traditional practices”; sexual orientation and sex education.

The CSW firmly rejected the adoption of a relativist approach at both the theoretical and the operative levels.

It reiterated that all human rights are universal, indivisible and interdependent and interrelated and urged states to “strongly condemn any form of violence against women and girls and to refrain from invoking any custom, tradition or religious consideration to avoid their obligations with respect to its elimination”.

At an operative level, the CSW included a significant range of obligations which are at the core of the traditionalist camp’s opposition. The Agreed Conclusions included promotion and protection of women’s human right to have control over and decide freely and responsibly on matters relating to their sexuality, including sexual and reproductive health free of discrimination and violence, and called upon states implement laws and policies which protect their fundamental freedoms, including their reproductive rights. It also called for a review of the minimum age of consent and age for marriage and an end to the practice of “child, early and forced marriage”, while this provision falls short of fixing a minimum age for consent and marriage at 18, as the CEDAW Committee has called for, in its concluding observations, it goes beyond the traditionalist approach which may allow marriage after puberty by adding the concept of early or forced marriage. The CSW addressed the need to ensure access to services and programs on preventing early pregnancy and sexually transmitted infections, to ensure institutional support and continued post-primary education for girls who were “married and/or pregnant”. It also talked of the need for comprehensive evidence based education on human sexuality and need to provide formal and informal education to girls to develop their self-esteem and access to a sustainable livelihood. A recent recommendation was included that emergency contraception and safe abortion be provided for women who have been raped.

This said, the battle over traditional values has not yet been entirely won. There was no mention in the agreed conclusions of harmful traditional practices, intimate partner violence, prostitution or violence on grounds of sexual orientation or gender identity.

The Working Group on Discrimination against Women was particularly satisfied to see the inclusion in the Agreed Conclusions of a series of issues on violence against women in their stable as well as the private sphere, which I, as Vice Chairperson, had presented to the CSW in an interactive dialogue, on the basis of the Working Group’s 2012-1013 work on the theme of women’s public and political lives. The Working Group is looking at violence against women as a cross-cutting issue in the four thematic areas it has established as its conceptual framework: public and political life; economic and social life; family and culture; health and safety. It regards elimination of gender based violence against women in all these spheres as crucial for women’s empowerment. It also included a much welcomed reference to the need to support and protect human rights defenders, who face particular risks of violence. It also addressed the new public space of ICT and social media, with all its potential for empowerment of girls and the need to develop mechanisms to combat its emerging forms of VAW, such as cyber stalker and privacy violations that compromise women’s and girls’ safety.

There is much room for satisfaction and appreciation of the CSW’s achievement and some place for optimism that it sets us on a good path for the future.

Frances Raday is the President of the Concord Research Center for Integration of International Law in Israel, Professor of Law, Hebrew University, Jerusalem (emerita) and a Mandate Holder in the UN Human Rights Council.

Violence Against Women in South Africa: President Zuma and the ANC Still Have Not Got the Message

By Nahibah Iqbal | 21 February 2013

The recent tragedy of Anene Boosyens has brought widespread attention to the pandemic of violence, especially sexual violence, against women in South Africa, a country labelled by Interpol as the ‘rape capital of the world’, and where it is estimated that a woman is raped every 17 seconds. Boosyens’ case has been heralded as marking a turning-point in the country’s attitude towards gender-based violence, but many pragmatists should be wary of notions that this is a wake-up call for the the country’s African National Congress (ANC) government, whose approach to gender-related issues can only be described as ‘sluggish’ at best.

A few days after Boosyens’ fatal attack, President Jacob Zuma delivered his State of the Nation Address (SONA). Disappointingly, he offered nothing in terms of specific means by which the government plans on tackling violence against women. He pays some lip service to the issue (which is an improvement on SONA 2012), but no doubt this is only due to the coincidence of the Boosyens case occupying the media spotlight in the week preceding his speech.

Of course, President Zuma does not hold back on the clichés. He declares that ‘improving the status of women remains a critical priority for the government’, calling on ‘the need for unity in action to eradicate this scourge’, ending his admonition with the peroration that ‘the brutality and cruelty meted out to defenceless women is unacceptable and has no place in our country’. But where does he go from here?

President Zuma reaches the apex of his speech on violence against women by proudly announcing the government’s establishment of the National Council on Gender Based Violence in 2012, which he refers to as a ‘coordinating structure to make the campaign of fighting against women an everyday campaign’. However, more bureaucracy is not the answer.

