



International Women's Day

25 Years after Beijing:
Achievements, Gaps and Challenges for the future

With articles addressing: Sexual violence • Economic, social and cultural rights • UK rape law reforms
Women's struggles in Palestine, Turkey, the Philippines, Japan, South Korea, Argentina and Venezuela

International Women's Day

The march for justice continues





Table of Contents - Table des matières

From the Editor

Evelyn Dürmayer 4

Accountability and Impunity: Developments and Challenges in Realizing Justice for Women Victims of Violence

Rashida Manjoo 5

Beijing+25: Looking Back and Looking Forward

Jeanne Mirer 9

Attrition and rape law reform in the United Kingdom: The urgent need for reform to mitigate rape myth bias

Grace Cowell 11

Steadfastness and resistance: Palestinian women political prisoners confront repression

Charlotte Kates 16

State of Emergency in Turkey: An example of masculine backlash

Serife Ceren Uysal 22

Women lawyers under attack: Beleaguered Pinay people's lawyers for justice and accountability

NUPL Women and Children's Committee 24

25 years after Beijing: Two steps forward or one step backward for women in Japan and South Korea?

Osamu Niikura and Youjeong Jeong 27

#CSW64: Avances de los objetivos de la Declaración y Plataforma de Acción de Beijing

Nelly Minyersky y Silvana Capece 30

Un breve análisis sobre la aplicación de la Declaración y Plataforma de Acción de Beijing en la República Bolivariana de Venezuela

María Lucrecia Hernández 33



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IADL, International Association of Democratic Lawyers, is a Non- Governmental Organization (NGO) with consultative status to ECOSOC and represented at UNESCO and UNICEF. The IADL was founded in 1946 by a gathering of lawyers who had survived the war against fascism and participated in the Nuremberg Trials.

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From the Editor

This special issue of the IADL International Review of Contemporary Law was meant to be an addendum to the UN Commission on the Status of Women and its 64th session and to review the 4th World Conference on Women (Beijing 1995), the achievements since, the gaps and the challenges for the future. This issue was planned to be published on the 8th of March 2020: International Women's Day as the occasion to present a series of contributions to assume the work for gender equality from legal and international perspectives.

The Conference starting on Monday 9th of March 2020 in New York at the UN premises will be limited to a procedural meeting with some statements and the adoption of the draft Political Declaration. It will be closed and no general debates, no side events planned by Member States and no parallel events prepared by NGO's will be possible. The coronavirus disease (COVID-19) made this decision necessary.

Starting with the text by Rashida Manjoo, the former UN Special Rapporteur on Violence Against Women, concentrating on sexual violence and post-conflict situations and the necessity to use a holistic approach and model to ascertain accountability, justice and peace.

Continuing with Jeanne Mirer (President of the International Association of Democratic Lawyers, IADL) who concentrates on the Beijing Platform of Action. Violence and poverty are still the main barriers for gender equality and underlining the role of IADL in this context.

Grace Cowell considers the rape law reform in UK as being a success but nevertheless the gap between reporting cases of sexual violence and the convictions for rape due to the fact that rape myth bias are not addressed in society.

Charlotte Kates analyzes the persistent resistance of Palestinian Women detainees and the importance of self education in the prisons against all measures of discrimination especially torture and sexual violence.

Ceren Uysal describes the State of Emergency in Turkey as a masculine backlash regarding dismissed women in various sectors, the new laws limiting the possibilities to fight

against them and the necessity to adopt a clear intersectional position against all forms of oppression.

NUPL Women and Children Committee use many examples to denounce that under the Duterte government in the Philippines women and women lawyers are under constant threat and hampered in exercising their duties as human rights defenders.

Youjeong Jeong and Osamu Niikura recall that the 4th World Conference on Women in Beijing (1995) was a milestone in promoting women's rights but actually in Japan the government under Prime Minister Abe does not resolve the case of the "comfort women" while in South Korea newly adopted laws might assure more rights for women.

Silvana Capece and Nelly Minyersky in the Spanish version with an English abstract search if and how in recent years (from 2015 till 2019) the Beijing Declaration and the Platform of Action have been implemented in Argentina in particular reproductive rights and abortion and comprehensive sexual education and the force of the women's movement.

Maria Lucrecia Hernández explains that patriarchy and the blocus against Venezuela in an English abstract of a Spanish article discuss the further advancement of women in accordance with the Beijing Declaration and Platform of Action.

Many thanks must not only be given to those who presented their articles but as well to the great team who prepared this issue: Marjorie Cohn, Kathy Johnson, and Dinorah La Luz for editing and Charlotte Kates for the design and the layout.

I encourage all readers to follow these texts with care and conscience to understand and support women and women's rights in different economical, social and cultural contexts.

Evelyn Dürmayer
Vienna, 8 March 2020



Accountability and Impunity: Developments and Challenges in Realizing Justice for Women Victims of Violence

RASHIDA MANJOO

Introduction

I served as the UN Special Rapporteur on violence against women, its causes and consequences from 2009 to 2015. Holding this position over six years has been a privilege, as it has allowed for a global overview of the issue of violence against women, whether in times of peace, conflict, post-conflict, displacement or transitions. Over the existence of the mandate, all mandate-holders have in different reports and statements, raised our concerns about the lack of acknowledgement, accountability and transformative redress for harms experienced by women and girls. Four years since the end of my term, focusing on the gains as well as the challenges that we face in respect to accountability for crimes experienced by women, whether they occur in the public or private spheres, is an imperative that cannot be ignored. Lack of accountability for gender-based violence “compounds the effects of such violence as a mechanism of control. When the State fails to hold the perpetrators accountable, impunity not only intensifies the subordination and powerlessness of the targets of violence, but also sends a message to society that male violence against women is acceptable and inevitable. As a result, patterns of violent behaviour are normalized.”¹

As I highlighted in my 2013 report to the Human Rights Council, “Despite numerous developments, violence against women remains endemic, and the lack of accountability for violations experienced by women is the rule rather than the exception in many countries.”² In 2020, this remains an accurate assertion. Some common issues linked to the culture of impunity include the lack of acceptance of violence against women as a human rights issue; inadequate State responses; insufficient effort made to tackle the problem in a systematic, comprehensive and sustained manner; minimum time and resources allocated to this issue; inadequate attention devoted to the investigation of patterns, causes and consequences of violence; and low levels of prosecutions and convictions, among others. This article will focus on sexual violence in conflict and post-conflict situations.

