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WOMEN & JUSTICE LEGAL DIALOGUE

* Special Edition



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On domestic violence in
Brazil



Women & equality in
Hungary



The objectives of
international federation
of women lawyers [FIDA]

Nigeria



Combating violence and
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Women in Turkey



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Dear readers,

It is my pleasure to introduce you to a new special edition of Legal Dialogue named “Women and Justice”.

This special issue is composed of seven articles written by women from seven different countries in the world, who were participants at the International Visitors Leadership Program (IVLP), supported by the US Embassies in our countries.

I would like to take the opportunity to express my gratitude to all these IVLP participants who voluntarily gave their contributions for Legal Dialogue “Women and Justice”, concerning the situation of women in their countries.

At the end I would like to thank the US Embassy which provided me with the unique chance to be IVLP participant in the US and to meet all these wonderful women who gave their contributions for this edition.

I wish you an inspirational reading.

*On behalf of all members of the project,
Irena Cuculoska*



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ON DOMESTIC VIOLENCE IN BRAZIL



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For many years, the topic Domestic Violence in Brazil was considered a matter associated with the intimacy of the family, so that, for a long period, the Brazilian society had reservations to intervention in this kind of conflict due to the privacy of individuals. This is just one reason among which the CEDAW - Convention on the Elimination of All Forms of Discrimination against Women - ratified by the country since 1982, produced little practical effect in regard to facing this kind of question. In fact, one can say that only a little over a decade, the Brazilian state and society effectively dealt with the problems arising from this matter and their consequences.

As an example, before the ratification of CEDAW by Brazil and even after that, several Brazilian courts deferred to the thesis of the legitimate defense of honor, as a cause of legal exculpatory to stand upon acquittal of defendants for crimes of passion, involving female victims, who had committed adultery or over which hung the suspicion of having acted well. It was only with the contribution of the feminist movement, which grew stronger during the years 70 and 80 in Brazil, that awareness was slowly built about domestic violence being primarily a matter of common interest, particularly in public safety field, since it was found to be significant as one of the main causes of violent death among Brazilian women.

As a result of this maturation process, Brazil, in 1995, ratified the Convention on the Prevention, Punishment and Eradication of Violence against Women of Belém do Pará, which had already been adopted by the General Assembly of the Organization of American States - OAS - since June the year before. This international rule, then incorporated into the Brazilian legal system, turned out to be the result of a shocking discovery of the fact that women across America, without distinction of race, social class, religion and age were victims of widespread violence and the American system lack of an international instrument that would act so vehement in their defense.

However, we can say that the great change in the Brazilian legal scenario regarding this thematic debate actually occurred when the enactment of the Act n. 11.340/06, better known as the Maria da Penha Act. This rule of law is the outcome of an incessant work done particularly by women lawyers in the country. Nevertheless, it is no less the fruit of Maria da Penha Maia Fernandes' pain, struggle and history, whose ex-husband acted twice against her life in 1983.

In the first attempt, the Colombian naturalized Brazilian M.A.H.V. simulated an assault and ordered another person to shoot his wife while she slept, so that, this victim endured injuries that left her paraplegic. In the second attempt, no less ruthless, while bathing, Maria da Penha received an electric shock, again, as it turned out, for her husband's plot.

Denounced by the prosecutor of the State of Fortaleza in September 1984, the husband of Maria da Penha had his aggressive temperament towards this woman declared by many witnesses in the case. Moreover, pre-sentence investigation also revealed that he was the owner of the shotgun used in the first assassination attempt. However, after some appeals and two sentences, it was only almost twenty years after these crimes that he was finally sent to prison. Even more alarming is the fact that he only remained two years in jail.

Such disparity between these facts and the answer given by the Brazilian State to such a brutal violence has not gone unnoticed before the Inter-American Court of Human Rights, after Maria da Penha, the Center for Justice and International Law (CEJIL) and the Latin American and Caribbean Defense of Women's Rights (CLADEM) have taken the case to this court. As a result of Brazil's conviction, a report, numbered 54/2001, was written in order to expose to the whole world how mistreated was this issue by the country. So strong was the impact that this document worked as a trigger for early discussions on this issue not only nationally, but also internationally throughout the Americas.

However, the sharpest effect of the Brazilian State conviction by this international court was the enactment of the rule of law which received the name of this Brazilian who is now considered as one of the most illustrious figures in the fight against domestic violence in this country. More than a breakthrough in the legal harvest of human rights and gender issues, this legislation represents an advance for the Brazilian criminal procedural law, as it has created a completely new system for the legal protection of women victims of domestic violence. In line with what has already been established by CEDAW and also by the Convention of Belém do Pará, Maria da Penha Act stated the forms of violence against women, such as psychological, moral, sexual, and physical assets.

Furthermore, great progress has been made by this rule, as it has determined the creation of a specialized justice, to deal with legal disputes arising from domestic violence within the family, so named Family and Domestic Violence Court.

Actually, this act ordered the creation of courts composed by judges with mixed competence of Family Law and Criminal Law. Moreover, it mustered the magistrates of these courts with various legal instruments to curb this kind of offense to the dignity of women, in particular, by providing the so-called temporary protective orders. Such orders, which are designed essentially to ensure the physical and psychological integrity of victims of domestic violence, can also imply preventive detention, in case of breach by the aggressor.

In fact, to ensure the integrity of any victim of domestic violence, the same Act authorized the judge, upon the request of the victim herself or the public prosecutor, to prohibit contact by any means of communication between the aggressor and the victim, and seal the frequency for the places where this woman studies, works or resides. These kinds of protective orders, however, exceed the victims' physical and psychological protection. These may also involve restricting the offender from visiting the children or prohibiting him to have access to the common heritage.

Member of the Judiciary of the State of Sao Paulo for about eight years, since 2010 I have been working as one of the judges in the Domestic Violence Court, created in 2009. In this institution, there is a very clear concern about Domestic Violence against women issues and it is confirmed by the fact that at the end of 2011 were established more six other courts of this sort in the same city. Besides that it has just been organized a Coordination inside the Judiciary of Sao Paulo, composed by judges and justices, who are women, specially to improve these specialized courts performance, regarding this matter.

Contrary to what most people assume, the routine of a judge who works in one of these kind of courts consists mainly in analyzing cases of sexual abuse, particularly rape of minors charged by grandparents, stepparents and parents. The good performance of judicial activity in these cases requires working together with the magistrate's court multidisciplinary team, composed by social workers and psychologists, as, indeed, states that legislation.

In conclusion, my professional experience allows me to say that is imperative the need for dialogue and exchange between the Judiciary and professionals from other sciences such as social work, psychology and medicine, for example. Likewise, it urges to be done partnerships and alliances with other state and private institutions, linked to the domestic violence matter. This is so, since domestic violence has a complex nature, caused not only by family issues, but by psychological, cultural, social and even by economic ones. Therefore, undoubtedly the fight against domestic violence requires measures that transcend the legal actions to reach the entire society commitment.

WOMEN AND EQUALITY IN HUNGARY



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The first impressions

The first (and usually the general long-term) impression may be that women in Hungary are in an enviable position, with some benefits that women in other developed countries could only dream of, such as maternity leave until the child reaches age 3.

It is only when you dig down deeper (and most of the time only experts or those dedicated to the cause would do so) that you notice that the general impression is very superficial, and things are not as good as they seem: patriarchal attitudes are persistent, while prejudices and stereotypes regarding the roles and responsibilities of women and men in the family and in society in general are deeply embedded in institutions and in society. These are reflected in women's educational choices, their situation in the labor market (occupational segregation, a wage gap, discrimination against women of childbearing age or women with small children), their under-representation in political and public life and in decision-making positions, as well as in the stereotypical portrayal of women in the media, about which concerns were expressed by international organizations¹.

The stereotypical and common practice, according to which child-raising and the household are the women's responsibility, dominates the Hungarian nation. The woman performs 80% of household tasks, even if she is the one with the higher paying, more prestigious job. According to the Global Gender Gap index of the World Economic Forum, Hungary dropped from number 60 in 2008 to even lower, to number 85 at present. The social position of women has shifted in the opposite direction to the global development trends of the past 20 years: the employment rate of active women dropped to 51%², which is almost ten percent less than the European average and the employment rate of Hungarian men. When we look deeper into the statistics we see that from those 51% of active women, 47% have full time employment (which is more than the EU average for women employed full time), so only 4% have part time jobs.

Hungarian mothers can (and are strongly encouraged by the system) to stay home with their children until the youngest reaches 3 years of age. The allowances available during maternity leave are the following: After giving birth, the insured mother is entitled for 24 weeks to 70% of her average income (TGYÁS). After this period, up until the child is aged

¹ Report of the CEDAW Committee on Hungary's sixth periodic report in 2007.

² The employment rate of active women was 77% in 1990.

2, one of the parents is entitled to a childcare allowance (GYED) which amounts to 70% of the average income of the parent, however there is an upper limit³. After this period, as a general rule there is another allowance until the child is aged 3 (GYES), which amounts to 100% of the minimum pension⁴. These amounts are very low, and are calculated based on the existence of a highly paid male breadwinner (disregarding the fact that half of marriages end up in divorce (the majority before the child reaches 4 years of age) and the fact that more than a third of children are born outside of marriage).

No wonder that women with small children preferred going back to work after one or two years, but they cannot place their children in crèches or elsewhere and there are no part time or flexible jobs available, so they remain at home with their children for about 4.5 years on average, which sometimes renders employment impossible for them afterwards. Due to an insufficient number of crèches, less than 10% of children under 3 years old are placed in formal childcare arrangements in Hungary. It is thus not surprising that while the childless women's employment rate is similar to the EU average, the employment rate of women with small children is 35-45% lower than the EU average.

If the topic of the equal treatment of women comes up, most educated people would think only of political correctness in the sense that women should not be complimented on their appearance in the workplace, or men should avoid all gestures of courtesy towards women which are considered signs of politeness (such as opening the door, helping to put on coats, etc.). Alternatively, people simply would not understand why gender equality should be dealt with in the first place, if men and women have the same rights anyway and can do anything they want. I must admit that, being a business lawyer specializing in international mergers and acquisitions, although sometimes I dealt with cases of discrimination against women in employment, for a long time I was not sensitive to women and equality in a broader social sense. So when I started to deal with the topic recently, and started up conversations with friends and family, I was surprised to see how very much incomprehension, prejudices, stereotypes, perception problems, resistance and mechanisms for repulsing responsibility are common in connection with the causes of equal opportunity and antidiscrimination.

The elimination of stereotypes is one of the most significant requirements for the establishment of equality between women and men. The results of several domestic and international surveys show that the Hungarian media also convey a disadvantageous message on the social and cultural status and role of women, in terms of topics as well as with regards to visual and linguistic communication when they are portrayed in a private or public environment. In addition to portraying women disadvantageously, the "acceptance" of the sexist language and attitude in the media is clearly of a discriminative character. A high number of illustrations humiliate women and use them as decorations in the media (most often in advertisements). The media is characterized by the increasing

³ The upper limit of GYED is 70% of twice the minimum wage. The minimum wage is 93,000 HUF per month in 2012, thus the maximum amount of GYED would be around 430 EUR per month. As a comparison, the average monthly net wage/salary in 2012 is barely above HUF 140,000 (around EUR 460 per month).

⁴ The minimum pension in 2012 is 28,500 HUF per month, thus the GYES would be less than 100 EUR per month, but the parent is entitled to work part time for a maximum of 4 hours a day.

pornographization of women's representations and the objectification of women's bodies, and it often conveys a romantic message related to violence between partners.