Taking heed of recent statistics, the government needs to realize that more immediate, affirmative action is the way to combat this spiralling problem. Violence against women is still on the rise in South Africa according to a 2012 report by Human Rights Watch. Research carried out across South Africa between 2010 and 2012 indicates that, in some provinces, between 50 and 77 per cent of women have experienced some form of violence in their lifetime. The failure of the criminal justice system to investigate and punish sexual, psychological and patriarchal forms of violence, and the attitudes that excuse or legitimise the use of violence against women have created a culture of impunity. That (sexual) violence against women has become almost ‘normalised’ in South African society is troubling and seriously undermines the country’s progressive legislation on the issue.

What the struggle against gender-based violence needs most from the State is the allocation of resources and funding, in order for existing legislation and policies to be fully implemented. So far the government has failed to make any specific budget allocations to help tackle violence against women. For example, the government seems to have no explicit funds directed towards implementing the police’s legislative mandate under the Domestic Violence Act, since it was enacted in 1998. As well as funding, the government needs to instate an effective education programme within both the communities affected by this violence, and the criminal justice system, in order to increase awareness of the problem. Although the South African Police Service (SAPS) receives some training on domestic violence, officers have themselves admitted that it is far from being adequate. Currently, the Department of Education provides guidance to children about sexual violence which takes place in schools, but there seems to be no state-endorsed approach to educating children about violence experienced out of school, in order to try and facilitate a change in mindset of the younger generations.

Changes must be made in these areas if President Zuma and the ANC are serious about reducing levels of gender-based violence in South Africa for good, and about justice for thousands of women who are suffering in a society riven with sexism.

Nahibah Iqbal is an English Barrister currently working as a legal intern at the Women’s Legal Centre, Cape Town, South Africa.

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By Kelly Stone [18 July 2013]

“I pay tribute to the mothers and wives and sisters of our nation. You are the rock-hard foundation of our struggle.” - Nelson Mandela, February 1990

Nelson Mandela spoke these words upon his release from Robben Island on 11 February 1990, after serving twenty-seven years as a political prisoner. Fuelled by an uncompromising vision for a free and democratic society, Nelson Mandela altered the course of his prearranged future by becoming something leaders of Apartheid never thought possible. By doing so, he shattered the structures of systematic discrimination and methodical oppression, altering not only his own fate, but the fate of generations to come. Driven by the steadfast conviction that all people are created equal, Mandela’s unbridled spirit and progressive ideals transcended the racial, religious, political barriers dividing his country’s people and created the foundation for the New South Africa.

Twenty-three years have passed since Mandela’s legendary speech in Cape Town, but his homeland has fallen short on its promise of “Mandela’s Days”. Today, women in South Africa experience the highest rates of gender-based violence in the world. Here, a girl is more likely to get raped than to learn to read — a world of manpower and defensive policing) are now better regarded as reasons why it would not be fair, just and reasonable for a departure from the precepts of Hill.

In 1981) present English courts with a strong case for the Human Rights Act compels courts to develop the common law in a way that is compatible with Convention rights. The prohibition on discrimination. Moreover, the Human Rights Act compels courts to develop the common law in a way that is compatible with Convention rights.

The English courts have made no such affirmations. Hill v Chief Constable of West Yorkshire established that the courts are under a duty to develop the common law to promote the spirit, purpose and objects of the Constitution, leading to a finding that the police had a positive duty to protect the woman from action that would infringe upon her constitutionally protected rights.

In Carmichele v Minister of Safety and Security, a woman was brutally attacked by a man awaiting trial for the violent rape of another woman. A catalogue of police failings led to the man’s release on bail. The Constitutional Court recognized that the courts are under a duty to develop the common law to promote the spirit, purpose and objects of the Constitution, leading to a finding that the police had a positive duty to protect the woman from action that would infringe upon her constitutionally protected rights.

The English courts have made no such affirmations. Hill v Chief Constable of West Yorkshire established that the police had a positive duty to care for victims of crime. This case still forms the bedrock of this area of law, although certain aspects of it have been tempered by subsequent courts. In Brooks v Metropolitan Police Commissioner, Lord Steyn doubted whether the optimistic view of the police force articulated in Hill could still be sustained, and in Osman v UK the ECHR ruled that a blanket immunity from suit for police would amount to a breach of the right to a fair trial. Importantly, Smith v Sussex Police held that a member of the public who had fallen victim to a criminal that the police should have caught (Hill) was inapplicable to a person who had alerted the police to the danger they faced from an identified individual, and a duty of care was therefore recognized in that case. Smith is a step in the right direction for English courts, but a stronger position is needed. In Smith, the police had failed to carry out even the most elementary steps to protect the claimant. The threshold for establishing police liability ought to be lowered.