Positive Developments

Historically, international law has rendered invisible the issue of sexual violence against women, including through linking sexual violence to notions of morality, honour and inhumane acts - rather than as specific gendered crimes against women. However, the International Criminal Court in its definitions of genocide, war crimes and crimes against humanity, does include a gendered approach to sexual violence crimes. They include rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilisation, and any other form of sexual violence of comparable gravity including indecent assault, strip searches and inappropriate medical examination. The Protocol on Women in Africa (Maputo Protocol) is the only treaty that defines violence against women as “all acts perpetrated against women... in private or public life in peace time and during situations of armed conflicts or of war.” Article 11 (3) places obligations on States “to protect... against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity.” Thus, recent definitions of rape in international and regional law instruments have aimed to remove the “family honour/inhumane treatment” underpinnings in relation to sexual violence against women, and have started to identify rape as a crime. This development has led to changes in some national contexts.

The 1993 UN Declaration on the Elimination of Violence against Women recognises women in conflict situations as a vulnerable group and thus its definition of violence against women would include cases arising in conflict situations. The 1995 Beijing Platform of Action includes women in conflict as one of its twelve areas of concern and highlights the types of sexual violence that violate women's rights in times of armed conflict. Other international standards addressing gender-based violence in conflict and post-conflict settings draw on provisions from various human rights documents that protect women's equality and non-discrimination rights. Although violence against women, in its broadest sense, is not specifically addressed in the Convention on the Elimination of all forms of Discrimi-

1 U.N. Secretary-General Report 2006 at 76.

2 UN Special Rapporteur on Violence against Women, Report to the Human Rights Council (2013) at 69.



nation against Women (CEDAW), some provisions are used to address sexual violence, including articles 2, 5 and 6. In addition, CEDAW's General Recommendation 28 articulates important guidelines for States parties in post-conflict settings including calling on States to collect information on the impact of conflict on women, and to ensure that adequate responses are implemented. Also, States parties are obligated to evaluate the *de jure* and *de facto* situation of armed conflicts and its impact on women and to take steps to eliminate discrimination. In 2013, CEDAW adopted GR 30, which highlights concerns about the gendered impacts of conflicts and women's exclusion from conflict prevention efforts, post-conflict transition and reconstruction processes. Standard-setting has prioritised attention toward sexual violence in armed conflict, but despite this, the reality is that such violations continue with impunity.

The United Nations Security Council is charged with the maintenance of international peace and security. Its powers include the establishment of peacekeeping operations, international sanctions, and the authorization of military action through the adoption of resolutions. The Security Council has adopted nine resolutions under the theme of women, peace and security – with a focus on women's human rights and gender equality in conflict situations. The first resolution adopted in 2000, resolution 1325, was the first time that the Council addressed the differential and unique impact of armed conflict on women. It is a milestone for addressing violence against women in armed conflict, as it applies both human rights and humanitarian laws to address the issue. Resolution 1325 recognises the need to protect women and girls during and after armed conflict and calls on States parties to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse. It also stresses the importance of women in peace-building processes and their equal participation and full involvement in peace and security efforts.

Since the adoption of resolution 1325, the Security Council has adopted further resolutions linked to conflict situations, under the theme of women, peace and security – with a focus on women's human rights and gender equality. They include resolutions 1820, 1888, 1889, 1960, 2106, 2122, 2242 and 2467. These eight resolutions facilitate implementation, enforcement and oversight mechanisms for the realization of the women, peace and security agenda. The resolutions specifically recognise that sexual violence is a threat to security (national, regional and international), and that it is

viewed as a tactic of war and as an impediment to the process and restoration of international peace and security. The resolutions identify factors that contribute to sexual violence, including inadequate measures to prevent sexual violence and protect civilians; lack of addressing of impunity for sexual violence; and inadequate addressing of continuing gender-based discrimination. The resolutions also focus on the need to establish a comprehensive framework towards implementation and enforcement of the women, peace and security agenda.

These resolutions have led to numerous developments including the following: the UN Secretary General is mandated to table reports on an annual basis to the Security Council; the appointment of a Special Representative of the Secretary General (SRSG) on Sexual Violence in Conflict; the establishment of the UN Action against Sexual Violence in Conflict as the inter-agency coordination forum (which is chaired by the SRSG); the appointment of a Team of Experts on Rule of Law and Sexual Violence in Conflict (to support efforts at the national level); the appointment of Women Protection Advisers; the provision of research and technical assistance by UN entities; the development of indicators; the adoption of a tool on Monitoring, Analysis and Reporting on conflict-related sexual violence; the referral of situations and named individuals to the Sanctions Committee of the Security Council; and the creation of an Informal Experts Group on Women, Peace and Security. Unfortunately, since 2000, the annual reports tabled by the Secretary-General generally indicate that there continues to be gaps in the linkage between women, peace and security in conflict and post-conflict settings. Also, the fifteen-year Impact Study on Resolution 1325 reflects an increase in the number of allegations of sexual exploitation and abuse (including by armed groups, peacekeepers and state agents).

The most recent resolution adopted by the Security Council in April 2019 is Resolution 2467. The original draft of the resolution stressed the importance of accountability and a survivor-centered approach to address the root causes and detrimental effects of sexual violence in conflict. The accountability recommendation highlighted the need to adopt a new mechanism in the form of a "Formal Working Group of the Security Council on Women, Peace and Security." But after objections by some member states, including Russia and China, it was removed from the final text of the resolution. Another contentious issue in the draft resolution was the inclusion of language regarding "sexual and reproductive health and rights." The USA strongly opposed



the inclusion of this language, and threatened to veto the resolution if it was included. Thus, this language was omitted from the final resolution. On a positive level, the resolution does include some new language recommending a victim-centered approach, the need for non-discrimination and specificity in prevention and responses, and the necessity to respect the rights and needs of survivors.