"The patriarchic and conservative values of Hungarian society get reinforced to a great extent by the manifestations of the current decision makers, in their opinions expressed (or in their very silence) about the equality of men and women. Therefore their main duty is to understand and identify themselves with the problem, and to initiate changes to remedy the problem." These are the wise words in the introduction to the "National Strategy for the Promotion of Gender Equality – Guidelines and Objectives 2010-2021" approved by Government Resolution No. 1004/2010 (I. 21.) ("**National Strategy on Gender Equality**") during the previous social-liberal administration.

With respect to the approach of the current conservative government, the end of term report for 2011 of NANE⁵ (Women for Women Against Violence) and Patent⁶ (Association Against Patriarchy) expresses the following concerns: *"Legal and policy concerns were dominated in the last half year by the numerous new major acts passed by Parliament that work to undermine a democratic and open society, and within that, almost all areas of gender equality. This endangers the safety of women in general, therefore specific issues (other than those related to reproductive health, which is threatened by the new constitution itself), such as specific forms of violence against women, are very difficult to put on to the agenda. [...] Specific lobbying on the political decision-making level is made almost impossible. This is due to the fact that every national mechanism related to women has been dismantled, including the national Council for Equality between Women and Men, and the reorganization of the ministry-level department of equality between women and men. Bills are often not made public, thus it is impossible to provide an analysis of proposed laws."*

Of course there are several "hot topics" relating to the situation of women widely discussed in the media, which most informed people would be aware of and would have an opinion about:

Hungarian women's rights groups are worried that, as of January 1, 2012, Hungary' new constitution which protects the fetus from conception (in the very same sentence that declares the right to life and human dignity) may lead to a stricter abortion law in the future (current regulation allows non-medical abortions in the case of a personal crisis of the woman until the 12th week, if they present themselves before the Service for Family Protection to undergo two counseling sessions and wait a minimum of three days).⁷

There is a recent law enabling local governments who are responsible for child care and education institutions to introduce a fee to be paid in crèches for children aged between

⁵ NANE Egyesület (Nők a Nőkért Együtt az Erőszak Ellen - Women for Women Against Violence) www.nane.hu

⁶ Patent Egyesület (Patriarchátust Ellenzők Társasága - Association Against Patriarchy) www.patent.org.hu

⁷ According to Act LXXIX of 1992 on the Protection of Fetal Life, a pregnancy can be terminated until the 12th week if the health of the mother is at serious risk, the fetus has a serious impairment, the pregnancy is a result of a crime, or the woman is in a situation of crisis. The pregnancy can be terminated until the 18th week if any of the above conditions apply and the woman has no or limited legal capacity, or if she did not know about the pregnancy for reasons beyond her control. The pregnancy may be terminated up to the 24th week in cases where the likelihood of genetic or congenital defect of the fetus is greater than 50%. The pregnancy can be terminated with no time limit if the life of the mother is in danger, or if the infant would not be able to survive after birth.



6 months and 3 years old. The fee to be paid per child is maximized at 25% of the per person income of the family. The local governments are at the moment in the process of deciding whether to introduce the fee and to establish its amount, and, with May being the month for submitting the requests for placing children in such institutions, it is the centre of attention currently. Places are scarce in such local government institutions anyway (10% of children below 3), and the introduction of a fee by certain districts would render the life of the poorest families even worse and would perpetuate social inequalities.

After the previous failed attempt, there is a campaign going on to collect signatures for the Parliament to include domestic violence as a sui generis crime in the Penal Code. Many well-known Hungarian figures, actresses and models gave their faces and brains for the campaign to raise awareness in the media and society.

Equal treatment laws and institutions

Hungary is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention), which was published in Hungary in 1982. The principle of equality between women and men is provided for by several other international documents and by Hungary's Constitution as well.

It is very difficult to base arguments on the CEDAW Convention in front of Hungarian courts, which has been cited in Hungary very few times: attorneys and judges do not seem to know the Convention, and Hungarian courts generally refrain from directly interpreting the constitution and other international documents as human rights document.

Act IV of 1952 on marriage, family and guardianship provides for the equality of women both in marriage and in family life. The basic content of the principle is that neither spouse has powers over the person or properties of the other and neither of them shall enjoy preferential rights in the field of parental supervision as compared to the other as long as the marriage is maintained and even after it is terminated (e.g. as far as the placement of the child or the utilization of the flat is concerned). Nice words - on paper.

Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities was enacted in accordance with EU law. The Act established the Equal Treatment Authority, but its insufficient use by women to address discrimination against women, including sexual harassment, and its lack of authority and resources, make it difficult to have an impact on gender equality (it being only one among the numerous other grounds for discrimination the Authority is in charge of). The Act requires that budgetary organs and legal entities in state majority ownership employing more than fifty employees are obliged to accept an equal opportunities plan. Although some institutions follow the law and adopt equal opportunity plans, in most cases these exist on paper only.

2Due to the repeated restructuring of the national institutional system⁸ responsible for the equal opportunities of women and fragmented responsibilities, it is very difficult to identify who is responsible for women's issues within the current state administration, and it seems that the national machinery for the advancement of women lacks even more sufficient authority and recourses than before.

A so-called Gender Equality Council was established by the Government in 2009⁹, which allegedly still exists, at least according to the current periodic report of Hungary to the CEDAW Convention, according to which the churches will also take part in the works of the Council from 2012 according to the plans of the Government. Prior to the current Government, all minutes of the Council together with all sorts of useful information relating to gender equality were accessible through the website of the then Ministry of Social Affairs and Employment, but since the formation of the current Government in 2010, nothing can be found on the official website of the Government. (The Minister of State for Social Inclusion within the Ministry of Public Administration is responsible for equal opportunities, but the official website does not specifically mention discrimination against or the equal opportunities of women.)

National Strategy on Gender Equality

The National Strategy on Gender Equality was adopted by the previous socialist government¹⁰. The Strategy - following the EU Commission's Roadmap on the equality of women and men 2006-2010 - is based on six priorities:

- (A) Economic independence for women, eliminating the gender pay gap and poverty;
- (B) Reconciliation of work, private and family life;
- (C) Advancing women in political and economic decision-making, as well as in sciences;
- (D) Eradicate and efficiently prevent violence;
- (E) Eliminating gender stereotypes; and
- (F) Professional foundations of gender mainstreaming.

The National Strategy on Gender Equality, in addition to listing the goals with respect to each priority, contains surprisingly realistic statements on and analyses of the current problems, discrepancies, and anomalies in Hungary, and is also supported by the research of human rights organizations working on gender issues.

⁸ Following the 2010 elections the national institutional system responsible for the advancement of women operated within the framework of the Ministry of National Resources, through the Department of Equal Opportunities, thus further down in the hierarchical system than before. (During the previous administration, the Ministry of Social Affairs and Employment had a separate Gender Equality Department within the Main Department of Equal Opportunities and the CEDAW Committee in its report in 2007 already expressed its concern that such a structure would reduce its importance and have a negative impact on its ability to carry out the tasks of effectively and fully implementing the Convention). Following further restructuring of the ministries, currently there is a Minister of State for Social Inclusion within the Ministry of Public Administration and Justice, and one of its two main responsibilities is equal opportunities in general. There is a separate Minister of State for Employment Policy under the Ministry of National Economy, and finally as of April 1, 2012, a ministerial commissioner was appointed for 6 months by the Minister of National Economy to be responsible for the enhancement of employment opportunities for women.

⁹ 1008/2009. (I.28.) Kormányhatározat a Nők és Férfiak Társadalmi Egyenlősége Tanácsról

¹⁰ Government Resolution No. 1004/2010 (I. 21.) on "National Strategy for the Promotion of Gender Equality – Guidelines and Objectives 2010-2021".



As a contradiction to that, according to the combined seventh and eighth periodic reports of the Hungarian Government (August 2011) to the CEDAW Convention ("**Combined Periodic Report**"): "299. *The measures introduced in Hungary in relation to the situation of women are in full harmony with relevant international conventions and the Beijing Declaration and Platform for Action as well. The Platform for Action and the Beijing Declaration of the Fourth World Conference of Women (Beijing, 1995) also provide grounds for the domestic application of the strategic principle of the policy of equality between women and men. The Government supported the priorities of the long-term strategy of 2010-2021 in the Strategy referred to above, which were set in harmony with the Beijing Platform for Action.*"

The Combined Report was prepared under the current conservative government, and while listing the exact same goals and priorities as set forth in the National Strategy on Gender Equality, it completely seems to ignore the current situation in Hungary, and in many instances the document contradicts the National Strategy on Gender Equality, trying to defend the current legislation and state of affairs. Also, the Combined Report describes many phenomena and measures that do not relate to the social situation of women, while it also does not address issues that are crucial, such as, for example, prostitution and battery.

Despite the impression that the Combined Periodic Report tries to convey relating to the Hungarian achievements in gender equality, the starting sentences of the Shadow Report¹¹ of the Hungarian Women' Lobby prepared in 2007 can be repeated also with respect to the Combined Periodic Report:

"The prevention and elimination of gender-based discrimination is not placed high on the agenda of the Hungarian Government, although the 6th Periodic Report of the Government to the CEDAW Committee (GR) gives the impression of that. As opposed to this, there is a lack of significant institutional mechanisms; gender equality policies are missing or are not shared with NGOs working in the specific fields, actions are scarce and ad hoc in nature. In general, whatever happens seems to have a superficial nature conveying the message that the measures taken are formal and only serve the purpose of facade."

The importance of gender mainstreaming has appeared in policies and discourses, mainly due to the EU requirements. However, the concept does not seem to be institutionally applied in practice.

After this introduction to the background relating to the National Strategy on Gender Equality, let us examine the situation of Hungarian women in more detail along with the first four priorities discussed therein.

(A) Equal economic independence (gender pay gap, poverty and health)

¹¹ Shadow Report of the Hungarian Women' Lobby, on the realization of the CEDAW Convention in Hungary, incorporated with the critical examination of the sixth periodic report of the Hungarian government (2002-2006) prepared in 2007.

Hungarian women are far from economic independence. According to EUROSTAT, Hungarian women spend the most time both on money earning and on housework in Europe. It is not childbirth that significantly increases the time spent on housework, but rather the entering into a co-habitation with a partner. The woman performs 80% of the household work even if she is the one with the higher-paying, more prestigious job. The stereotype and common practice, according to which child-raising and the household are the women's responsibility, dominates the Hungarian nation. An increase in the number of children makes women unreliable and men a more reliable workforce in the eyes of society, a stereotype which is very often also accepted by women.

The level of the gender wage gap is in the middle range as compared to other EU countries, it was around 20% in the 1990 and has decreased to around 15% in the last decade. According to studies by the Equal Opportunities Authority¹², the wages of men and women are - with the exception of the top-earners - in the same range. The wage gap increases above 30 and with the level of education. The more a woman earns, the bigger the wage gap, and the large wage gap in relation to these small -and special groups of women constitute the average wage gap of 15%. Gender-based segregation in employment is very pronounced by occupation, and much more prominent within the market sector as opposed to the state sector, which has a high female employment rate. The wage gap is primarily caused by the fact that different types of work are done by women and men, rather than by the unequal remuneration of the same type of work.

