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Legislative Actions in Africa towards the Prevention of Violence against Women

Summary of Presentation

General problem of Violence against Women (VAW) in Africa

Challenges to combating VAW on the continent

Existing legal responses to VAW with focus on Kenya, Uganda, Ghana & Nigeria

Potential limitations to using the law to combat VAW

Proposals for mobilizing support for VAW laws in Africa, drawing in part on the lessons learned in Nigeria.

Introduction

- VAW is a serious problem that occurs in every culture & social group.
- Global epidemic that requires global strategies for effective prevention.
- Depending on their country & culture, women face particular obstacles that impact their ability to escape violent relationships.
- Devastating physical, emotional, financial & social effects on women, children, families & communities.
- A recent national study in Ghana, revealed that 1 in 3 women had been physically abused by her current or most recent intimate partner.
- It is likely that abuse rates are comparable in other African countries, given the similar cultural context & system of customary law that many of these countries share.
- Women in Europe and the US may face barriers to accessing legal services, but the legal system is largely on their side, at least in principle, when it comes to preventing VAW & prosecuting abusers.
- Vast majority of women in Africa, do not have the support of a legal system that condemns VAW.
- Only very few out of the 54 countries in Africa,—South Africa, Ghana, Mauritania, Sierra Leone & Mauritius— have adopted laws against VAW.
- Most women in Africa could only prosecute their abusers under general assault provisions in the Criminal Codes of their countries, which do not provide the specific protections & services that so many VAW survivors need.

Extent & Nature of Violence against Women in Africa

- Cultural attitudes support the notion that a husband has the right to “discipline” his wife using corporal punishment.
- Customs & traditions perpetuate VAW - Female Genital Mutilation (FGM); Maltreatment of widows, Child Marriage, Lack of inheritance Rights.
- Sentiments attached to religion has been used in some cases to subdue & subjugate women.
- Customary law permit the right of punishment for husbands - has led to a prevalence of wife beating in some

African communities.

- Communities have strong discriminatory attitudes towards women who seek divorce - many women who would have sought for divorce stay married & encounter physical, mental, emotional & psychological abuse that come with such marriages.
- Women have no right to inherit from their husbands or share ownership of marital property; they are excluded from ownership of land, & are almost without remedy upon divorce.
- Traditional “bride price” for women supports the attitude that a woman is the property of her husband & her husband’s family/clan.
- Consent to marriage is the equivalent of consent to sex in Ghanaian & Nigerian customary law.
- Even more “modern” laws discriminate against women. In Uganda, women are required to meet a higher evidentiary standard than their husbands in order to obtain a divorce - a woman can only get a divorce by coupling a claim of adultery with a claim that the adultery was incestuous, bigamous, or part of a polygamous marriage. There is no such legal requirement for men.
- Penal Code, Nigeria endorses wife beating as corrective measure; equates relationship of husband & wife with that of master/servant, schoolmaster/pupil, child/ward.
- Police Act requires a female police officer to seek the permission of the Commissioner to get married.
- VAW leads to particular complications in Africa due to the prevalence of HIV/AIDS.
- Due to violence or threat thereof, many women do not have the option of consenting to sex, negotiating safer sex, or determining number & spacing of their children.
- Abusive husbands may force their wives to have sex without using condoms, thus increasing women’s risk of pregnancy & HIV infection.
- They may also prevent their wives from seeking health services once they are infected with the virus.
- A study in Uganda found that once women are known to be HIV positive, they may be evicted from their homes & abandoned by their husbands & their neighbors.
- Without economic autonomy, these women find it difficult to escape abusive relationships & to survive once they have been infected with HIV & ostracized by their families & communities.

Existing Legal Responses to VAW in Africa

- Several states had signed &/or ratified international treaties such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979 or the African Charter on Human and People’s Rights 1981, but only few have incorporated them into domestic law.
- African Platform for Action (Dakar declaration) 1994 was a landmark document in highlighting the problem of VAW on the continent.
- Following the Beijing 4th World Conference on Women in 1995, African women activists began to focus more attention on documenting the problem of domestic abuse within Africa & lobbying for passage of VAW especially Domestic Violence codes.
- Then came African Women’s Protocol 2005- places an obligation on state-parties to address not only VAW but also explicitly includes marital rape & other forms of forced or unwanted sex.
- Before these developments, VAW had often gone unreported & there were across Africa only few supporting pieces of legislation that could be used to challenge it.
- Emboldened by these developments, African women activists started pushing for legislation to address VAW.
- South Africa, Mauritius, Mauritania, Ghana, Rwanda and Sierra Leone have passed the legislation.
- Uganda, Kenya, Nigeria have attempted to pass VAW laws.
- In 1998, SADC passed a resolution on the Prevention of VAW & Children - strongly condemned VAW & children in all its forms, & resolved enacting legislation to criminalise various forms of VAW.
- SA passed the very first Prevention of Family Violence Act on the continent in 1993, which it replaced with its current Domestic Violence Act in 1998.
- SA’s law provides protective orders to survivors & defines “domestic relationships” broadly, including two people who



“share or have recently shared the same residence.”