Continuing Gaps and Challenges

A holistic approach to remedies requires States to recognize the existence of structural and institutional inequalities linked to violence and discrimination. Whether this is based on race, ethnicity, national origin, ability, socio-economic class, sexual orientation, gender identity, religion, culture, tradition or other realities - inequalities and discrimination often intensify acts of violence. Efforts to end all forms of violence must consider not only how individual lives are affected by the immediate impact of abuse, but also how structures of discrimination and inequality perpetuate and exacerbate a victim's experience. Interpersonal, institutional, communal and structural forms of violence perpetuate gender inequalities, but also racial hierarchies, religious orthodoxies, ethnic group exclusionary practices, and resource allocation that benefit some groups of women at the expense of others. Interventions that seek to only address the individual harm, and which do not factor in women's realities, are not challenging the fundamental and root causes of this human rights violation. Adopting a holistic model with regards to gender-based violence requires an understanding of the ways in which inter- and intra-gender differences exist. In meeting their international legal obligations, States must bear in mind that discrimination affects women in different ways depending on how they are positioned within the social, economic and cultural hierarchies that prohibit or further compromise certain women's ability to enjoy universal human rights.

Studies reveal a correlation between prevalence rates and effective and responsive accountability measures. The exercise of due diligence requires that States have a responsibility to: (a) conduct effective investigations of the crime, and prosecute and sanction acts of violence perpetrated by State or private actors; (b) guarantee *de jure* and *de facto* access to adequate and effective judicial remedies; (c) include in the obligation of access to justice, a requirement to treat women victims and their relatives with respect and dignity throughout the legal process; (d) ensure comprehensive and transformative reparations for women victims

of violence and their relatives; (e) identify certain groups of women as being at particular risk for acts of violence due to having been subjected to discrimination based on more than one factor, including women belonging to ethnic, racial and minority groups; and (f) modify the social and cultural patterns of conduct of men and women and eliminate prejudices, myths and stereotypes regarding the status of women.

The right to an effective remedy is a fundamental human right under numerous international treaties. States have an obligation to guarantee *de jure* and *de facto* access to adequate and effective remedies for women subjected to violence. Generally, the right to a remedy should include: access to justice, reparation for harm suffered, restitution, compensation, satisfaction, rehabilitation, and guarantees of non-repetition. Timely arrests, effective prosecutions and appropriate punishment are positive measures that enhance women's access to justice. Failure to investigate, prosecute and punish acts of violence against women violates the obligation of States to act with due diligence to protect, prevent, prosecute and provide effective redress, including through ensuring the effective implementation of relevant laws.

Transformative remedies, as articulated by women victims, must include among others:

- Understanding the root causes of violence against women, and acknowledging that it functions on a continuum, both temporally and spatially;
- Defining harm in a gendered way;
- Ending impunity and ensuring accountability;
- Providing for broad-based reparations, including compensation;
- Working on women's human rights reforms, including protecting and promoting equality, dignity and non-discrimination rights;
- Providing comprehensive health services;
- Addressing shelter and longer-term housing needs;
- Providing for educational opportunities, including for children;
- Addressing economic realities of women; and
- Promoting the political participation of women, including in post-conflict governance.

Conclusion

Violence against women impedes women's realization of a broad range of human rights that are essential to the exercise of full participatory citizenship. Although progress



has been achieved in advancing women's and girl's human rights as well as gender equality at the national, regional and international level, there are gaps and challenges that have not been adequately addressed. Continuing and new sets of challenges that hamper efforts to promote the human rights of women and girls can be linked largely to the lack of a holistic approach that addresses individual, institutional, communal and structural factors that are a cause and a consequence of violence against women and girls.

Achieving the goal of a life free of all forms of violence against women and girls, through both a temporal and spatial lens, requires addressing the pervasive culture of impunity. The international community explicitly acknowledged violence against women as a human rights issue when it adopted the Vienna Declaration and Program of Action at the World Conference on Human Rights in 1993. However, States are not being held accountable for failing in their responsibility to effectively promote the rights of women and girls, including through the provision of transformative redress measures for human rights violations. The lack of accountability has resulted in a culture of impunity for crimes committed against women, and this in turn has led to the normalisation of violence against women in many societies. The rise in the rates of gender-related killings of women, which is the ultimate act of violence against women on a continuum of violence, is a reflection that responding effectively to all manifestations of violence is not a priority for many States.

Gender-based violence impedes peace and sustainable development by obstructing women's participation and undermining many of the goals of development. Some human rights policies have recognized that "violence against women is an obstacle to the achievement of the objectives of equality, development and peace . . . [where] in all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture."³ Other human rights instruments guarantee the right to development, "by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, and in which all human rights and fundamental freedoms can be fully realized."⁴

Despite numerous developments, it is unfortunately clear that there is a long way to go to fully and substantively address violence against women, to achieve gender equality and non-discrimination goals, and to attain the substance of the Sustainable Development Goals. It is crucial that we continue our quest for a better world, one where justice and accountability are the norm.

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³ Beijing Platform for Women, 1995, ¶ 112; See also International Conference on Population and Development, Programme of Action, ¶ 4.9; ICPD +5, Key Action, ¶ 48.

⁴ UN General Assembly, Declaration on the Right to Development, art. 1, U.N. Doc. A/RES/41/128 (December 4, 1986).



Beijing+25: Looking Back and Looking Forward

JEANNE MIRER

This year, 2020, marks the 25th anniversary of “Fourth World Conference on Women (FWCW) which was held in Beijing under the banner of “Action for Equality, Development and Peace”. The conference followed by two years the Vienna Conference on Human Rights in which women’s rights was a major topic, and which led to the creation of the office of the UN High Commissioner for Human Rights.