The occupational segregation resulting in the wage gap starts with education segregated by genders, mainly in vocational training and in higher education. In Hungary the educational level of women is generally higher than that of men. In full time courses, the proportion of women and men is about equal. However, women make up about two thirds of students in evening and correspondence courses. Women take part in out-of-school training courses in a relatively higher number than men and the rate of women in labor market courses is nearly 10% higher than that of men. Paradoxically, the reason for this is partly due to gender inequality on the labor market, i.e. women need higher qualifications than men in order to be able to find suitable jobs, and their domestic and childcare duties or financial situation do not allow them to attend full time courses. Contrary to the above trend, Roma women are significantly disadvantaged in the school system in terms of participation.

The most important problems in the world of work are the lack of or the deficiencies in part-time, flexible time and shared-time employment and family-friendly workplaces, spending time out of paid work while on maternity leave and the reintegration of women into the labor market after maternity leave. Low Hungarian employment indicators are in close relation to the low rate of part time jobs.

(B) Reconciliation of work, private and family life

Hungarian families are dominated by the traditional sharing of tasks: the stereotypes of the mother taking care of her family and the father working full time to provide

¹² www.egyenlobanasmod.hu

financially for the family are very strongly embedded in society: 53 percent of men between 18–75 years find it proper that the work is more important for the men while the household and caring for the family is more important for the women.¹³ The child care institutions lacks capacity, and many couples are sustaining the traditional gender roles due to rational, economic considerations: the less well-paid women stay home with the child(ren). Although the Labor Code provides prohibition of dismissal from the pregnancy until 30 days after the termination of maternity/childcare leave, practice shows that women cannot easily turn back to their work, as employers often initiate the termination of their employment after the expiry of the protection period.

It would be essential to support and spread the forms of work that facilitate the reconciliation of work and private life for both genders (part-time, remote, tandem, flexible work hours, work time bank), which is an explicitly stipulated measure both in the National Strategy on Gender Equality, as well as in the Combined Periodic Report. Both documents foresee the reconsideration of the system of childcare allowances to allow for a better division of responsibilities within the family, as well as the development of the system of part-time work combined with the child care allowance scheme. While the National Strategy on Gender Equality also foresees considerably increasing the capacities of kindergartens and crèches, the Combined Periodic Report omits crèches: as it turned out later, with the adoption of the new law introducing fees to enroll in crèches, probably on purpose.

(C) Political and economic decision-making, sciences

Women’s participation in leading positions is very low both in the public and the private sectors. There are (almost) only men in absolute leading positions. It is much more probable that a man is appointed to a leading position implying a high wage, even if the given profession is dominated by women. There is a strong glass ceiling effect: women reach a lower level in the hierarchy and their rate in management reduces linearly with the prestige and the level of the position. Women are underrepresented among entrepreneurs as well: their rate is of only 30%.

Following the general elections in April 2010, the number of female members of Parliament was reduced to 35 (from 41 as it was in 2006) from among the 386 MPs in total. The number of women is extremely low in the top governmental levels. It has only been for several months that there is now finally one female minister (previously there was none, similar to the situation in the former government). After the concluding comments of the CEDAW Committee on the sixth periodic report of Hungary in 2007, the Parliament discussed a so-called quota act relating to list-based voting which is aimed at the introduction of a 50 per cent male/female quota for local and national list-based elections. Despite the explicit encouragement by the Committee to speedily adopt and implement such a proposal, and despite press and round-table discussions etc. being generally positive in tone regarding the recommendation, the leadership of the parties did not accept a standpoint and did not ask their factions to back them with the votes:

¹³ Central Statistical Office (KSH), Társadalmi helyzetkép 2003 (The Society in 2003)

each party left decision-making to the conscience of their MPs. Finally, less than a third of MPs voted for the recommendation.

There is serious horizontal and vertical segregation in sciences as well. Women are in the most under-financed and under-preferred positions in both the private and the state scientific field. As to the PhD degree, 37% of its holders are women while less than 14% of university professors are women. Only 3.5% of the members of the Hungarian Academy of Sciences are women – the members of the leading bodies of the Academy are men nearly without any exception.¹⁴

(D) Violence against women

Violence against women is invisible in Hungary, and male violence in the family is not treated properly and adequately in the applicable law, which maintains and strengthens violent environments. Authorities do not understand or consider the life situation of battered women, partly due to the legal norms that use gender-neutral terminology. By disregarding the existing power differences in society, this seemingly politically correct solution results in women (and other disadvantaged groups) having to exert significantly more energy to access the same legal tools as those in power. *"Law protects patriarchal values, thus discrimination is not the individual characteristic of those applying the law but it is a characteristic of the whole system, which is necessary to maintain violence. Nowadays, this discrimination is no longer included in written law as open discrimination but rather as the indirect discriminative effect of procedural regulations, or of legal practice even more."*¹⁵ Victims do not receive adequate protection and perpetrators can avoid being called to account due to certain legal institutions in written law and in practice that make it difficult for the abused woman to access justice. *"Without knowing the facts of domestic violence and without applying that knowledge widely, the officials applying the law will almost inevitably make the mistake of victim blaming, fall prey to their biases and will become party to the maintenance of abuse."*¹⁶

Parliament Resolution 45/2003. (IV.16.) on the development of the national strategy on the prevention and efficient treatment of domestic violence, together with Parliament Resolution 115/2003. (X.28.) on the national strategy of crime prevention in society, set and define the duties of the Government. While the first acknowledges the above problematic issues and contains nice declarations and goals, many have not been implemented since (deficiencies of the substantive and procedural law were not amended, the promised speedy process is still not guaranteed for the victims of domestic violence, there is still no separate criminalized conduct for domestic violence etc.).

Prior to addressing the criminalized conducts in connection with domestic violence, let's see several examples how the system maintains domestic violence:

¹⁴ Combined seventh and eighth periodic reports of the Hungarian Government (August 2011) to the CEDAW Convention, point 217.

¹⁵ Dr. Júlia Spronz: Caught up in Law, in System Failure, published by NANE and Patent Associations in 2011, p. 27.

¹⁶ Dr. Júlia Spronz: Caught up in Law, in System Failure, published by NANE and Patent Associations in 2011, p. 29.



Private Motion and Private Prosecution

Almost all criminal acts that are commonly perpetrated within domestic violence (rape, light bodily injury, harassment) are to be pursued upon private motion, thus shifting the responsibility of initiating the procedure to the victim who usually lives in the same apartment with the accused. Problematic is that the deadline for filing a private motion is 30 days altogether, and no coercive measure (e.g. preliminary arrest, restraining order) is possible before the private motion has been filed.

Another obstacle to gaining access to justice is private prosecution: in cases of light bodily injury and certain other crimes (breach of privacy, breach of mail confidentiality, slander and defamation), the charges are represented by a private person. In the case of a private prosecution, the burden of proving the accused guilty lies with the private person, but although the private prosecutor fulfills the role of a prosecutor, he or she is not vested with the public powers and authority of a public prosecutor and so therefore may not order a coercive measure or an investigation. In addition, certain fees are payable in such private prosecution cases which is an obstacle for a women running away without financial resources.

Practice of Forensic Psychologist Experts

The practice of forensic psychologists in domestic violence cases is questionable: they use unsuitable tests¹⁷ and are prejudiced¹⁸ in the lack of appropriate training on domestic violence, thus the victim-witnesses' testimonies usually produce unfavorable results for victims. The professional practices of forensic psychologist experts are regulated mainly in methodological communications of the National Institute of Forensic Medicine¹⁹, which calls for asking questions about the credibility of the plaintiff-witness in many ways and on many occasions, while the examination of the accused person and his credibility is less of a question. The questioning of the credibility and reality of victims is out of proportion considering the statistical fact that false allegations make up only about 1 to 2 % of domestic violence cases (similarly to any other types of crimes). *"Experts almost never observe their subjects in their own environment, nor do they collect information about the events leading up to the case from those living with or near the person, and they do not get in touch with the examined person's psychologist or psychiatrist. This leads to collecting data primarily about the person's personality as shown in the*

¹⁷"The methodological communications recommend and the experts use two tests of dubious scientific quality, the Rorschach test and the Szondi test, the most often. It is of special concern that according to numerous studies a large proportion of healthy individuals appear to be ill on the Rorschach, so the plaintiff-witness, who is examined more often than the accused, will appear to be psychologically ill more often than the suspect." Gábor Kuszing: The Practice of Forensic Psychologists in Domestic Violence Cases in Hungary, in System Failure, published by NANE and Patent Associations in 2011, p. 55.

¹⁸"The majority of forensic psychologist experts do not exhibit zero tolerance for violence. They have attitudes based on which the male perpetrator of domestic physical or sexual violence can be acquitted, or the whole or part of the responsibility may be shifted to the victim." Gábor Kuszing: The Practice of Forensic Psychologists in Domestic Violence Cases in Hungary, in System Failure, published by NANE and Patent Associations in 2011, p. 55.

¹⁹ Methodological Communication No. 20 of the National Institute of Forensic Medicine, which can be downloaded from <http://www.igaz.sote.hu/>



laboratory situation, and less information about the person's behavior in a natural situation; while it is the latter that is the subject of the legal procedure."²⁰

Visitation plans²¹

In regulating and enforcing visitation plans neither the court nor the custody authority examine whether domestic violence has taken place, and the accounts of women are not taken into consideration. In 90% of the custody schemes created or settled on by the parties themselves, the mother will be the custodial parent; where there is no agreement, the courts decide for the mother in 60% of the cases. Domestic violence is probably involved in a significant proportion of custody cases without a settlement and so part of the 40% of the decisions favoring the man render children defenseless against an abusive parent.

Several court decisions have stated that where a child does not want to see the parent entitled to visitation (most often because of the father's earlier violence), this can be held against the custodial parent (usually the mother) and can be sanctioned²², while the parent entitled to visitation is responsible only for cancelling the visitation in a lawful manner, usually 2 days earlier.

The provisions of the Act on child protection²³ also result in indirect discrimination of domestic violence victims, as by deviation from the general rule it stipulates that the client must pay a fee in visitation cases and authorizes the custody authority to collect an advance on the fee of an expert²⁴ ordered in a visitation case. Many battered women are unable to utilize the administrative procedure because of this rule.

Other issues maintaining violence

Doctors seldom inform battered women about the possibility of getting a medical assessment of their injuries free of charge in criminal procedures and thus many poor women are excluded from this possibility.

The victim procedural position in criminal procedures is significantly weaker than that of the accused. In addition, the police, the prosecutor and the court often expect the victim to collect the evidence herself and do not undertake the investigation that they would do in criminal cases between strangers. The authorities tend to believe that violent criminal acts within the family are extremely difficult to prove and try to dissuade victims from

²⁰ Gábor Kuszing: The Practice of Forensic Psychologists in Domestic Violence Cases in Hungary, in System Failure, published by NANE and Patent Associations in 2011, p. 55.

²¹ Government decree 149/1997.(IX. 10.) serves as the primary (and only detailed) legal framework for visitation.

²² The custody authority warns the parent once, afterwards it may impose a fine of HUF 500,000 (approximately EUR 1800) on each consecutive time of failure. As a comparison, the average monthly net wage/salary in 2012 is barely above HUF 140,000 (around EUR 460 per month). If the parent fails to ensure the visitation in spite of the above measures, the custody authority may initiate a lawsuit to change the child's custodian and/or may report the custodial parent to the police or prosecutor for "endangering a minor". To make things worse, since 2005 it is a criminal act under the Penal Code if the custodial parent continues to prevent the visitation even after a fine has been imposed in order to enforce the visitation of the separated parent, and the custodial parent can be punished with up to one year of imprisonment.