- SA has also passed a separate law outlawing marital rape.
- Mauritius passed the 2nd VAW law in Africa in 1997.

The Nigerian Experience

- Before 2003, there were no specific national legislation protecting women against violence.
- Where there is a semblance of protection, they are often inadequate, discriminatory or limited by virtue of the undue burden placed on the victim.
- Remedies under criminal law are confined to the prosecution & possible conviction of the offender – S 383 Criminal Code: prescribes a maximum punishment of 3 years imprisonment for assault occasioning harm.

Limitations of CC

- Fails to protect women from violence in relationships
- Does not provide reliefs like maintenance, shelter, custody
- Has little space to consider the victim's needs
- Does not allow women any scope for entering into settlements once the case reaches the court
- Requires higher standard of proof - beyond reasonable doubt - difficult to discharge.
- Police refuse to file complaints by victims & send them away to seek reconciliation instead - general perception is that such cases are private
- Provide punishment for violent acts but refuses to deal with violence in the home as crime.
- Requires corroboration in rape cases - difficult.
- While indecent assault on a girl under 16 years is a simple offence, the same offence on a male child is a felony & carries stiffer penalty.
- S. 221 - penalty of 2 years imprisonment for unlawful carnal knowledge of a girl above 13 years & under 16 years of age but makes it a defense that accused believed the girl to be above 16.
- Provides that prosecution must have begun within 2 months after the offence was committed & there must be corroboration to secure a conviction.
- There are usually no eyewitnesses in offences of this nature, so corroboration is almost impossible.
- Even where there is a conviction & sentence, punishment is too meagre to serve as a deterrent.

- Rape is criminalized in the Sharia Penal Laws 1999 (applicable in 12 states of Northern Nigeria) but:
 - Does not provide sufficient protection or redress for women & girls who have been raped
 - It discriminates against married women & girls
 - Permits marital rape
- Under the Kano Sharia Penal Code rape carries different penalties according to the marital status of the perpetrator.
 - punishable with death by stoning if the perpetrator is married,
 - caning & up to life imprisonment if the perpetrator is unmarried.
- If a woman who alleges that she has been raped fails to produce 4 witnesses to prove the rape, she is liable to imprisonment for one year or up to 100 lashes.

Limitations of Marriage Law

- Some laws reduce the ability of women to escape violent relationships - in the Matrimonial Causes Act, a ground for dissolution of marriage is irretrievable break down.

- S. 15 lists cruelty as conduct with which the petitioner cannot reasonably be expected to live with .
- But makes it impossible to secure a divorce on that ground - petitioner must satisfy court that “since the marriage, & within a period of 1 year preceding the date of the petition, the respondent has been convicted of
 - (i) having attempted to murder or unlawfully kill the petitioner; or
 - (ii) having committed an offence involving the intentional infliction of grievous harm or grievous hurt on the petitioner or the intent to inflict grievous harm or grievous hurt on the petitioner.
- Until the petitioner is able to secure a conviction against respondent for attempting to kill her or for inflicting grievous harm on her, she cannot get out of the relationship lawfully.
- Courts do not consider a single act of cruelty sufficient to evoke that section of the law. It has to be a behaviour pattern based on cruelty which leads the court to infer that cohabitation can no longer subsist between the parties.
- Where on the same occasion, the respondent beat petitioner, pushed her down & locked her up, the acts did not amount to that sustained behaviour envisaged by law.
- None of the laws - statutory, Muslim, Christian or custom, contain any declaration of a right to reside in matrimonial home – general belief is that the home belongs to the man.
- Without the recognition of a right to reside, civil laws on divorce provide little in terms of support to women in violent situations - root cause of the vulnerability of a woman in her matrimonial home.
- Breakdown of marriage in African society with its attendant discrimination means virtual civil death for women.
- Many women do not want a divorce but want to end the violence -divorce law has no answers for such women.