The participants at the Fourth World Conference issued a Declaration and a Platform for Action. The Platform for Action identified critical areas of concern for governmental attention. These areas of concern are:

- The persistent and increasing burden of poverty on women
- Inequalities and inadequacies in and unequal access to education and training
- Inequalities and inadequacies in and unequal access to health care and related services
- Violence against women
- The effects of armed or other kinds of conflict on women, including those living under foreign occupation
- Inequality in economic structures and policies, in all forms of productive activities and in access to resources
- Inequality between men and women in the sharing of power and decision-making at all levels
- Insufficient mechanisms at all levels to promote the advancement of women
- Lack of respect for and inadequate promotion and protection of the human rights of women
- Stereotyping of women and inequality in women’s access to and participation in all communication systems, especially in the media
- Gender inequalities in the management of natural resources and in the safeguarding of the environment
- Persistent discrimination against and violation of the rights of the girl child

It is time that we look back on efforts that have been made to address the areas of concern identified in the Platform for Action, which still remain as areas of concern and sources of inequality for women.

In 2000, at the five year review of the implementation of the Beijing Declaration and Platform for Action the twenty third session of the General Assembly on Women consid-

ered the Platform. The committee assigned this task noted, in part, as follows:

“Four years after the Beijing Conference, governments were asked to report on their actions taken to implement the Platform for Action in the 12 critical areas of concern. As of 1 October 2000, 153 Member States and 2 observers responded to the questionnaire prepared by the Secretariat in collaboration with the five regional commissions and sent out in October 1998. This response rate of over 80% per cent is of itself, indicative of the strong worldwide commitment to the goal of gender equality. An analysis of the main trends in the implementation of the Platform as contained in these reports was carried out and submitted by The Division for the Advancement of Women to the preparatory committee at its third session in March 2000 (E/CN.6/2000/PC/2).”

“Review of the national reports show that profound changes in the status and role of women have occurred in the years since the start of the United Nations Decade for Women in 1976, some more markedly since the FWCW. Women have entered the labour force in unprecedented numbers, increasing the potential for their ability to participate in economic decision making at various levels, starting with the household. Women, individually and collectively, have been major actors in the rise of civil society throughout the world, stimulating pressure for increased awareness of the gender equality dimensions of all issues, and demanding a role in national and global decision making processes. Thus, the role of non-governmental organizations, especially women’s organizations, in putting the concerns of women and gender equality on the national and international agenda was acknowledged by many Governments.”

“Despite much progress, responses from Member States indicate that much more work needs to be done with regard to implementation of the Platform for Action. Two major areas - violence and poverty - continue to be major obstacles to gender equality worldwide. Globalization has added new dimensions to both areas, creating new challenges for the implementation of the Platform, such as trafficking in women and girls, changing nature of armed conflict, growing gap between nations and genders, the detachment of macroeconomic policy from social protection concerns.”

“Overall, the analysis of the national reports on the implementation of the Platform for Action revealed that there had been no major breakthrough with regard to equal sharing of decision making in political structures at national and international levels. In most countries of the world, representation of women remains low. Even in countries where a “critical mass” in decision-making positions



within the public sector has been achieved, there are few women on boards of directors of major business corporations. There is need for more careful monitoring of progress in ensuring women's equal participation in these positions of economic power."

The findings that poverty and violence continue to be major obstacles to gender equality worldwide should not be surprising. Globalization with neoliberal economic policies does not end poverty. To the contrary, multinational corporations consistently seek lower and lower wage/cost countries contributing to a race to the economic bottom. Precarious work holds many workers including women workers in states of insecurity and poverty. Violence against women appears often in the context of poverty where exploitation of women through violence or threats of violence hold women back from exercising their rights. That there have been no breakthroughs with regard to equal sharing of decision making in political structures is both a cause and effect of women's economic and physical precarity.

After the 2000 Beijing +5 review, the work of the Commission on the Status of Women (CSW) has adopted a multi-year program of work to evaluate the progress of the implementation of the Platform of Action from Beijing. ECOSOC resolution 2015/6 established methods of work for the CSW which are designed to keep the issues of gender equality fully on the agenda for the global community to mainstream gender equality across all policies and programs. The CSW is to contribute to the 2030 Agenda for Sustainable Development. In 2020 the CSW is poised to review and evaluate how the implementation of the Beijing Platform and Program of Action have proceeded since the 23rd Session of the General Assembly in 2000 addressed the issue. The CSW is also to address the contribution to the 2030 Agenda for Sustainable Development.

But poverty is still a major obstacle for women. For example in 2008, before the effects of the financial crisis were felt, the Center for American Progress stated in a report with respect to women in poverty as follows:

"Over half of the 37 million Americans living in poverty today are women. And women in America are further behind than women in other countries—the gap in poverty rates between men and women is wider in America than anywhere else in the Western world. Consider the following facts: Poverty rates are higher for women than men. In 2007, 13.8% of females were poor compared to 11.1% of men. Women are poorer than men in all racial and ethnic groups. Recent data shows that 26.5% of African American women are poor compared to 22.3% of African American men; 23.6% of Hispanic

women are poor compared to 19.6% of Hispanic men; 10.7% of Asian women are poor compared to 9.7% of Asian men; and 11.6% of white women are poor compared to 9.4% of white men."

The percentage of those who remain in poverty has not changed much since 2008, even with the sustained economic growth in the US. Suffice it to say the burdens of economic hardship, whether poverty or other forms of "low wealth" still fall most heavily on women.

The International Association of Democratic Lawyers (IADL) has over the years struggled to uphold the goals of the UN Charter which specifically outlaws discrimination based on gender. IADL has tried to address the gender dimension in its overall programs as we have also tried to address racial and national origin discrimination. IADL has held women's conferences and for many years sent delegations to the CSW meetings and sponsored side events. But it is time to not only look back, but to look forward to find paths to continued progress of women to find true equality in the world.

The Beijing Platform for action set out a series of tasks to overcome the inequalities women face. These tasks must be provided for by governments including providing mechanisms at all levels to promote the advancement of women; addressing the lack of respect for and inadequate promotion and protection of the human rights of women; and to end stereotyping of women.