²³ Sections (3)c) and (4) of 133/A of Act XXXI of 1997.

²⁴ The expert's fee may be around HUF 40,000 to 120,000 (EUR 160 to 480).

filing a private motion in most cases. Batterers often choose the method of making the constant threat of slander cases: if the victim of violence talks about the battery in public, she is risking a criminal lawsuit by the batterer.

Many times judges refuse the testimony of a family member on the grounds that it is biased. In cases of custody, visitation or battery, courts often refuse to listen to an abused women's account on the preliminaries of the violence, saying that those do not pertain to the matter of the case, although these are the circumstances that lead to the lawsuit or criminal case. *"Because of a lack of training, police personnel often see the fragmented and incoherent testimonies of trauma survivors as proof of their lying or lack of credibility. The lack of special hearing procedures for victims of violence against women (i.e., the use of female police officers, or the use of video recording) further reduces the chances of women victims finding their voices and exposes them to further traumatization and abuse."*²⁵

In cases of light bodily injury, courts not only summon the two parties to the same hearing but - disregarding experts' serious reservations on the applicability of mediation and family therapy techniques in domestic violence - also attempt conciliation. *"And the practice of conciliation takes this victim blaming attitude further: if women are reluctant to be reconciled, they are seen as 'unable to compromise' or 'hostile', but if they do and they bring their case again before a court after another criminal act, they lose credibility and they are seen as capricious since 'if they went back, the situation cannot be so bad.'*"²⁶

Criminalized forms of violence against women

There was no general research or data collection on all forms of violence against women in Hungary. Domestic violence as a sui generis crime is still not included in the Criminal Code²⁷, and neither is it included in the current version of the draft of the new criminal code. The term domestic violence is defined only in Act LXXII of 2009 on preventive restraining in the case of violence between family members (see more below). The National Police Chief's Order²⁸ regulating interventions in domestic violence cases also contains a definition of domestic violence, and takes into account victims' interests in several points on paper. The document is one that every police officer is supposed to know and implement. Indeed some training was done with the help of NGOs. However, these were not systematic and did not reach all officers in the necessary depth. *"Typical complaints by victims include: the police not considering their requests for private motion, the police not doing much but letting the victim know that it does not make much sense to take the perpetrator away for a short time because he will come back even angrier, or the police does not respond to the call."*²⁹

²⁵ Gábor Kuszting and Judit Wirth in Shadow Report of the Hungarian Women's Lobby on the realization of the CEDAW Convention in Hungary, 2007, p.57.

²⁶ Dr. Júlia Spronz: Caught up in Law, in System Failure, published by NANE and Patent Associations in 2011.

²⁷ Act IV of 1978 on the Criminal Code

²⁸ National Police Chief's Order 32/2007. (OT.26.) (replacing Directive 13/2003 (III.27.) of the National Police Chief drafted in cooperation with the NGOs and thus reflecting a human right approach).

²⁹ Gábor Kuszting and Judit Wirth in Shadow Report of the Hungarian Women's Lobby on the realization of the CEDAW Convention in Hungary, 2007, p.49.

The following crimes are those committed most often as part of domestic violence:

Stalking

The Equal Treatment Act defines harassment or stalking very broadly: Stalking is a sexual or other type of conduct violating human dignity related to the relevant person's characteristic³⁰ with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment around a particular person.³¹ This definition does not correspond to the internationally accepted definition of sexual harassment, and most sexual harassment cases do not go before legal forums. As a big generalization, the mentality of Hungarians is rather South-European, Hungarians have a Latin temperament. The usual way of greeting friends and acquaintances is a kiss on each side of the cheek among women, as well as men and women. Men rather just shake each other's hands. A typical reaction of an employer in connection with stalking would be: "If I do not praise the new haircut or a nice dress of the secretary, she would be disappointed and may not do her job properly!" In such an environment sexual harassment is very common, but would not be addressed publicly. The Equal Treatment Authority is dealing with these cases and they are doing awareness-raising campaigns, training and articles.

Harassment

The Criminal Code sanctions harassment from 1 January 2008 only: The person regularly or permanently harassing another person to terrify him/her or to intervene into his/her private life or everyday life arbitrarily may be punished with imprisonment of up to one year. It is a qualified case and is to be punished more seriously if the abused is his/her former spouse, former registered partner or former partner or if the abused is a person under his/her custody, supervision, care or medical treatment. Despite women's organizations lobbying for years for criminalization of harassment, despite their recommendations, in the final text of the crime, harassing a family member was deleted from the aggravating circumstances, and only ex-spouses and ex-partners remained in the group receiving special protection. Harassment shall be prosecuted only upon private motion.³²

Battery

A simple battery is if a person causes bodily harm to or injures the health of another person, if the injury or illness heals within eight days. The punishment can be imprisonment of up to two years. Simple battery shall only be prosecuted upon private motion, which renders domestic violence cases very difficult to prosecute.

³⁰ Sex, racial origin, color, nationality, national or ethnic origin, mother tongue, disability, state of health, religious or ideological conviction, political or other opinion, family status, motherhood (pregnancy) or fatherhood, sexual orientation, sexual identity, age, social origin, financial status, the part-time nature or definite term of the employment relationship or other relationship related to employment, the membership of an organization representing employees' interests, other status, attribute or characteristic.

³¹ Section 10.§ (1) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities.

³² In the current wording of the draft of the new criminal code, harassment will be defined and punished identically to the above (again leaving out current family members from among aggravating circumstances), with the only difference that it will also be the most serious qualified case if the harasser abuses his/her power position.



Aggravated battery is if the injury or illness caused by battery takes more than eight days to heal, in which case the perpetrator is punishable by imprisonment of up to three years.

Committing the crime for a malicious motive or purpose, or against a person who is defenseless or unable to express his will, or if it causes permanent physical disability or a grave injury to health, or if it is committed with extreme brutality, or if the battery causes life endangerment or death: these are aggravated cases and are punishable with longer imprisonment.

Neither in the current form, nor in the wording of the draft of the new criminal code is domestic nature a qualifying criteria rendering the punishment more serious. Battery in its current form is unable to fight domestic violence cases.

Rape

In 2007 there were only 125 accusations of rape, which is just a fraction of all cases. A comprehensive study on EU countries revealed that Hungary has the lowest rate³³ of criminal procedures initiated for rape. At the same time, the rate of convictions is extremely high in rape cases³⁴. It seems therefore probable that only in very serious cases, which the police consider obvious and easy to prove, is investigation initiated. As such, the vast majority of the cases fall out of the system even prior to the investigation phase, because the victim doesn't trust the system, fails or is dissuaded to submit a private motion, or is otherwise deterred from starting the process. According to the NANE website, upon comparing judicial statistics and research, it can be estimated that in Hungary only about 1% of perpetrators of rape are punished.

Contrary to international recommendations and the motions of Hungarian NGOs, sexual are regulated within a separate chapter entitled "crimes against the freedom of sexual life and morality", they are not treated as violations of women's rights to bodily security and integrity and thus do not follow the human rights approach repeatedly requested by the CEDAW Committee addressing the sixth Hungarian periodic report.

The Criminal Code differentiates between rape and sexual assault on the basis of whether intercourse takes place or not, but by now the other elements of the two crimes are the same: The person forcing someone with violence or with the direct threatening of life or bodily integrity into sexual intercourse or sodomy or to endure sodomy, or uses a person for sexual intercourse or sodomy who is someone incapable of defense or expression of will, shall be punished with imprisonment from two to eight years. According to judicial practice, violence means physical pressure while threatening is psychic influence appropriate for causing serious fear. As of August 2009, a person deemed incapable of defense includes those who are temporarily or finally unable to resist because of his/her

³³ Only 2.24 cases /100 thousand people on average per year, based on the results of 10 years.

³⁴ 80 % of the criminal proceedings relating to rape ended in convictions as compared to the 3-17% in other EU countries.

position or condition. These basic forms of rape are punishable only upon private motion by the victim.³⁵

The definition of rape continues to remain based on the use of force, rather than on the lack of consent - a concept which was repeatedly criticized by the CEDAW Committee, and it is not an aggravated case if the victim is the relative of the perpetrator.

On the basis of the commentary to the Criminal Code, it must be proven that the woman showed physical resistance (fought) for rape or sexual assault to be proven. The commentary differentiates between real resistance and (!) apparent resistance and it advises judges to examine if the defendant was in error because of the plaintiff's misleading, "inviting" or "outright provocative" behavior, which - according to the commentary - may point to the lack of serious resistance. The commentator gives examples as well: going up to the man's flat, tolerating kissing and petting, etc.... *"This commentary enacts the right of men over women's sexuality by questioning the woman's right to change her mind during sex or to desire only certain forms of being with the man."*³⁶

Human trafficking and prostitution

The National Strategy on Gender Equality admits that the regulations in effect concerning both prostitution and human trafficking were amended and/or drafted without any deeper knowledge about the social reality of both prostitution and human trafficking, so a strange situation has developed in which Hungarian regulations deal with the two questions totally independently of each other, without any regard to the close relationship between the two, in different thematic environments. The wording of the regulations poses many theoretical and interpretation problems, and due to this and to the ignorance of the close relationship between human trafficking and prostitution, there are severe shortcomings in the implementation as well.

Special measures against perpetrators and to help victims

Restraining

Restraining was introduced in 2006 as a coercive measure into the criminal proceedings act (not to be confused with the restraining during probation period regulated within the

³⁵ In the current wording of the draft of the new criminal code, certain forms of the crime will be more seriously punished than currently, and more acts will qualify as rape. Although the forcing to have sex will be punishable if there is no violence or direct threatening of life or bodily integrity, the definition of rape will continue to remain based on the use of force, rather than on the lack of consent. If the victim is the relative of the perpetrator, or if the perpetrator abuses its relationship of power or influence over the victim, it will qualify as a qualified form of rape, and, similarly to the other more serious forms of rape, will no longer require private motion to be prosecuted. The acts will be punishable if the victim is below 18, 14 or 12 years old, with increasing punishments. If the act is committed against someone who is incapable of defense and/or of expression of will, private motion will no longer be required either. Sexual crimes will no longer be differentiated as to whether intercourse takes place or not, the uniform terminology is "sexual act": intercourse and all seriously indecent/pornographic acts, which are able to or aimed at arousing, maintaining or satisfying sexual desire. Sexual crimes will still remain within a separate chapter entitled "crimes against the freedom of sexual life and morality" disregarding the requirements of the human rights approach.

³⁶ Gábor Kuszting: *The Practice of Forensic Psychologists in Domestic Violence Cases in Hungary*; in *System Failure*, published by NANE and Patent Associations in 2011.



Criminal Code³⁷ or with the preliminary restraining - see below) which may be ordered by the court (the police cannot - even temporarily - issue it). Courts can issue a restraining for a period of ten to sixty days where there is a grounded suspicion of crimes that can be punished with imprisonment upon the initiation of the prosecutor, private prosecutor, substitute civil suitor or the injured party. In the case of crimes which require a private motion, the restraining may not be ordered prior to submitting the private motion.

The problem with this is that it is neither fast, nor effective, thus it is not a suitable tool to combat domestic violence. In practice, if the prosecutor does not support or initiate the restraining order, courts will not order it, and the process will take 30 to 40 days at best.³⁸

No wonder that there were only 149 restraining orders issued within 2007 and 2008. Generally the restraining orders issued did not oblige the perpetrator to leave the joint apartment.