Although the South African Constitution expressly grants citizens the right to be free from violence, domestic violence contravenes a number of rights granted by the ECHR, including the right to life, the right to be free from inhuman and degrading treatment, and (on the reasoning of Baloyi, above) the prohibition on discrimination. Moreover, the Human Rights Act compels courts to develop the common law in a way that is compatible with Convention rights. The ECHR, and the provisions of CEDAW (signed by the UK in 1981) present English courts with a strong case for the modification of the traditional common law position, and a departure from the precepts of Hill.

In Smith, Lord Rimer said that the considerations in Hill which led to the court conferring immunity on the police (diversion of manpower and defensive policing) are now better regarded as reasons why it would not be fair, just and reasonable for a duty of care to be imposed. The nature of domestic violence ought to be recognized as a competing interest when the courts make their assessment of duty of care. In Baloyi, domestic violence was distinguished from other crimes by its ‘hidden, repetitive character’, ‘immeasurable ripple effects on society’ and the fact that it is ‘often concealed and so frequently goes unpunished’. These features, as well as the intense vulnerability of the victim, their unwillingness to speak out, and the rising levels of violence towards women in the UK add weight to the arguments in favour of imposing liability on the police.

The South African Constitution is a product of the country’s unique past, designed to enhance citizens’ rights and protect them from abuses of State power. The UK is a different country with a different past, and yet the circumstances of Rachael Slack’s death raise questions about police failings in the context of domestic violence. The UK should look to and learn from the South African model, created with human rights and protection from State abuse at the top of the local agenda.

Olivia Bliss is a BPTC graduate, currently interning at the Women’s Legal Centre in Cape Town, South Africa. Email: olivia_bliss77@hotmail.com

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Lessons from the South African Constitutional Court: a duty of care for police in England and Wales?
By Olivia Bliss | 12 November 2013

Last month at the inquest of Rachael Slack, a 38-year-old woman stabbed to death by her ex-partner, the jury ruled that police failures had contributed more than minimally towards her death. The ruling has prompted calls for a public inquiry into what the coroner described as an ‘epidemic’ of domestic violence towards women. The Slack family have announced their intention to sue the police.

In South Africa, a jurisdiction plagued by violence against women, the courts have expressly acknowledged the State’s obligation under constitutional and international law to protect women from harm.

In Carmichele v Minister of Safety and Security, a woman was brutally attacked by a man awaiting trial for the violent rape of another woman. A catalogue of police failings led to the man’s release on bail. The Constitutional Court recognized that the courts are under a duty to develop the common law to promote the spirit, purpose and objects of the Constitution, leading to a finding that the police had a positive duty to protect the woman from action that would infringe upon her constitutionally protected rights.

The English courts have made no such affirmations. Hill v Chief Constable of West Yorkshire established that the police had a duty of care to victims of crime. This case still forms the bedrock of this area of law, although certain aspects of it have been tempered by subsequent courts. In Brooks v Metropolitan Police Commissioner, Lord Steyn doubted whether the optimistic view of the police force articulated in Hill could still be sustained, and in Osman v UK the ECHR ruled that a blanket immunity from suit for police would amount to a breach of the right to a fair trial. Importantly, Smith v Sussex Police held that a member of the public who had fallen victim to a criminal that the police should have caught (Hill) was inapplicable to a person who had alerted the police to the danger they faced from an identified individual, and a duty of care was therefore recognized in that case. Smith is a step in the right direction for English courts, but a stronger position is needed. In Smith, the police had failed to carry out even the most elementary steps to protect the claimant. The threshold for establishing police liability ought to be lowered.

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The South African Constitution is a product of the country’s unique past, designed to enhance citizens’ rights and protect them from abuses of State power. The UK is a different country with a different past, and yet the circumstances of Rachael Slack’s death raise questions about police failings in the context of domestic violence. The UK should look to and learn from the South African model, created with human rights and protection from State abuse at the top of the local agenda.