State Anti-VAW Laws

- With the return of democracy in 1999, states passed laws prohibiting Female Genital Mutilation (FGM), widowhood practices, early marriage etc.
 - Edo State Female Circumcision & Genital Mutilation (Prohibition) Law of 1999,
 - Cross River State Girl-Child Marriages & Female Circumcision (Prohibition) Law 2000,
 - Rivers State Abolition of Female Circumcision Law No. 2, 2001,
 - Laws which make it unlawful to infringe on the fundamental rights of widows & widowers:
 - Enugu State Law on the Prohibition of Infringement of Widow’s & Widower’s Fundamental Rights Law No. 3 of 2001;
 - Oyo State Widows’ Empowerment Law, 2002;
 - Anambra State Malpractices against Widows & Widowers (Prohibition) Law 2004;
- Harmful Traditional Practices are criminalized with penalties for offenders. However, the laws are not comprehensive, having been pruned down by legislators before passage; do not provide adequate protection for women.

Efforts to Push for VAW Laws

- In the light of the inadequacies of existing laws & their failure to protect women, women’s rights activists came together under a coalition – National Coalition on VAW (NACVAW) – to join forces to address this menace.
- Consensus was that legislation must be part of the strategies - with that in mind, the Legislative Advocacy Coalition on VAW (LACVAW) was formed.
- A VAW bill was drafted & after due consultations, was presented before the National Assembly in 2002.
- Legislative advocacy commenced in earnest; but the bill failed to pass before the end of that National Assembly.
- Provisions on marital rape & right to residence were viewed as «western» & «against the culture of Nigeria» & were invoked, to stall progress of the bill.
- In 2003, Nigeria Trafficking in Persons (Prohibition) Law Enforcement & Administration Act was passed to punish traffickers.



The Kenyan experience

- A sexual-offences bill that seeks harsher penalties for perpetrators of sexual violence was presented in Parliament by women's rights advocates.
- It became mired in controversy when a legislator (male, as were 204 of the 222 expected to vote on the bill) alleged that some provisions would criminalize men's advances towards women.
- Gun-toting policemen blocked activists from entering parliament to press this demand, as they chanted anti-rape songs & chanted at the police: «Kill us today so that we do not get raped tomorrow!»

The Ugandan situation

- In 2003, a domestic-relations bill was tabled before parliament, containing a host of provisions to deal with discriminatory laws & practices in marriage, divorce, inheritance, property ownership; violence & equality within marriage & family.
- Bill reached the committee stage in 2005, only to generate massive controversy that stretched beyond parliament to the media & streets.
- A sarcastic comment on the bill's contents by the legal & parliamentary affairs committee was echoed in a demonstration on 29 March 2005 by hundreds of women (majority of them wearing the hijab) in streets of Kampala.
- They described the bill as a «coup against family decency», & swore to oppose its passage - Parliament shelved the bill for «more extensive consultations.»
- When President Yoweri Museveni declared during the election campaign in 2006 that «it was not urgently needed», the debate was effectively closed - a severe setback for Uganda's women's movement.

The Ghana Experience

- A more positive legislative outcome was witnessed in Ghana –
- In 1998, the Women & Juvenile Unit (WAJU) was created in Ghana's police force to specifically deal with issues of VAW etc. & to document patterns & types of crimes against women & children.
- Two years later a spree of serial killings of women in Ghana spurred activists into action.
- Local women's rights advocates formed a coalition & took to the streets to protest the murders of women, as well as the wider problem of VAW in the country.
- Women's rights organizations & government organizations prepared a private member's motion for Parliament to enact a VAW law.
- The VAW bill is on record for having the widest public consultation in Ghana's legislative history.
- Early resistance from a surprising source - then minister of women's affairs - argued that the law would «destroy families»; & coalition's demand for the repeal of S42 (g) of the CC (the so-called «marital-rape exemption» caused bitter acrimony.
- Opponents of the bill portrayed it & its gender-activist supporters as purveying «foreign» ideas that threatened Ghanaian cultural beliefs & practices - the sanctity of marriage & men's rights within it.
- DV Act was however passed in 2007, without the express repeal of S42(g), although with the provision that «(the) use of violence in the domestic setting is not justified on the basis of consent.»
- Within a few weeks of the passage, the statute law commissioner, acting on his own initiative, removed the offending S42 (g) from the statute-book.
- Ghana's DV Law provides protective orders for victims of abuse.
- Defines domestic violence broadly, including physical, sexual, economic, emotional, verbal or psychological abuse, or harassment within a previous or existing domestic relationship.
- Includes a broad conception of a domestic relationship - specifically includes “house help in the household of [the abuser]” as a type of protected domestic relationship, reflecting the reality that women & girls working as live-in domestic help in Ghana often face abuse in the home.
- Creates the protection of restraining orders for abusive domestic relationships, repealed S. 42(g) of Ghana's Criminal Code, 1960 (Act 29) that allows marital rape.