Preventive restraining

Act LXXII of 2009 on preventive restraining because of violence³⁹ among relatives has been in force since 1 October 2009. For the purposes of the Act, relatives are: close relatives, relatives⁴⁰, ex-spouses, former registered partners, custodians, persons under custody, guardians and persons under guardianship. In the case of violence by those not falling within these categories (boyfriends and ex-boyfriends, ex-domestic partners), the victim will have no option other than to try to apply for a criminal procedural restraining order (see above).

One of the other main problems is that if the victim jointly uses the apartment as a residence with the batterer, the batterer will be obliged to stay away from the apartment

³⁷ Since 2005, the Criminal Code includes restraining as a behavioral rule that can be ordered during the probation period after the procedure. The court or, if indictment is postponed, the prosecutor may stipulate in its resolution obligations and bans as behavioral rules and may instruct the accused to stay away from the injured party, or his/her apartment, place of work or educational institution.

³⁸ The police can only arrest the person caught in the act of committing the crime or suspected to have committed the crime for a maximum of 8 hours, which can be prolonged by an additional 4 hours. After this initial arrest, the police cannot take the person into custody, because it requires, in addition to a well-founded suspicion of a crime punishable by imprisonment, also the probability of the preliminary arrest of the suspect, which is not the case in light bodily injury. For the judge to deal with the restraining order in effect, it is necessary to hold a hearing and, prior to it, to communicate well-founded suspicion to the accused, which requires that an investigation be ordered. Since custody may only last 72 hours, and preliminary arrest may only be applied if there is a well-founded suspicion, the investigation is hastened by the prosecutor in these cases, and preliminary arrest (or lighter measures, such as a restraining order) can be issued. In all other cases the prosecutor will not hasten the process, or in cases requiring a private prosecutor lacking the authority to order an investigation, well-founded suspicion will not be established in 72 hours and the restraining order will be issued (if at all) in 30 to 40 days at best for a maximum 60 days. As such, it is not worth the effort.

³⁹ Under Act LXXII of 2009 on preventive restraining because of violence among relatives the following is to be considered violence among relatives: activity performed or default/failure by the abuser to the injury of the abused seriously and directly jeopardizing dignity, life, the right of sexual self-determination, body and spiritual integrity.

⁴⁰ According to the Civil Code 'close relative' shall mean spouses and registered partners, next of kin, adopted persons, step- and foster children, adoptive-, step- and foster parents, siblings; 'relatives' are furthermore: domestic partners, spouses and registered partners of the next of kin, fiancées; next of kin and siblings of a spouse or registered partner; and spouses/registered partners of siblings.

'Domestic partners' shall mean two persons living together outside of wedlock or registered partnership in an emotional and financial community in the same household (cohabitation), provided that neither of them is engaged in wedlock or partnership with another, registered or otherwise, and that they do not stand in any next of kin relationship to one another, and are not siblings (whether by whole or half blood).



only if the victim has a legal title other than just using the apartment out of courtesy, or if the victim raises their common child.

The police may order temporary preventive restraining for a period of 72 hours if there is a grounded suspicion of violence based on all the circumstances of the incident – with special regard to the facts outlined by the abuser and the abused – the site of the violence between the relatives, the signs of violence between the relatives, the conduct of the abuser and the abused person and the relationship between the abuser and the abused person.

When such a temporary restraining is ordered, the police shall, ex officio, initiate non-litigious court proceedings for ordering such a preventive restraining. The preventive restraining may be ordered by the court for a maximum of thirty days, upon the expiry of which the restraining ordered shall lose its force.⁴¹

The abused person or relatives of the abused person may also initiate such proceedings. The ungrounded initiation of preventive restraining shall be considered as a violation of rules and may be punished with a fine up to HUF 150 thousand (which is more than the average net monthly income in Hungary of HUF 141 thousand in 2012).

There were only 1463 temporary restraining orders issued by the police in 2010 in Hungary, so the police seem to be very careful about this institution. The problem is more serious on the part of the courts: in Budapest, for example, the courts revoked 60 out of the 95 temporary restraining orders. (No data is available as to other parts of the country or as to the number of requested temporary restraining orders.)

Alleviation by the State of damages of the victims of crime

There is a state victim protection service obliged to assist and to convey general information relating to the rights and obligations of crime victims in criminal proceedings in accordance with Act CXXXV of 2005 on the assistance of victims of crime and the alleviation by the state of damage. The Act regulates the procedure for requesting financial aid, as well as the reimbursement by the state of all or part of the damages caused by crime.

The act has three major shortcomings for victims of domestic violence: (i) it can only be requested if there is a criminal procedure in the case (which, in almost all types of violence against women is often not the case); (ii) requests for financial assistance must be submitted within five days of the crime being committed, so even if a woman decides within the legal time limit of 30 days to submit a private motion to initiate the criminal procedure, she can no longer request financial assistance if more than 5 days have passed since the crime took place; and (iii) it does not automatically offer representation before the court.

⁴¹ The persons failing to observe the rules included in the temporary or final resolution on preventive restraining may be punished with detainment or a fine of up to HUF 150 thousand.

Legal Aid in General

According to the general rule of Act LXXX of 2003 On Legal Aid, the state shall pay the fee of the official legal aid providers⁴² if the party's monthly net income does not exceed the amount of the prevailing minimum retirement pension⁴³ and the party - with some exceptions - has no property. The fee shall also be paid by the state regardless of the amount of income if the party is prevented from exercising the right of disposal of their income, making it impossible for them to use legal services. If a party has been declared a crime victim, the state shall cover the fee of the legal aid provider if the available net monthly income of the party does not exceed 86 per cent of the national average of the gross monthly wage⁴⁴. In other cases the State only advances the fees if the monthly net income of the party with no property does not exceed 43 per cent of the national average of the gross monthly wage.

The cases where the party can request a legal aid provider include, among many others, the following types of cases:

- the party is a crime victim and in need of legal advice or requires assistance for the preparation of a petition (statement of claim, request, complaint, indictment etc.) in order to file charges, understand their procedural rights and obligations, or to institute a lawsuit for compensation for the damage caused by the crime. etc;
- legal assistance is necessary in matters directly affecting the day-to-day livelihood (in particular, issues related to housing, labor law, or the public utilities) of the party;
- the party requires legal advice as to what type of proceedings should be instituted in order to protect his/her rights, and at which authority or organization, or if a petition has to be prepared in the course of such proceedings.

Unfortunately, covering the costs of legal representation before the courts in civil and criminal cases is not automatic: The right to representation through an attorney called a "litigation friend" shall be due to injured parties, private prosecutors, private parties and other interested persons who are financially in need, if "*because of the intricacy of the case, their lack of legal expertise or other personal circumstances they - by proceeding personally - were not able to effectively assert their procedural rights*".

All attorneys and NGOs, foundations, etc. engaged in activities related to the provision of legal protection, and universities offering legal education, may join the list of legal aid providers if they conclude a service contract in accordance with the Legal Aid Act.

⁴² The hourly rate of the legal aid provider is HUF 3000 per hour in extra-judiciary cases.

⁴³ The minimum pension is HUF 28,500, that is less than 100 EUR per month in 2012.

⁴⁴ As published by the Central Statistical Office for the second year prior. In 2008 the gross monthly wage was 198,900 and in 2011 it is around HUF 219.000 - approximately EUR 700-730 per month.

CONCLUSIONS

By disregarding the existing power differences in a society dominated by patriarchal values, seemingly politically correct solutions and gender-neutral legal norms result in indirect discrimination of women who have to exert significantly more energy to access justice.

The elimination of patriarchal stereotypes is one of the most significant duties for the establishment of equality between women and men. The media and each and every person expressing an opinion publicly or privately have a main role in this.

The most important problems in the world of work are the lack of or the deficiencies in part-time, flexible time and shared-time employment and family-friendly workplaces, spending time out of paid work while on maternity leave and the reintegration of women into the labor market after maternity leave.

Professions that encounter violence against women (police, prosecutors, judges, attorneys, social workers, child custody officers, psychologists, etc.) should receive systematic training (not just on a voluntary basis) in the areas of violence against women, to be held by professionals who have no "victim-blaming" attitudes.



THE OBJECTIVES OF INTERNATIONAL FEDERATION OF WOMEN LAWYERS [FIDA] NIGERIA



Sylvia Abanah

International Federation of Women Lawyers [FIDA]

My organization is International Federation of Women Lawyers [FIDA]. It is a non-governmental and non-profit organization. This is a group of women lawyers that came together to fight the course of women and children. We deal with all cases of violence against women and children; ranging from battery, human trafficking, rape and child abuse. We are also focused on cases of widowhood inheritance rights, prevention of harmful traditional practices like female genital mutilation. FIDA offers free legal services to indigent women and children. We also encourage girl child education and women to participate in politics and we offer them free legal services to go before election petition. Our objective is prevention of violence against women and children, making it possible for women to have access to justice, support good governance and democratic process and reaching out to the vulnerable people in the society.

However, fighting these courses has not been easy because of the situation in my country Nigeria; it is either the culture or the religion cage the women and prevents them from fighting for their right. Women are relegated to the background, and their place is supposed to be in the kitchen. They are not supposed to be heard but to be seen. The man sees the woman as his chattel once he marries her, which she can handle anyhow, not considering her feelings or her opinions. The woman is expected to be submissive to the man even unto death. Moreover, she is not just married to the man but also to his relatives and so orders could come from any of the family members. The man can treat her any way he likes and tradition and religion forbids her to leave her husband's house. This is because a woman's husband is seen as her dignity. Morally separation or divorce is seen as a wrong step to take having wedded in the church. As a result of the above situation or because of what people will say most parents do not welcome the idea of their daughters coming back to their houses once they are married rather they advise them to stay and endure and look unto her children. It is unfortunate that these institutions do not consider the degree of what the woman is suffering in the hands of the man. For instance in cases of battery it affects the woman physically, psychologically and emotionally, it is traumatic. In Nigeria it is not common for a wife to report her husband to the police. However where the woman decides to do so the police does not treat it with any atom of seriousness and no protective order is given to her against the abuser, it is seen as a family matter which has to be treated at home. Also the issue of sexual abuse or rape by her husband is a non-issue.

The case of widowhood is a very sympathetic issue. In the Eastern part of Nigeria, where I come from once a man dies, his relations see the woman as the killer of the man. The man's relations end up struggling with the woman over her husband's property and in some cases they succeed. They might end up chasing the woman away from the family house. It is so disheartening that even where the man dies leaving a Will, his relations contest his will, where the family is a polygamous one the case is so complicated because the man may end up giving 90% of his wealth to the wife he loves most and she wants to be the sole beneficiary while the other wives will be contesting it.

Human trafficking is another issue that is posing a problem in my country, it comes with deceit, where the pimp convinces the parents of the victim that he/she is going to find a job for the victim who ends up being sexually abused until she pays him all the expenses she spent in bringing her there. The victim is afraid to report to the law enforcement agencies for fear of being killed or being deported.

However, cases of child abuse, ranges from physical violence and rape. It's unfortunate that such cases are not taken serious because most of such cases do not get to court and are swept under the carpet, some of them that end up getting to court and are before the male judges are not treated with caution. This is because the degree of punishment meted to the abuser is at times less than what the law says and not commensurate to the offence he committed.

Female Genital mutilation is a harmful traditional practice in some part of my country, because it is believed that where a girl is not circumcised she becomes highly promiscuous.

The issue of Girl child education is still a problem in some part of Nigeria especially in the Northern part where children are given out in marriage at a very tender age [10-12yrs], unfortunately this is supported by their Muslim religion and it affects the girl child education and her opportunity to be empowered as a woman and also not healthy for her.