The world needs women to lead the fight to attain these goals but it is up to all to participate. Women obtaining rights is not a zero-sum game where men lose their rights in proportion. The world needs all countries to devote their budgets to ending poverty and promoting the basic human rights of all the people to an adequate standard of living. Progress towards true equality is a constant struggle. Strength lies in organization. Organizations like the IADL need to become more proactive and mobilize our many affiliates around the world to implement to Platform of Action. It is up to all of us.

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Attrition and rape law reform in the United Kingdom: the urgent need for reform to mitigate rape myth bias

GRACE COWELL

Abstract

Since the adoption of the Beijing Declaration and Platform for Action, rape law reform in the United Kingdom has achieved partial success, most notably evidenced in the increased willingness to report sexual violence. However, reform has consistently failed to address the attrition rate of rape cases in the criminal justice system. In recent years the “justice gap” between the initial reporting of rape and convictions for rape has widened even further. This is due, in part, to a failure to sufficiently address rape myth bias in society as a whole and the criminal justice system in particular. To begin to address this, the Crown Prosecution Service must continue to be held accountable for charging decisions, and standardised objective information should be provided to juries to prevent potential misunderstandings about rape. Ultimately, wide-ranging public education initiatives must be employed to debunk rape myths across society and within the criminal justice system.

Article

The development and implementation of adequate legal and policy frameworks aimed at preventing and prosecuting offences of sexual violence is an ‘urgent priority’ of the Beijing Declaration and Platform for Action (“the Declaration”)¹. Over the past 25 years the UK has introduced legal and procedural reforms reaffirming this commitment multiple times. This includes at the 23rd Special Session of the General Assembly and the ratification of the Istanbul Convention.

Preceding the upcoming Convention on the Status of Women, the UK government response to the UN Questionnaire on the implementation of the Declaration notes:

‘Whilst the reporting of sexual violence has risen in recent years, there have been reductions in police referrals, prosecutions and convictions for rape cases. In particular, in 2017/18 the volume of rape referrals from the police fell by 9.1% to 6,012, prosecutions fell by 13% to 4,517 and the volume of rape convictions fell by

11.9% to 2,635. In response, the Government has committed to an ‘end to end’ review of the criminal justice system in relation to rape and serious sexual offences, which will consider data from the point of police report to final outcome in court.’²

This ‘end to end’ review has been commissioned under the remit of the Criminal Justice Board, a group of senior members of the judiciary which aims to address challenges facing the system. Within this review the inspectorate of the Crown Prosecution Service (“CPS”), has published an examination of rape cases within the CPS (“the HMCPSI report”)³.

Rape affects a variety of groups of people; membership of groups which are not cis female are subjected to specific and harmful biases. However, this article will focus solely on complainants of rape who identify as women. This does not seek to negate the experience of men and people who do not identify as female.

Conviction and attrition rates

One persistent aim of reform has been to address the attrition rate in sexual offences. Attrition refers to the passage of cases and the rate at which they are funnelled out of the legal process, from the decision to report to the police, through to the police referral decision, the CPS decision to prosecute and the decision of the jury at trial. A comprehensive study of attrition in 2005 recorded the national average as only 5.6% of reported rapes resulting in conviction⁴. The conviction rate only considers cases at the last stage of attrition, when cases are tried by juries; for rape it was 63.4% in 2018-19⁵. For the same time period the conviction rate for all offences was 80.8%⁶.

The conviction rate has spurred commentary suggesting that there is unnecessary panic on this subject. However, the conviction rate often obscures the attrition rate, which

1 UN Women, ‘Summary Report: The Beijing Declaration and Platform for Action Turns 20’ (UN Women 2015) 20

2 Government Equalities Office, ‘Beijing+25 National Report’ (UN Women 2020) 33

3 HMCPSI, ‘2019 rape inspection’ (HMCPSI 2019)

4 Kelly and others, ‘A gap or a chasm? Attrition in reported rape cases’ (Home Office 2005) 40

5 CPS, ‘Violence Against Women and Girls Report 2018-19’ (12 September 2019) <<https://www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2019.pdf>> accessed 24 February 2020

6 CPS, ‘Key Measures 2018-19’ (April 2019) <<https://www.cps.gov.uk/key-measures>> accessed 24 February 2020



has officially been accepted as ‘the justice gap’⁷. Since the UK adopted the Declaration the attrition rate has increased further: between 2018 and 2019 just 3.28% of reported rapes resulted in conviction⁸. When one considers that only an estimated 17% of people who are raped report their experience to the police⁹, this justice gap becomes a ‘chasm’¹⁰. To preface, plainly not all reported cases necessitate a conviction. However, as summarised by the HMCPSI report, ‘if 58,657 allegations of rape were made in the year ending March 2019 but only 1,925 successful prosecutions for the offence followed, something must be wrong’¹¹.

Rape myths and attrition

The continued existence and increase of the attrition rate evidences a failure to develop or implement legal and policy frameworks to adequately prosecute sexual offences. Rape myth bias within society and the criminal justice system is one reason for this. Since the Declaration, various arms of the judiciary have recognised the existence of rape myths and the need to mitigate their effect on cases. However, reform on this basis has been minimal.

CPS Guidance to prosecutors defines a rape myth as ‘a commonly held belief, idea or explanation that is not true... they arise from and reinforce our prejudices and stereotypes’¹². The CPS gives examples of rape myths, including ‘rape occurs between strangers in dark alleys’, ‘if she didn’t scream, fight or get injured, it wasn’t rape’ and ‘you can tell if she’s ‘really’ been raped by how she acts’¹³. These beliefs are compounded for complainants who experience intersecting oppressions.