Olivia Bliss is a BPTC graduate, currently interning at the Women’s Legal Centre in Cape Town, South Africa. Email: olivia_bliss77@hotmail.com
Decriminalizing Adultery: Eliminating Discrimination and Violence against Women  
By Frances Raday | 2 November 2012

The UN Working Group (WG) on discrimination against women in law and practice has issued a call to Governments to repeal laws criminalizing adultery. The WG notes that the enforcement of such laws is linked to discrimination and violence against women in law and in practice.

The call by the WG is path-breaking. Previously, human rights mechanisms have made urgent appeals to commute criminal sentences for adultery in specific cases, on grounds of unfair trial, when courts imposed death penalty for adultery, is contrary to international standards. However, the WG considers that commuting sentences, though welcome, is not enough and the offence of adultery must not be regarded as a criminal offence at all.

In many countries around the world, adultery continues to be a crime punishable by severe penalties, including, fines, arbitrary detention, imprisonment, flogging and, in the most extreme instances, death sentences by stoning. In many Islamic states, adultery is prohibited and, in some, court sentences of death by stoning are interminably promulgated and sometimes carried out, as, recently, in Saudi Arabia and in Mali. In many South-West Asian and East Asian countries, including India, South Korea and the Philippines, adultery continues to be a crime. In Pakistan, adultery is a crime under the Hudood Ordinance which sets a maximum penalty of death, which has been particularly controversial because it requires a woman making an accusation of rape to provide extremely strong evidence to avoid being charged with adultery herself. In the US, about 18 states still have criminal adultery provisions and while prosecutions remain rare, they do occur.

Adultery laws have usually been drafted and almost always implemented in a manner prejudicial to women. Provisions in penal codes often do not treat women and men equally and establish harsher rules and sanctions for women. In many instances, adultery is defined as consensual sexual intercourse between a married woman and a man who is not her husband. In some countries, rules of evidence value the testimony of men’s witnesses over that of a woman’s. In some countries where the law prohibits adultery for men as well as women, men are permitted to take more than one wife and also to enter into temporary marriages.

The WG recognises that in accordance with some traditions, customs or civil law systems, adultery may constitute a matrimonial offence bearing legal consequences in divorce cases, the custody of children or the denial of alimony. In many instances, adultery is defined as consensual sexual intercourse between a married woman and a man who is not her husband. In some countries, rules of evidence value the testimony of men’s witnesses over that of a woman’s. In some countries where the law prohibits adultery for men as well as women, men are permitted to take more than one wife and also to enter into temporary marriages.

The WG notes that the enforcement of such laws is linked to discrimination and violence against women in law and in practice.

The experts on the Working Group emphasized that the criminalisation of sexual relations between consenting adults is a violation of their right to privacy, infringing the International Covenant on Civil and Political Rights, as established almost two decades ago by international human rights jurisprudence. It is a violation of CEDAW’s prohibition of discrimination in all matters relating to family. Maintaining adultery as a criminal offence—when, even, on the face of it, it applies to both women and men—means in practice that women will continue to face extreme vulnerabilities, and violation of their human rights to dignity, privacy and equality, given continuing discrimination and inequalities faced by women.

The Working Group on the issue of discrimination against women in law and in practice was established by the Human Rights Council in 2010 to identify ways to eliminate existing discrimination in law and practice, and helping States to ensure greater empowerment and autonomy for women in all fields. The Group is currently composed of four independent human rights experts: Kamala Chandrakirana, Chair-Rapporteur (Indonesia); Emma Aouij (Tunisia); Frances Raday (Israel/United Kingdom) and Eleonora Zielenkiewicz (Poland).

Frances Raday is Vice-President-Rapporteur of the Working Group on Discrimination against Women in Law and Practice; Honorary Professor, Centre of Excellence for Integration of International Law in Israel, The Haim Striks School of Law, COLMAN; Professor of Law, Hebrew University, Jerusalem (emerita)

Men and gender based violence: part of the problem, but also the solution?  
By The Good Lad Workshop | 1 November 2013

Universities may well create the future leaders of our governments, economies, and communities—they are places of intellectual development. Yet does that square with what we know about how often university women face sexual harassment and unwanted advances?

The statistics on gender-based violence amongst university students in the UK are staggering: one in seven women report a serious physical or sexual assault during their time in university, and a quarter of women reported unwanted sexual contact. Most strikingly, 68% of women reported some degree of physical or verbal harassment during their time in university. In addition to the National Union of Students’ prioritisation of this issue, other groups have begun to take notice: Amnesty International UK has pointed to the increasingly clear problem of sexual violence amongst university students, while a recent and highly debated article in The Guardian connected ‘lad culture’ to the high prevalence of harassment.