Notwithstanding the drawbacks, my organization FIDA is doing its best to fight against all forms of violence against women which has been mentioned above by conducting outreaches on Wills, Widowhood inheritance rights, women empowerment, girl child education, child abuse, human trafficking etc. and giving them tips and strategies of achieving them and telling them why it is necessary. We also encourage women to participate in politics by campaigning and supporting them during party politics. We volunteer as observers during elections, pro- bono services to them either by defending their cases in court or using alternative dispute resolution [ADR]. In cases of battery we try to encourage the women to empower themselves by going back to school, getting a job, so that they can earn some respect and not depend on their husbands. This works out sometimes; they become financially independent and less dependent on men to a certain degree.

We intend building shelter homes for victims of violence in order to reduce tension for them and also keep them away from the abuser, and also getting more volunteers for free legal services in order to enable us, improve in our efforts in protecting women's right and offering them access to justice. However we are lacking funds but we are doing our best.



COMBATING VIOLENCE AND BUILDING PEACE



*Uzma Mehboob,
Human Rights Activist Pakistan*

Pakistan is big news. From the catastrophic floods to terror attacks, the world is watching and is worried. We know there are challenges – big ones – but we also know there are stories of hope and resilience. Pakistan's rich spiritual heritage and culture is an inspiration for those trying to make a difference.

Pakistan is also a stabilizing factor in the region for the region's progress and prosperity. Economic development and democracy in Pakistan have been hindered by internal and cross border conflicts that have resulted in the past. The highest number of Afghan refugees as well as internally displaced persons is still burden on Pakistan's economy. Jihad in Afghanistan, Iran and Iraq's war, Jihad in Kashmir, islamization policies of general Zia ul Haq and rapid growth of Madrassas contributed to increasing of extremism in Pakistan. We are also facing sectarian violence and sectarian politics.

So we can say that Pakistan today is a country torn by political and religious conflict, and peace building in Pakistan requires post conflict recovery of the system, the institutions, security and above all the economy. Although the nature of conflict in Pakistan is ethnic as well as religious, its roots lie in chronic deprivation of various segments of society. A fundamental transformation of Pakistani society requires uplifting of those chronically deprived, which can only come at the expense of breaking the current power structure.

Pakistan is an important country and playing a vital role in combating terrorism and extremism. Poverty-stricken Pakistani citizens grow desperate and they fuel extremism.

In attempts to stop terrorist activity, we are receiving drone attacks, and public buildings, including mosques and schools, are demolished. Mothers, children and other innocent civilians are killed.

Through these attacks "We are trying to kill the terrorist, we are trying to clean the terrorist, but we are not going to be able to shut up the channels that are promoting the terrorist which breed the terrorist." We are facing economic crisis, political instability, movement issues, minority issues and extremism due to this war against terrorism.

While talking about women we found that The Constitution of Pakistan guarantees fundamental rights to the citizens without any discrimination. The Government of Pakistan is fully sensitive to the issue of violence against women and is engaged in taking bold steps to address these issues, by becoming signatory to various UN Conventions, especially CEDAW.

Despite all these efforts women in Pakistan live in a world, which is structured by strict religious, family and tribal customs. They are subjected to discrimination and violence on a daily basis. Women are facing various forms of violence, discrimination and inequality in almost every aspect of life. Poverty and religious extremism are also roadblocks in the way of women becoming progressive and independent.

The rapid raise of religious extremism has made the lives of women in Khyber Pukhtoon Khawa and also in Pakistan more miserable and oppressed. The war against terrorism not only helped grow further extremism but it also created a non-conducive atmosphere for the progression and women rights forces to work in. Millions of people had to flee from conflict zones of Swat valley and other areas in 2009. Women and children suffered most among internally displaced people. The limited freedom and democratic rights earlier available to women are being crushed by the extremist groups. They have banned girls' education declaring it as “western conspiracy”. More than 300 girls' schools were burnt, destroyed or closed down by local Taliban in Swat. Women have also been banned from markets and shops. A strict dress code was imposed. Women are not allowed to take part in the political activities and are barred from voting in elections. Women have become an invisible community in the areas controlled by the fundamentalist religious groups. Even after flashing them out of these areas by military, situation for women remains same. They are still bombing and targeting schools, school buses and teachers also. In Khyber pukhtoon Khawa we are facing bombing, kidnapping and different kinds of threats on the daily bases.

The main victims of this violence are women and children. Mortality rate is already high in Pakistan during pregnancy and this manmade disaster making women and children more vulnerable. Police, legal, health, education and social services were disrupted; families and communities were separated. The vacuum of law and order, family separation and the breakdown of community networks, acute trauma and the lack of shelter/privacy in both camp and community settings increases risks for women. In these situations, increased vulnerability to sexual exploitation and trafficking is well documented, as is increased domestic violence. In traditional Pakistani and KPK society it is taboo for women to receive aid or medical care from male relief workers, preventing many of them from seeking aid in the first place.

We are in a situation of *no-war-no-peace*, and while there have been a number of bilateral and multilateral peace-building processes launched, women and women's issues have not been incorporated into these discussions. Women and girls are among those most affected by the violence and economic instability associated with conflict and post-conflict situations. Yet, when it comes to negotiating peace and facilitating the reconstruction after war, women are grossly underrepresented.

Women must be equitably represented at all levels and stages in processes of negotiating and sustaining peace; a policy of zero tolerance to sexual and gender-based violence must be enacted and victims provided with adequate support and protection; and women's needs should be taken into account and budgeted for in all recovery processes.

The civil society called on the Government of Pakistan to give priority attention to women’s social, political and economic well-being in the phase of rehabilitation. They further stressed the importance of developing a comprehensive national action plan on the implementation of Security Council resolution 1325, as well as provincial action plans with sound monitoring and reporting mechanisms.

To ensure women’s inclusion in the peace-building process in Pakistan, as well as to facilitate the achievement of their economic and human security, the government of Pakistan is in the process of developing a strategic framework intervention on women, peace and security.

At the end I would like to say that extremism and terrorism could be curbed by eliminating its root causes. Establishing educational institutions, creation of job opportunities and generation of economic activities in the tribal areas of Pakistan would help eliminate extremism from the area. Such opportunities would also help in uplift of womenfolk in the Federally Administered Tribal Areas.



SITUATION OF WOMEN IN PERÚ: AN APPROXIMATION TO THEIR REALITY



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The population in Perú, according to the last Population Census 2007, was about 27'412,157 and the women represented 50.3% of the total population.

The Peruvian women a long time ago was excluded of the social life and was victim of many inequality situations; just in 1955 by first time in Perú, the women could vote and was elected as candidate.

End of 1970, the situation of women was highlighted and faced trough of international and regional agreements and Perú signed them; Conventions such as, the Convention on the Elimination of all Forms of Discrimination against Women (United Nations, 1979) and the Inter- American Convention on the Prevention, Sanction and Eradication of Violence against Women (Convention Belém do Pará) 1994, these encouraged to the Peruvian State to assumes responsibilities and designs policies in favor of Peruvian women. In this scenery, in 1993 was promulgated the Law 26260, Law on Protection of the Familiar Violence, It defines the family violence, establishes the policies and actions of the Peruvian State, indicates the competence of the Police, Prosecutor's Office, and Family and Penal Court; and gives details regarding with protection orders.

In 1996 was create the Ministry of Women's Promotion and Human Development; today, Ministry of Women and Vulnerable Population (MIMP); and in 2001 was created the National Program against Familiar and Sexual Violence (PNCVFS), it has three main work areas: 1) Prevention, 2) Support to victims, and, 3) Research; the service for supporting to women victims of familiar violence is called "Centro Emergencia Mujer", its model of intervention includes an approach interdisciplinary with three professionals: legal advice (lawyer), social evaluation (social worker) and psychological support (psychologist), and these professionals coordinate with the Police, District Attorneys and

Judges for legal issues, and for social and protection services with other institutions within community, according each case. Nowadays, there are 148 Centro Emergencia Mujer, located in many parts around Perú, they are specialized and free services, they support not only women (who are the main users), but also, children, elder people and men victims.

We are aware that the only intervention of Ministry of Women and Vulnerable Population isn't enough to eradicate the huge problem of the violence against women; so, since year 2002 Peruvian State established the National Plan against Violence to Women. At the moment, we have the second one by the period of 2009 to 2015. This National Plan to pretend to join efforts between State, NGO and civic organizations in a same purpose: women without violence; the main objectives are to implement public policy to face violence against women in different level of government (national, regional and local); to reach that women victims of gender violence access to public quality services and services of judicial system; and to promote the transformation of socio cultural pattern that tolerate and legitimize the violence against women. The National Plan considers actions regarding with different forms of violence against women, such us: familiar violence, sexual violence and violence against women in situation of armed conflict, femicide, trafficking in women, sexual harassment, and homophobia.

In Perú, many changes to our legislation had been done and also we have provided of a great quantity of services to victims; nevertheless, the violence against women continues, maybe, the clue is to invest more in actions of prevention.

Statistics on violence against women in Perú show us that in 2010, 4 of out of 10 women had suffered physical violence by their partner; 6 of out of 10 women suffered psychological violence, and near of 10% had suffered sexual violence by their partner one in their life. Only, near to 20% of all women whose suffered violence, asks for help to any service, especially Police Office (INEI, ENDES 2010).

The violence against women many times finish with the death of the victim, it is called femicide, and it's mean the death of women by gender discrimination. In Perú, since 2003 activist NGOs showed with evidence and statistics based in news the high and terrible situation of the femicide, as a consequence of it, in 2009 the Peruvian Government included the femicide as a public policy; so in this year, the Public Prosecutor's Office and the Ministry of Women and Vulnerable Population create their Femicide Register. The register of the Public Prosecutor's Office is the Official one, it has as objective to follow up and analyze the cases of femicide and attempts in national level, it provides data about intimate femicide and femicide by others perpetrators, these statistics are based in the investigation of the Public Prosecutor's Office; while the Ministry of Women and Vulnerable Population's Femicide Register is based in data of news verified with the Police Office; and its main objective is provide information to support victims and their family.

Data of Public Prosecutor’s Office show us that in period between January and December 2010 were 130 femicides: 109 intimate femicides and 21 no intimate femicides. This data represents 51.18% of intentional and violent total women homicide.

Graph 1: Femicide Perú 2010



Source: observatory of criminality - Public Prosecutor’s Office of Perú. 2010

Statistics from Ministry of Women and Vulnerable Population (MIMP) indicate that in the 2011, this Ministry supported to 93 cases with characteristics of femicide. In average it represented 6 cases per month (see table 1).

Table 1: Cases of Femicide in Perú 2011

Kind of violence		Death with characteristic s of femicide	Cases with characteristics of femicide attempt
Total	159	93	66
Percentage	100 %	58%	42%
Average of cases per month	11	6	5

Source: Administrative Register of Femicide, 2011
PNCVFS-MIMP

On December 2011, the Peruvian Congress approved the 29819 Law, Law that modified Peruvian Penal Code in article 107, the modification included the femicide as a kind of crime, it comprises, the murder of the wife or the live in partner or a woman linked sentimentally with the murderer; this article penalizes it until with 25 years of jail. Before of it, the murderer of a woman could have a sentence only of six years with the possibility to get liberty in two years through penitentiary benefits and good behavior.