A review by Sir John Gillen, a recently retired senior judge, into the law and procedure in serious sexual offences in Northern Ireland summarises the evidential basis of the existence of rape myth bias:

*‘The existing research into mock jurors, public research such as the YouGov Survey so recently commissioned by EVAW, the universal acceptance of their presence by judges throughout the common law jurisdictions and, importantly, the first hand evidence with complainants themselves to the effect that even they embrace them. The key issue is not whether these rape myths exist in society. They clearly do’.*¹⁴

Rape myths affect all stages of attrition. They drastically impact upon the decision to report to the police, as complainants may not ‘perceive themselves as true victims’ or anticipate that ‘others, including the police, will fail to recognise them as such if they do not conform to the stereotype’¹⁵.

An assumption of jury bias can be prescriptive: police and prosecutors anticipate that jurors believe in rape myths and filter cases accordingly. This perpetuates a cycle, further reinforcing stereotypes. Furthermore, individuals within the criminal justice system may themselves be biased and treat cases accordingly. Myths surrounding false allegations are particularly prevalent. Research has consistently suggested that false allegations constitute 3% of rape allegations; this is a similar proportion to the proportion of false allegations for other offences¹⁶. Nonetheless, in 2016 a study of 40 serving police officers in a UK force who frequently deal with rape cases found that officers believed between 5% and 90% of reported rapes to be false, ‘with an overall mean response of 53%’¹⁷. This undoubtedly affects the passage of cases through the justice system.

Ultimately, in line with the Declaration, the UK government has a positive duty to address rape myth bias in society¹⁸. However, until this is achieved, reform is necessary to mitigate its effect in the legal process.

7 Office for Criminal Justice Reform, ‘Convicting Rapists and Protecting Victims – Justice for Victims of Rape: A Consultation Paper’ (Home Office 2006) 18

8 HMCPSI (n 3) 7

9 Office for National Statistics (ONS), ‘Sexual offending: victimisation and the path through the criminal justice system’ (Home Office 2018) 11

10 Kelly and others (n 4)

11 HMCPSI (n 3) 7

12 CPS, ‘Rape and Sexual Offences - Chapter 21: Societal Myths’ (1 March 2018) <<https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-21-societal-myths>> accessed 24 February 2020

13 CPS (n 12)

14 Sir John Gillen, ‘Gillen Review: Report into the law and procedures in serious sexual offences in Northern Ireland’ (Department of Justice 2019) 211-212

15 Jennifer Temkin and Barbara Krahé, *Sexual Assault and the Justice Gap: A Question of Attitude* (Hart Publishing 2008) 13

16 Kelly and others (n 4) xi; Rt Hon Dame Elish Angiolini, ‘Report of the Independent Review into The Investigation and Prosecution of Rape in London’ (CPS 2015) 38

17 Lesley McMillan, ‘Police officers’ perceptions of false allegations of rape’ (2016) 27(1) Journal of Gender Studies 9, 10

18 UN Women (n 1) 55



Reform

Historically, rape law has epitomised jurisprudential misogyny. Legal reform has been likened to a Sisyphean struggle¹⁹. Documentation of the development is not within the remit of this article. In particular, the incontrovertible need to balance the fair trial rights of defendants with proposed reforms has been the subject of significant debate and judicial wariness²⁰.

Reform following the adoption of the Declaration has achieved some success. Crucially, the complainant's experience of the justice system is reported as markedly improving²¹. This is evidenced most notably in the increased reporting of sexual violence²².

There has also been some progress aimed at mitigating rape myth bias in juries. The Court of Appeal has accepted that 'a judge may give appropriate directions to counter the risk of stereotypes and assumptions about sexual behaviour and reactions to non-consensual sexual conduct'²³. Specimen directions are provided in the Crown Court Bench Book²⁴ with passages endorsed by the Court of Appeal²⁵.

However, attrition has not been considered sufficiently through the lens of rape myth bias. This is highlighted in the recent HMCPSI report.

Rape myths and the CPS

The HMCPSI report notes that 'historically, the successful prosecution of rape cases has been hampered by myths and stereotypes'²⁶. In 2015 an independent review into

the investigation and prosecution of rape in London analysed prosecutor case files. It found numerous examples of how if a victim's behaviour deviates 'from the common understanding' of post-assault behaviour, cases were dropped because "a jury might find it hard to convict of this count"²⁷.

In November 2019, following a Law Society Gazette investigation, BBC Newsnight published evidence suggesting that, from 2016, prosecutors were given a 'hidden rape conviction target' of 60%²⁸. Conviction targets are dangerous as they propel prosecutors to bring only the strongest cases. This assumes and internalises rape myth bias.

The HMCPSI report suggests that the recent decline in charging decisions is due to evidential difficulties inherent in rape cases, underfunding, and lack of resources²⁹. The CPS has also sought to apportion blame to a decline in police referrals³⁰. This does not sufficiently address the one third decline in charging decisions, or the fact that CPS decisions to prosecute rape are now at their lowest rate on record, having fallen by 51% over 5 years³¹. While the problems highlighted in the HMCPSI report are relevant, they offer an inadequate and incomplete analysis of the causes of attrition and the decline in referrals. This has led the End Violence Against Women ("EVAW") Coalition to warn that 'rape is being effectively decriminalised'³².

The EVAW Coalition have recommended that the Criminal Justice Board take the unusual step of rejecting the HMCPSI report³³. The EVAW Coalition's criticism was partly based on the allegation that the CPS has taken an

19 Clare McGlynn, 'Feminist activism and rape law reform in England and Wales: A Sisyphean struggle?' in Clare McGlynn and Vanessa E Munro (eds), *Rethinking rape law: International and comparative perspectives* (Routledge 2010) 139

20 Sir Brian Leveson, 'Criminal Trials: The Human Experience' (UCL 13 June 2019) 12 <<https://www.judiciary.uk/wp-content/uploads/2019/06/Sir-Brian-Leveson-UCL-Valedictory-lecture.pdf>> accessed 24 February 2020

21 ONS (n 9) 12

22 Government Equalities Office (n 2) 33

23 *D* [2008] EWCA Crim 2557

24 HHJ Martin Picton and others (eds), 'The Crown Court Compendium, Part 1: Jury and Trial Management and Summing Up' (Judicial College June 2018) <<https://www.judiciary.uk/wp-content/uploads/2016/06/crown-court-compedium-pt1-jury-and-trial-management-and-summing-up-june-2018a.pdf>> accessed 24 February 2020 20-1