- Gives women option to prosecute their husbands for rape.
- Full implementation will require a comprehensive, nationwide action plan & the necessary human & budgetary resources.
- Some aspects of the social environment - in which most Ghanaian women still live in poverty, depend on men, & are surrounded by attitudes & codes that tolerate oppressive behaviour or allow serious violations of women's rights to be «settled» without justice or accountability - reinforce the argument that implementation mechanisms are vital.

Limitations of Using the Law to Combat VAW in Africa

- Even if more African countries eventually pass laws providing protections against VAW, problems with enforcement will limit their practical effectiveness.
 - Laws that have clashed with cultural norms & religious beliefs have proven difficult to enforce.
 - If the community does not widely support the laws at the time of their passage, individuals may continue to deal with violence through traditional means, rather than turning to the protections of the law.
 - VAW issues in African countries have traditionally been dealt with by family tribunals, which tend to be male-dominated & insensitive to gender issues.
 - Without widespread community acceptance of the law, individuals may continue to turn to family tribunals rather than utilizing the domestic violence law passed.
 - Numerous factors combine to limit African women's access to justice:
 - Women's lack of education about their legal rights,
 - lack of access to formal education,
 - limited legal literacy,
 - lack of familiarity with the language of the courts may inhibit them from using the laws.
 - Limitations of African police forces & medical facilities present additional barriers to using the law.
 - It is often difficult to collect medical evidence to support VAW cases in Africa, since there are few medical facilities in rural areas where many women live, & even urban facilities may have inadequate resources to collect medical evidence.
 - Many victims may also be unable to afford expensive medical tests, even if they are available.
- Corruption & gender-insensitivity within many African police forces will likely continue to present a significant challenge to the enforcement of VAW laws.

Proposals for Mobilizing Support for VAW Laws in Africa

- VAW is complex & diverse in its manifestations -its elimination requires a comprehensive & systematic response by States, UN, & all stakeholders.
- Local communities have a responsibility for addressing VAW & they should be assisted in doing so.
- Men have a role, especially in preventing violence, & this role needs to be further explored & strengthened.
- Strong institutional mechanisms are required at national & international level to ensure action, coordination, monitoring & accountability.
- States should take urgent & concrete measures to secure gender equality & protect women's human rights.
- VAW is both a cause & a consequence of discrimination against women. States have an obligation to respect, protect, promote & fulfill all human rights, including the right of women to be free from discrimination.
- Failure to do so results in & exacerbates VAW. E.g. if States allow discriminatory laws to remain in force, or laws that fail to criminalize certain forms of VAW, then the acts may be perpetrated with impunity.
- Advocates must continue to engage in targeted outreach & education to ensure that communities understand & support the protections that VAW laws can provide, so that victims can choose to make use of such laws.
- Leadership is critical at all levels & by all sectors (including politicians & government officials, opinion formers, business leaders, CSOs & community leaders).
- States must close the gaps between international standards & national laws, policies & practices.



- Ending impunity & ensuring accountability for VAW are crucial to prevent & reduce such violence.
- Impunity for VAW (by both state & non-state actors) results from failure of States to implement international standards at the national & local level.

- States have a responsibility to act with due diligence to prevent VAW; to investigate such violence; to prosecute & punish perpetrators, whether they are state or non-state actors; & to provide access to redress for victims.
- States should build & sustain strong multisectoral strategies, coordinated nationally & locally.
- Work to end VAW requires not only a clear demonstration of political commitment but also systematic & sustained action, backed by strong, dedicated & permanent institutional mechanisms.
- States should build on the work done by non-governmental organizations (NGOs), scale up & institutionalize it.

Conclusion

- While it is true that laws don't necessarily translate into real-life changes, legal precedent can be a powerful tool for reform & the legal system can be a catalyst for change.
- African experiences shows that the formulation of laws is an important instrument in countering the threat of VAW; but it is not enough to eliminate it.
- Multiple strategies & approaches are needed that recognise the differing interests, lived realities & contradictions among women of different class, religious & cultural backgrounds; & to find ways to express proposed changes in language & practices that better approximate women's lived realities & experiences.
- Common principles include: clear policies & laws; strong enforcement mechanisms; motivated & well-trained personnel; involvement of multiple sectors; & close collaboration with local women's groups, CSOs, academics & professionals.