On the other hand, Perú has had advances related with the equality of opportunities between men and women; in 2007 the Congress approved the 28983 Law, Law of equality of opportunities between men and women; according article 1, it is “applied in the national, regional and local level of government to guarantee to women and men the exercise of equality, dignity, development free rights, autonomy, to prevent the

discrimination in all spheres of their life, public and private (...). The article 5, indicates that “role of State is: 1) “To promote and guarantee the equality between women and men, take all necessary measures for moving the obstacles of exercise this right (...); 2) To take temporary positive action’s measures in order to shift the equality between men and women, it won’t be understood as discriminatory; 3) To incorporate and promote the use of inclusive language in all written communications and in documents in all institutions and level of government”.

In 2010, Ministry of Women and Vulnerable Population with its stakeholders: the National Office of Statistics, ECLAC, UNPHA, UNIFEM and NGO Manuela Ramos did the first “National Survey on Use of Time”, its objectives were: to know on the global work differentiated by gender; to determine the characteristics of men and women according to distribution and use of their time in diary activities. The main results were that men spend time in paid work in market with a weekly average of 50 hours and 38 minutes, while the women’s weekly average is 36 hours and 25 minutes. In case of domestic work no paid, men spend only 15 hours and 53 minutes per week, and women spend 39 hours and 28 minutes. This shows us the unequal work between men and women (Freyre, M.; López E. 2011: 05).

Table 2: Perú. Global work by sex, 2010

Sex	Paid work	Domestic work	Global work
Man	50.38	15.53	66.31
Woman	36.25	39.28	75.53
Different	14.13	-24.15	-9.22

Source: DGM-OIDS.ENUT 2010

The situation of rural women in Perú needs more attention; the majority of women illiterate come from rural areas with 23.1% in comparison to 4% of urban areas. 92.4% of urban women have access to media while only 76% of rural women have it (MIMDES, 2011: 06).

About women’s political participation in Perú, our Electoral Register 2010 indicated that women represent 50.17% and men 49.83% of the national electoral population; however, women were the major electoral population in Perú, the last local and regional election not reflects their majority participation and election, overall in positions where there isn’t gender quote: Regional Presidents, Vice President, Provincial and District Mayor (ibidem: 11).

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PERSONAL LAWS OF SRI LANKA ON MATTERS RELEVANT TO MARRIAGE, DIVORCE AND MAINTENANCE AND ITS' IMPACT ON WOMEN



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Introduction

The existing laws of Sri Lanka can for convenience and easy reference be classified into two categories such as the Common Law and the Personal Law, while the Statutes cover both Common Law and Personal Laws.

However, the aim of this presentation is to focus on the impact on women made by various personal laws (both common law and statute law) governing marriages and divorces.

The Personal Laws that obtain in Sri Lanka are the Law of Thesawalamai, the Kandyan Law and the Muslim Law.

The Law of Thesawalamai is applicable to the “Malabar inhabitants of the Jaffna peninsula and to the lands situated in the Northern Province, regardless of whether the owners reside there or not. The Kandyan Law is applicable to all Kandyan Sinhalese and The Muslim Law is applicable to all Muslims who are inhabitants of Sri Lanka.

Sri Lanka is a multi-ethnic country composed of Sinhalese, Tamils and Muslims. As such the existing Personal Laws of Sri Lanka are influenced by multi-ethical religion, culture, traditions, social structure, male-dominancy social system etc. Thus the main objective of this Presentation is to review the impact of these Laws on women.

Marriage

The General Marriages Ordinance is applicable to all Sri Lankans except Sri Lankan Muslims. The people who are governed by Kandyan Law have the optional right to choose the Kandyan Law or General Marriages Ordinance as the law governing their marriage and divorce. Marriages and related issues of Sri Lankan Muslims are governed by the Muslim Marriage and Divorce Act of Sri Lanka.

While the minimum age of marriage for both male and female is 18 years in terms of General Marriages Ordinance and Kandyan Law. The Muslim Law of Sri Lanka does not specify any minimum age of marriage. It is mandatory under the General Marriages Ordinance and Kandyan Law that a marriage should be registered. There are number of decided cases which stand testimony to the recognition granted to customary marriages by law of Sri Lanka.

Though the Muslim Marriage and Divorce Act emphasize the registration of marriages but at the same time it also says that the validity or invalidity of a marriage does not depend on registration. This renders valid even those which are not registered under the Muslim Marriage and Divorce Act. Therefore, customary marriages and marriages with no registration also are considered valid under the law of Sri Lanka.

When we consider child marriages with this background, though it is rare now the flexibility of the law in this regard seriously impedes the enforcement of the law prohibiting child marriage. Due to the flexibility of the law, abuses take place. As the result of child marriages it is the female children who are mostly affected physically, mentally and economically. However it should be pointed out here that today child marriages are either rare or nil in Sri Lanka.

Likewise, women are mostly affected due to customary marriages and marriages with no registration. It is well known that the best and only evidence of the marriage is a marriage registration. When there is no marriage registration it is easy for men to neglect their legal duties and responsibilities towards their wives and children.

In the case of marriages governed by the General Marriages Ordinance and Kandyan Law, in the registration form there is a column provided for bride's signature signifying her consent for the marriage. But under the Muslim Law of Sri Lanka there is no such column in the relevant registration form but instead there is a column for Wali's (Marriage Guardian) signature. It is expected that the Wali should get the bride's consent, but in most cases it would be difficult to say whether the consent of the bride was actually obtained or not as the marriage register does not provide a column for the Wali to declare the position.

All laws except Muslim law of Sri Lanka emphasis monogamy. It makes bigamy or polygamy a punishable offence under the Penal Code of Sri Lanka. In contrast the Muslim Law of Sri Lanka permits polygamy on a conditional basis. The concept of the Holy Quran on polygamy such as “the equal treatment and equality between all the wives” is not it correctly and strictly adhered to in the Muslim Marriage and the Divorce Act of Sri Lanka. According to the Muslim Law of Sri Lanka, the Courts have no jurisdiction to inquire into and adjudicate upon a male who seeks for additional marriage as to the ability of the male whether he is capable of providing equal treatment among all the wives and to permit or refuse the marriage. It is compulsory for the court to grant permission for polygamy according to Sri Lankan Muslim Law. Due to the loop-holes in the law on the concept of polygamy, there are opportunities open to men to misuse the concept of polygamy. Under these circumstances too the women are the victims.

Divorce

Under the General Marriages Ordinance, the grounds for divorce for a male and a female are same. They are adultery after marriage, malicious desertion, incurable impotency at the time of marriage, legal separation for a period not less than two years, actual separation for a period of 7 years or more are the grounds for divorce under General Marriages Ordinance.

The grounds for divorce under Kandyan Law are the adultery by wife after marriage, adultery by husband coupled with incest or gross cruelty, complete and continued desertion for a continuous period of 2 years by the husband or by the wife, inability to live happily together, of which actual separation from bed and board for a period of one year. Therefore it is significant to note that the adultery of the husband without the offence of incest or gross cruelty is not a ground for divorce for a Kandyan wife to obtain divorce from her husband. This appears to be discriminatory in nature. Further divorce on mutual consent of both parties is also allowed under Kandyan Law.

The Muslim Law of Sri Lanka also allows the parties to obtain divorce on mutual consent. Apart from this, there are marked differences between the grounds on which a wife could obtain divorce from her husband and the grounds on which a husband could obtain divorce from his wife under Sri Lankan Muslim Law. A Muslim husband has an inherent right to divorce his wife without giving any reason to the Court. The Court also has no jurisdiction to refuse the request of the husband. On the other hand when a Muslim wife seeks a divorce against her husband she should satisfy the Court by proving the husband's faults or the ill-treatment meted out to her by the husband. If a Muslim wife needs to obtain a divorce from her husband when there is no fault or ill treatment on his part, she has to get the husband's consent for divorce and she also has to pay compensation to him.

The Kandyan Law and the Muslim Law of Sri Lanka permit the parties to get divorce on mutual consent while the others be it a male or a female who are governed by the General Marriages Ordinance do not have this option.

While Muslim Law allows a Muslim women of Sri Lanka to obtain divorce from her husband on the grounds of cruelty of the husband, the women who are governed by the General Marriages Ordinance and Kandyan Law, are not given those rights. It should be noted that Domestic Violence Act, which is common for all, provides remedies for women who became victims of domestic violence.

When we consider the Muslim Law in respect of divorce the male has all the liberty to divorce his wife at his will and pleasure while the female cannot do so easily. Here the Law is very lenient for the males and very cumbersome for the female.

Maintenance

The Law of maintenance includes maintenance between husband and wife, between father and children and between mother and children.

All inhabitants other than Muslims of Sri Lanka are governed by the Maintenance Ordinance with regard to maintenance between husband and wife but the Muslims are governed by the Muslim Marriage and Divorce Act.

The concept that the husband should maintain his wife is adhered to both the Maintenance Ordinance as well as the Muslim Law of Sri Lanka. The liability of a husband to maintain his wife ceases with the decree of the divorce in terms of Maintenance Ordinance. But in terms of Muslim Marriage and Divorce Act, the obligation of the husband continues up to a period of three months after the registration of the divorce and if the wife has conceived (pregnant) at that time of divorce then it ceases with the delivery of the child.

According to Civil Procedure Code a permanent alimony is permissible to either spouse through the court depending on their capability, ability and income. But there are no such provisions in the Muslim Marriage and Divorce Act. It has to be pointed out that the availability of permanent alimony is applicable to all Sri Lankans except Muslims. Married Women's Property Ordinance provides that a woman who has independent sufficient means is liable to maintain her husband, this is applicable to all Sri Lankans except the Muslims. But a Muslim woman does not have such legal obligations.

With regard to maintenance for children according to Maintenance Ordinance a child whether male or female should be maintained by his/her father until he/she attains the age of 21 years. There is no such age limit under the Muslim Marriage and Divorce Act. According to the case laws a Muslim son should be maintained by his father until he begins to earn on his own and a daughter until she is married.

According to Matrimonial Rights and Inheritance (Jaffna) Ordinance, which is applicable only to those who are governed by the law of Thesawalamai and according to Married Women's Property Ordinance, a mother who has sufficient independent means is liable to maintain her children which does not affect the obligations of the father to maintain his children.

There are no differences between the legal rights of the adopted children to maintenance and the (their own) natural children in terms of Adoption of Children Ordinance which is not applicable to Sri Lankan Muslims. The Muslim Law does not permit adoption of children. If any Muslim wishes to adopt a child they should do so in terms of Adoption of Children Ordinance, however the adopted children have no legal right to get maintenance under Muslim Law. The children who are adopted by Muslim parents in terms of Adoption of Children Ordinance lose their rights to maintenance in terms of Muslim Law of Sri Lanka.

The divorce between father and mother does not affect the rights of the children to maintenance. This concept is common for all Sri Lankans.

It is a common feature of law of maintenance that the legal duties, obligations and liabilities of a man is more than that of a woman's duties, obligations and liabilities on maintenance.

Conclusion

What is given above is an brief over view study on the Personal Law of Sri Lanka in respect of marriages, divorces and maintenance and certain Statutes dealing with these Personal laws and the impact they have on women.

We could observe that the flexibility or rigidity that is found in the different personal laws under different situations do affect and influence the legal status of women in Sri Lanka, finally placing the women in an advantages position under certain instances and in a disadvantages position in many other instances the personal laws prevailing in Sri Lanka have afforded the women only a limited protections in view of the various constraints placed on women and the inherent limitations of the law.