25 *Miller* [2010] EWCA Crim 1578

26 HMCPSI (n 3) 10

27 Angiolini (n 16) 132

28 Melanie Newman, 'Hidden rape conviction target revealed' BBC Newsnight (13 November 2019) <<https://www.bbc.co.uk/news/uk-50406598>> accessed 24 February 2020

29 HMCPSI (n 3) 10

30 CPS (n 5) 15

31 EVAW Coalition, 'Statement CPS VAWG Report 2018-19' 1 <<https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/Statement-CPS-VAWG-REPORT-201819-.pdf>> accessed 24 February 2020

32 EVAW Coalition (n 31) 1

33 EVAW Coalition, 'Response to HMCPSI rape inspection report, December 2019; expression of serious concerns' <<https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/EVAW-Coalition-Response-to-HMCPSI-Rape-Report-Dec-2019-FINAL.pdf>> accessed 24 February 2020



increasingly 'risk-averse' approach in the prosecution of sexual violence offences. This would be unsurprising considering the collapse of a number of trials in late 2017, which publicly highlighted CPS disclosure failings. The EAW Coalition response also alleges that the HMCPSI report fails to sufficiently and impartially investigate current prosecutorial practices³⁴.

The principal recommendation of the HMCPSI report is a further inspection at a later date³⁵. There have been a significant number of reviews and inspections in the 25 years since the adoption of the Declaration, not least the current 'end to end' review. Further rhetoric is, at best, 'deeply inadequate' and is necessitated only because 'the findings do not adequately address the issues HMCPSI was asked to examine'³⁶. The report fails to consider the effect of rape myth bias.

The EAW Coalition is presently bringing a judicial review against the CPS, on the basis that 'CPS leaders have quietly changed their approach to decision-making in rape cases, switching from building cases based on their 'merits' back to second-guessing jury prejudices'³⁷. Harriet Wistrich, Director of the Centre for Women's Justice, who is bringing the judicial review for the EAW Coalition noted its evidential basis:

*'We have undertaken a major research and evidence gathering exercise and have presented a large mass of compelling evidence from a range of sources, including expert statistical analysis, whistle blowing testimony, a dossier of 20 cases and accounts from police and frontline advocates, which together show that a small cultural shift at the top of the CPS has had a butterfly effect leading to the devastating changes.'*³⁸

The CPS is a pinch point of attrition. The HMCPSI report highlights a failure to contextualise the attrition rate within a patriarchal society and justice system. This is particularly concerning given the CPS' previous rhetoric surrounding rape myths and must be scrutinised against the backdrop

of a global rollback on women's rights. The UK response to the upcoming Convention on the Status of Women notes that opposition to women's rights 'appears to now be more coordinated, better funded and able to mobilise more efficiently than ever before'³⁹.

The #MeToo movement and the inevitable backlash it has engendered, particularly in relation to allegations which have not resulted in criminal convictions⁴⁰, highlights the importance of the court in wider societal responses to rape. As noted by Olivia Smith, author of 'Rape Trials in England and Wales' which presented the results of 13 months of court observations, 'if the courts take rape seriously, society follows'⁴¹. The inverse of this statement is also true. The CPS must continue to be held to account for its decisions relating to the prosecution of rape cases; the media and women's rights organisations are pivotal in this task.

Rape myths and juries

Research on rape myths with real jurors, as opposed to mock jurors, has recently been commissioned⁴². Preliminary findings indicate that legal reform and education initiatives have achieved some success. However, as explained by Sir Brian Leveson in a recent lecture:

*'There are some factual issues in respect of which a substantial proportion of jurors are uncertain what to believe. For example, we know that most people who are raped are raped by someone they know – not a stranger. And while the research found that the majority of serving jurors know this is the case, just under a third said they were not sure about it. Further, we also know from psychological research that a person may not always be visibly upset when they are asked to recount a traumatic event like rape. But the research found that over a third of serving jurors were not sure about this.'*⁴³

In 2018 a petition to Parliament for 'all jurors in rape trials to complete compulsory training about rape myths'

34 EAW Coalition (n 33) 7

35 HMCPSI (n 3) 20

36 EAW Coalition (n 33) 6

37 EAW Coalition, 'EAW commences Judicial Review proceedings against Crown Prosecution Service for failure to prosecute rape' (24 September 2019) <<https://www.endviolenceagainstwomen.org.uk/womens-groups-commence-legal-proceedings-in-judicial-review-against-crown-prosecution-service-for-failure-to-prosecute-rape/>> accessed 24 February 2020

38 EAW Coalition (n 37)

39 Government Equalities Office (n 2) 8

40 Olivia Smith, *Rape Trials in England and Wales* (Palgrave MacMillan 2018) 7

41 Smith (n 40) 2

42 Leveson (n 20) 14

43 Leveson (n 20) 14



was signed by over 15,000 people⁴⁴. There is widespread support in Northern Ireland for the proposal to present the jury with a pre-trial video⁴⁵. This video would provide objective and standardised information aimed at defusing rape myths. A pilot scheme of this has commenced in England: 'early indications are that such information can help to reduce the number of jurors who are not sure about these factual issues'⁴⁶.

This proposal is one among many potential developments aimed at mitigating jury bias. The long-term solution of public education on rape myths may eventually eradicate the need for juror education. However, for the time being, a multi-faceted programme of juror education, including jury directions, is an appropriate way forward.

Conclusion

Since the adoption of the Declaration attrition has worsened in the UK. The justice gap evidences a failure of law and policy to prosecute rapists. Such a failure stems in part from insufficiently tackling rape myth bias within society and the criminal justice system. Education programmes for jurors are one potential short-term solution. A pre-trial video is currently being piloted in England. However, concerning, recent CPS decisions suggest a move away from recognition of rape myth bias. The CPS must continue to be held accountable for prosecutorial decisions. Ultimately, the UK has a positive duty to mitigate rape myth bias in society.