In sum, we can make headway in reducing the epidemic on gender-based violence in our university culture by targeting larger cultural issues as well. Better yet, we can do this in a way that promotes excellence and positivity, and that reveals our best selves in our relationships with others. We hope you’ll join us, because together we can make our university campuses better places for women and men alike.

The Good Lad Workshop is a group of men in Oxford committed to beginning the conversation on what men can do to end gender inequality. You can get in contact with us at goodladworkshops@gmail.com.

Sexual harassment and violence does happen amongst people like us—we, and people like us, are perpetrators, and we are also victims.

In these cases, most assailants or harassers are not strangers, but rather fellow university students and, specifically in the case of sexual violence (e.g. sexual assault), persons known to those who report this violence. So, if the people perpetrating these acts are not strangers hiding in the bushes, who are they? What does this tell us about our larger university culture—one marked by such a well-documented problem? And, most importantly, what can we do about it?

To effectively address this epidemic of gender-based violence, an approach that addresses norms, culture, and attitudes is key. Changing the way that men relate to women across the board is essential in reducing the prevalence of harassment and other harms—and more broadly, to improving men’s relationships with women.

Enter the Good Lad Workshops. This programme is focused on developing ‘positive masculinity’—a way of being that encourages men not to view gender rights and equality as offensives to avoid, but rather as opportunities for excellence. Men should involve themselves as part of the solution to these problems, and by doing so can produce positive outcomes for themselves, people they have relationships with, and the community as a whole. This is positive masculinity. Through small group discussions, reflection, and conversation, participants are encouraged to reflect on their own relationships across gender lines. Participants develop skills that will enhance their relationships, and—most importantly—become better men.

The Good Lad Workshops are problem-focused and action-oriented. Beyond considering what is ‘right’ and ‘wrong’ in relationships, participants discover how to put their beliefs and perspectives into practice. Our approach is guided by a social norms model, which juxtaposes the individual’s perceptions as to what peers believe with real-time data reflecting the values peers actually endorse. The goal of this approach is to clarify that perceptions about how well-accepted negative behaviours may often be illusory in the face of anonymous reporting about individual values. Social norms programmes have been shown repeatedly to reduce reports of sexual violence in populations— including those of university-age men—where the intervention had been deployed, and to create lasting change regarding norms and attitudes about the acceptability of sexual violence was achieved. Several randomised controlled trials (see here, here, and here) of social norms interventions have borne this conclusion out, with replicable success.

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The Ongoing Search for Justice for Victims of the Japanese War Crimes in Mapanique, Philippines

By Harry Roque | 31 August 2013

On November 23, 1944, Japanese troops descended on the town of Mapanique in the Philippines. The troops gathered men and boys in the town and proceeded to castrate them. Afterwards, the men were forced to put their severed sexual organs in their mouths before they were burned to death en masse. Women and girls were marched to what is known today as “Bahay na Pula” (red house) in San Ildenfonso, Bulacan. There, they were interred and repeatedly raped.

The magnitude of the Japanese cruelty in Mapanique can be attributed to several causes. The town was known to be a hotbed of resistance to Japanese rule. It was in Central Luzon where the guerilla movement, HUKBALAHAP, was formed only months before the siege. One of the movement’s most respected leaders Commander Dayang Dayang was a native of Mapanique. The Japanese troops were also growing desperate because they knew they had already lost the war.

Fifty years later, inspired by the revelations of South Korean women who publicly admitted that they were victims of the Japanese comfort women system, about 60 victims of war crimes from Mapanique formed the group known as Malaya Lola’s, or liberated grandmothers. While primarily an organization of women who were raped by the Japanese during the Mapanique siege, it also includes in its roster women whose husbands, sons and other male loved ones became victims of Japanese war atrocities.

In 2004, the Malaya Lolas filed suit in the Philippine Supreme Court to compel the Philippine government to espouse, or sponsor, their claims for compensation from the Japanese government. Prior to this suit, the Malaya Lolas had a suit for reparations dismissed by Japanese courts on the ground that the women do not have personality to sue under international law. The Japanese courts opined that the Philippine government must sponsor their claims. Hence, the case Vinuya et al. versus Executive Secretary.