Finally, it could be said that traditions, culture, customs, etc do influence the Personal Law at various situations and instances. If all these factors contribute to help to promote the status of all women in society irrespective of their race or religion – it is then and only then, that women will be in a position to participate in society, with dignity befitting their status.

Resources:

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WOMAN IN TURKEY



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INTRODUCTION

Turkish Republic was founded in 1923 and just after the foundation Turkish women were granted the rights by founder Atatürk that most women in the world did not have in those years. One of the leading reforms that directly influenced Turkish women are the Law on Union of Education adopted in 1924 in order to unify education under a single system and give men and women equal education opportunities and Turkish Civil Law adopted in 1926.

Another important step towards equalizing legal status of women is gaining political rights. Much earlier than most Western countries, Turkish women were granted the right to elect and be elected in local elections in 1930 and general elections in 1934. Turkey adopted Action Plan without hesitation in 4. World Women Conference aiming to enhance status of women. In the conference, our country made a commitment to reduce mother and child mortality by 50% until 2000, increase compulsory education to 8 years and female literacy to 100%.

Established in 1990 as an international mechanism to develop women policies, General Directorate of Women's Status (KSGM) carries the problems to the parliament and works for decisions in favor of women in our country that approved CEDAW.

Another important development is Council of Europe Convention on preventing and combating violence against women and domestic violence adopted by Council of Europe Committee of Ministers on April 7th, 2001. The legislation approving the ratification of the convention was adopted in Turkish Grand National Assembly and published on Official Gazette on November 29th, 2011. thus, Turkey became the first country to ratify the convention of Council of Europe.

LEGAL DEVELOPMENTS

A) CONSTITUTION– TURKISH CIVIL LAW AND WOMEN

Men and women have equal rights in T.R. Constitution and the State is responsible for putting such equality into practice. Measures that may be taken in order to realize such equality cannot be construed to be against the principle of equality...

Family is the basis of Turkish society and couples are equal in the family concept both in our constitution and Civil Law.

The New Turkish Civil Law that took effect on 01.01.2002 is a new regulation that granted Turkish society the opportunity to experience modern developments. The Civil Law as amended is a regulation that pursues women-men equality, gives an end to sexual discrimination, makes men and women equal in society and values labor of women.

The New Civil Law brought many important innovations, particularly in family law. With this Law, the notion of male leadership of family was changed and it was stated that couples will manage and represent marriage together. Couples will choose their residence together and women will be able to use their own surnames with marriage surname.

Couples use guardianship together according to Turkish Civil Law. However, mother has the guardianship of an extramarital child.

Different from the previous Civil Law, a new provision was brought stating that one of the partners does not have to take permission of the other in selection of profession and job. While the legal property regime was "separation of property" in the previous laws, the new regime is "participation in acquisitions" and property acquired under union of marriage is subject to equal regardless of the person in whose name the property is registered. This provision will certainly have exceptions. Property acquired by inheritance, personal property and property acquired before marriage are excluded from this provision.

Legal marital age is 17 in Turkey and in some cases persons who have completed the age of 16 are allowed to get married with ruling of judges. However, it is known that marital age in rural areas is lower than this age.

While most amendments in family law did not aim for solely women, it is undeniable that primarily women enjoyed these changes due to their status in life. Supporting status of women and exposing them to positive discrimination in a patriarchal society structure should be a constitutional assignment of all states and T.R. Constitution includes the necessary regulation for such purposes. Moreover, in a regulation concerned with Family residence, the Civil Law restricted actions of one of the partners on family residence without clear consent of the other and granted the partner to attach notation to register of deeds in order to prevent sale of the family residence without their consent. If an extra

marital child is recognized by father or a family tie is established by the judge, extra marital children is as entitled for inheritance right as the legitimate children.

Extra marital children whose family tie is established through Recognition or judge's ruling have been granted the right for equal inheritance of mother like the children under marriage.

Establishment of family courts became the agenda with the enactment of the New Civil Law and they were established on January 9th, 2003.

These courts deal with cases related to Family Law as well as cases arising from Protection of Family and Prevention of Violence against Women...

Scope of the 1998 dated 4320 numbered Law on Protection of Family was extended in 2007. Finally, Law on Protection of Family and Prevention of Violence against Women became published on the official gazette and became effective.

-TURKISH PENAL (CRIMINAL) CODE AND PUBLIC PERCEPTION

Turkish Penal Code, prepared in accordance with daily needs was adopted by TGNA ON 16 September 2004. Below are the primary regulations in the law including sexual equality and violence against women.

The definition discriminating between girl and woman was excluded from the text.

Penal sanction was brought for sexual assaults committed on the partner, however investigation was made subject to the complaint of the partner.

Notion of sexual harassment in the office was brought, qualifications of sexual harassment crime were specified, accordingly misusing the influence arising from hierarchical and service affair or sexual harassment by using the facility of working in the same workplace were punished with more severe penalties.

It was ruled that it will not be possible to deduce, defer or delete sentence when one of the criminals or suspects gets married to the victim abducted or detained.

Tradition motive was added to the article that designates aggravated life sentence for deliberate murder and the most severe penalties were adopted for killing with tradition motive.

It was stated that no seducement will be applied on penalties of family members and relatives who kill sexually assaulted women for honor (honor killing).

In cases where the women gets pregnant as a result of a crime she is the victim of, no penalty is given to the person ending pregnancy on condition that pregnancy is no longer than twenty weeks and the woman consents. However, pregnancy must be ended in a hospital by specialist doctors.

Failure in liabilities to care, educate and support arising from family law was defined as a crime. The article stipulates punishment for man who leaves without any support his pregnant wife or a pregnant woman he lives with whether they are married or not.

Prostitution crime and conditions were defined under which pandering persons specifically children to prostitution constitutes a crime. While making such amendments, Turkey's liabilities arising from international conventions on fight with prostitution were taken into account. Sexual affair with non-adults was defined as an independent crime.

Regulations were made effort fight with woman and child trafficking. Liabilities arising from international conventions were taken into account in such regulations.

-LABOUR LAW AND PARTICIPATION IN WORK LIFE

While participation of women in work life is considered as an important factor of sustainable development, their participation is quite low and falls each year. Despite equalitarian structure of the laws, the most important reason of the fall is the lack of mechanisms that will enable women's qualitative development and penetration into the workforce market and woman employment continues to exist as basic problematic areas in Turkey.

The higher educational level of women rises, the more they are likely to participate in the workforce. However, there is still inequality for women in all stages of education. Even if we hope that such inequality is eliminated in the future, there is need for common public education in order to improve women's knowledge and skills which will gain quality for women labor.

There is not sexual discrimination in the laws for women to penetrate into work life and continue their jobs. In the labor law enacted in 2003, there are provisions stipulating that no different fee will be designated due to gender for the same or similar jobs, no different procedure will be carried out due to gender or pregnancy in executing, performing and terminating work contract; gender, marital status and family liabilities, pregnancy and birth could not constitute valid reason to terminate a work contract.

As anywhere in the world, such positive provisions in the laws cannot prevent different practices in Turkey as well. We witness discriminative instances such as public's failure to recognize certain jobs and professions unsuitable for women, unfairness in job share, laying off women in economic crisis and low wages particularly in shadow sector.

Women only gather in traditional female jobs and work for lower status and wages. For instance, women in agricultural sector are not included in social security although it is not legally restricted as they are generally free-working family worker. Voluntary insurance for housewives is very low due to high Premium, dependence on husband for payment and insufficient information...

Women’s difficulty in harmonizing home and work life is the basic reason for keeping work life shorter and not displaying full performance in order to be in their career. Social support institutions such as kindergartens are still insufficient in our country despite all efforts. In order to increase women’s participation in workforce, several projects are carried out by Turkish Confederation of Tradesman and Craftsmen (KESK) and Directorate of Small and Medium Sized Enterprise Development (KOSGEB) and non-governmental organizations.

- INCOME TAX LAW AND WOMEN

With the amendment of income tax law in 2007, tax exemption was brought for women’s income they gain from their homemade products sold at fairs, festivals or temporary places designated by public organizations and institutions.

Turkey also adopted without hesitation the documents adopted in 4. World Women Conference, Beijing Declaration and Action Plan. (Beijing Action Plan) specified 12 critical fields to support and strengthen women. One of those fields is “Woman and Education”.

The illiterate constitutes 6% of Turkish population and the rate is higher among women. Desired level of literacy has not been achieved yet despite increasing rate.

-POLITICS AND PARTICIPATION IN DECISION-MAKING

Gender equality, positive discrimination and special measures are now being supported by international regulations. Establishment of woman branches in Turkish political parties targeted woman activity in political life.

Turkish parliament comprises 550 deputies. Number of female representatives in 2011 General Elections is only 79. This figure is yet much below the targeted 30%. Adana Bar Executive Board which I am a member of comprises 10 persons, with 4 female members. This figure is occasionally higher in some NGOs, which is pleasing in terms of female participation.

- PROJECTS

Having initiated an education campaign for equal participation of boys and girls in education, Turkey opened boarding primary schools in order to provide primary education for children of poor families in villages in rural areas where there is no school. Moreover, in consideration of the cultural structure of the region, increasing the number of boarding primary schools is projected in Eastern and Southeastern Anatolia where girls predominantly fail to attend school.

Another Project planned to improve the quality of education is "Father Mother Child Education Project" aiming to understand educational needs of mothers, fathers and children develop public awareness by means of education programs designed according to those needs.

Campaigns such as "Girls to School", "Dad, Send me to School", "Snowdrops" and projects such as Support to Basic Education aim at lowering girls' school quitting rate. In order to attract public attention, campaigns are held with the participation of the President and Prime Minister.

- VIOLENCE and LEGAL REGULATIONS

Violence against women is still the most important problematic field all around the world. Violence is more dominant in economically weak communities.

Regardless of its form, violence brings fear and distrust to women's life, prevents them from using basic rights and freedom. In our country, domestic violence appears as a notion difficult to fight and prevent because it is not possible to estimate its prevalence as family secrecy is strictly kept.

4320 numbered Law on Protection of Family, enacted in 1998 in order to prevent domestic violence, introduced a very important security system against violence. This regulation defined notion of domestic violence in the legal text for the first time in Turkey and enabled police and justice mechanism to act without complaint (upon notification of third persons) in cases of domestic violence.

Law on protection of family and prevention of violence against women was adopted on 20 March 2012.

Reduced sentence due to tradition motive was eliminated from Turkish Penal Code and it was even adopted as a reason to aggravate the sentence... Members of police, health and jurisdiction were included in several projects in fight with violence against women.



An organizational structure was established in fight against violence; “Woman Guest House” was opened to service in 1990 subject to “Social Services and Child Care Institution” as the first independent woman shelter house. Tens of women shelter houses were opened in the following years, which were followed by woman shelter houses subject to non-governmental organizations. Though the target is to reduce the need for such organizations, number and physical conditions are not at the desired level yet.

CONCLUSIONS

Turkey has target modern structuring and efforts continue to harmonize legal texts with international liabilities. However, even if legal procedures are fulfilled in life dynamics, projects have to be spread to social classes as the “woman” issue is not only related with women but also basic social units such as family and child...

Training process of law enforcement personnel should be accelerated, social views should be modernized in tradition and life. In addition to training of law enforcement personnel, training should be given at educational institutions from the early ages in order to create an understanding of Social Gender Equality and Social Gender.

Both government efforts and voluntary contribution of non-governmental organizations should be emphasized in actively practicing current regulations instead of their insufficiency.

RESOURCE:

- Reports of the Ministry of Family and Social Policies
- Adana Bar Seminary notes