The position raised three points: one, mass rapes against civilian populations have always been subject of a non-derogable prohibition in times of war; two, it is also subject of civilian populations have always been subject of non-derogable prohibition in times of war; and three, the commission of mass rape as a war crime, will not only entail the duty of a state to pay compensation as a consequence of the doing an internationally wrongful act, but it is also the basis for individuals to incur individual criminal responsibility.

To counter the Philippine Government’s position that further reparations are barred by a waiver which the Republic had signed, the women argued that the waiver is null and void for being contrary to public policy and also that the state cannot waive a right that inures to its nationals.

In its 33 page decision, the Court said that the claims for compensation are barred because of the San Francisco Peace Pact. In exchange for nominal war reparations, the government was said to have waived any and further claims for compensation from Japan, a view consistently espoused by the Department of Foreign Affairs. Furthermore, the court ruled that while it commiserates with the sufferings of the women of Mapanique, this, allegedly, is one instance where there is a violation of right but bereft of legal remedy. The Court also said that while rape is prohibited, there is no non-derogable obligation to investigate, prosecute and punish those who committed mass rape as a war crime. This decision is the second siege of the women of Mapanique.

Fortunately, the women of Mapanique have found new allies in their continuing search for justice. Pending resolution of their motion for reconsideration, the Korean Constitutional Court, ruling on a petition with the same issues as those in the Philippine Supreme Court, ruled that the Korean government must espouse the claim of the Korean comfort women. Further, the European Center for Constitutional and Human Rights filed intervention in the Philippine Supreme Court to argue that pacta sunt servanda cannot prevail over the jus cogens prohibition on rape. The intervention of the ECCHR in the case was facilitated by a non-profit organization, the Bertha Foundation, which has been funding young lawyers in both the ECCHR and CenterLaw, and counsel of the comfort women in the Philippine case.

Harry Roque is a Professor of International Law at University of the Philippines and Chair of the Center for International Law, Counsel to the Women.

Constitutionalising the Violation of the Right of the Girl Child in Nigeria: Exploring Constitutional Safeguards and Pitfalls

By Azubike Onuoha-Oguno | 5 August 2013

The Senate of the Federal Republic of Nigeria, the highest legislative arm in Nigeria, is on the verge of enshrining the legality of child marriage. This is a direct implication of the voting pattern anchored by Senator Yerima (former governor of Zamfara State) refusing the deleting of Section 29 (4) (b) of Nigeria’s current Constitution. Nigeria’s 1999 constitution left open a possibility for the legality of child marriage: Section 29 (4) of the 1999 Nigeria Constitution provides that age of maturity is age 18. However, Section 29 (4) (b) includes an exception for girl children and proclaims that girl children reach maturity when they marry, regardless of the age of marriage. Thus, marriage arguably elevates even a ‘1 year old female child to the status of womanhood. Removal of the above section portends the inferred exclusion of child marriages.

Unfortunately, proponents of maintaining Section 29 (4) (b) base the argument on Islamic law. However, Nigeria is not a religious state and the constitution should be devoid of religious undertones. Indeed, instead of mere inference of rejection of girl child marriage there should be a direct and direct rejection of marriages of girls below 18 years of age.

Nigeria’s obligation under global and regional laws remains at variance with maintaining Section 29 (4) (b). Sec 21 and Sec 22 of the Child’s Right Act of Nigeria 2003 (CRA) prohibits the marriage of a girl child or support any such act by an individual. It further provides for punishment for anyone involved in its promotion (sec 23). In addition, Article 18 (3) of the African Charter on the Rights and Welfare of the Child all prohibit girl child marriages. Article 16 of the Convention on Elimination of all Forms Discrimination against Women (CEDAW); Article 16 (2) of the Convention of the Rights of a Child (CRC) all abhor child marriages. The 1962 Convention of Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages also advocate for the stipulation of minimum marriage age of the girl child (Article 1 and 2).

The CRA (2003) of Nigeria is compliant with the right to life and health of a child as stipulated in Q2 V 233 (see ITM Kalameedon; Rights of Nigerian Child under Shariah and The Child’s Right Act 2003). It is my inference that the reasoning of Kalameedon can also be hinged on the dangers of early girl child marriage which includes but not limited to high risk of HIV/ AIDS, Cervical Cancer, other STIs as inherent risks to the right to health and life of the child which Islamic Law upholds.

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6 years after the filing of the Vinuya case, and after 20 of the original petitioners had died, the Philippine Supreme Court unanimously dismissed the Malaya Lola’s petition.