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44 UK Government and Parliament, 'All jurors in rape trials to complete compulsory training about rape myths' (17 July 2018) <<https://petition.parliament.uk/petitions/209573>> accessed 24 February 2020

45 Gillen (n 14) 212

46 Leveson (n 20) 15



Steadfastness and resistance: Palestinian women political prisoners confront repression

CHARLOTTE KATES

"In prison, we challenge the abusive prison guard together, with the same will and determination to break him so that he does not break us...Prison is the art of exploring possibilities; it is a school that trains you to solve daily challenges using the simplest and most creative means, whether it be food preparation, mending old clothes or finding common ground so that we may all endure and survive together. For Palestinians, the prison is a microcosm of the much larger struggle of a people who refuse to be enslaved on their own land, and who are determined to regain their freedom, with the same will and vigor carried by all triumphant, once-colonized nations."

— Khalida Jarrar, imprisoned Palestinian feminist, leftist and parliamentarian ¹

Incarceration forms a major front for Israeli colonial control directed against the Palestinian population. However, the image of the Palestinian prisoner is largely a masculine one; indeed, the large majority of Palestinian political prisoners are men. Nevertheless, women political prisoners in occupied Palestine have played a major role in resistance behind bars, reflecting the role of Palestinian women in their national liberation struggle. They have encountered harsh torture, gendered violence and repression through the systematic policies of Israeli occupation forces and have often been targeted for imprisonment because of their leading roles in various forms of resistance to Israeli occupation.

Between 1967 and 2017, around 10,000 Palestinian women were jailed by Israeli authorities for political reasons and/or their involvement in the Palestinian resistance. This figure includes Palestinian women who hold Israeli citizenship, Palestinian Jerusalemites and Palestinian women living under direct Israeli military occupation in the West Bank and Gaza Strip. There are currently approximately 41 Palestinian women held as political prisoners and detainees in Israeli prisons, out of approximately 5,000 Palestinian political prisoners overall².

Flagrant violations of international law

Four of these women are jailed under administrative detention -- imprisonment without charge or trial based on a "secret file." The contents of this secret file may not be disclosed to their defense lawyers or to the detainees themselves. There are approximately 500 Palestinian prisoners currently held in administrative detention. While the Fourth Geneva Convention allows for some use of administrative detention by an occupying power, the Convention imposes strict limitations on its usage, including due process requirements. These are routinely violated by the Israeli occupation regime, and the Israeli practice of administrative detention does not comply with the Convention's restrictions³. The Convention specifies that any form of administrative detention may be used only as an "exceptional" measure due to "imperative" circumstances.

Further, Article 66 of the Fourth Geneva Convention requires occupation courts to be legally constituted, with proper fair trial guarantees, in the occupied territory⁴. Instead, Palestinians in the West Bank face Israeli military courts that do not meet such standards, and the vast majority of the military courts are located behind Israeli borders. These courts routinely uphold administrative detention orders, in violation of Article 71 of the Convention, which mandates that such occupation courts must not issue decisions unless they are first preceded by a legal trial⁵. Administrative detainees and their lawyers are denied access to any form of trial or even knowledge of the allegations against them. "Willfully depriving a protected person of the rights of fair and regular trial" is a grave violation of the Fourth Geneva Convention⁶. Israel's deprivation of fair trial rights and imprisonment in violation of the fundamental rules of international law further constitute war crimes and crimes against humanity under the Rome Statute of the International Criminal Court⁷. Furthermore, administrative detention as routinely practiced violates several provisions of

1 Khalida Jarrar, "Foreword," in Ramzy Baroud, *These Chains Will Be Broken: Palestinian Stories of Struggle and Defiance in Israeli Prisons*. Clarity Press, 2020

2 Addameer Prisoner Support and Human Rights Association, "Imprisonment of Women and Girls." November 2018, http://www.addameer.org/the_prisoners/women

3 Al-Haq, "Ongoing violations of the rights of Palestinian prisoners." 11 October 2010, <http://www.alhaq.org/advocacy/7311.html>

4 Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949., Art. 66, <https://ihl-databases.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>

5 Id., Art. 71.

6 Id., Art. 147.

7 Rome Statute of the International Criminal Court, Part 2, Article 8, <https://www.icc-cpi.int/resource/library/official-journal/rome-statute.aspx#article8>



the International Covenant on Civil and Political Rights, including Articles 9, 10 and 14⁸.

It should be noted that the Convention's acceptance of any form of administrative detention was meant to apply to conventional military occupations, while Israel has combined its ongoing occupation with a long-term colonial project. Administrative detention is not handled as an individual, urgent, or case-by-case matter, as mandated by the Convention; instead, it is used routinely to penalize prominent community leaders and activists, especially when Israeli interrogators have found it impossible to obtain a confession. Since 1967, at least 50,000 administrative detention orders have been issued by Israeli military officials and courts⁹. Administrative detention orders are indefinitely renewable, and Palestinians have spent years at a time jailed without charge or trial.

All Palestinian women political prisoners are held in Damon prison, an Israeli prison within the "green line" demarcating the 1948 armistice borders of the Israeli state. This means that Palestinian women - like most Palestinian political prisoners - are detained outside the 1967 occupied territories of the West Bank, Gaza Strip and East Jerusalem, directly contravening Article 76 of the Fourth Geneva Convention, which mandates that an occupying power must detain the residents of an occupied territory within that occupied territory itself¹⁰.

Torture and ill-treatment

This violation of the Convention has multiple significant material effects on the lives of Palestinian women prisoners. In order for Palestinians from the West Bank or the Gaza Strip to visit their imprisoned family members, they must obtain special permits from the Israeli administration. These permits are frequently denied on "security" grounds. When these permits are granted, they can be revoked at any time. This means that, in practice, Palestinian women may be frequently denied family visits, including

from their spouses and children¹¹.

Palestinian women detainees routinely encounter torture and ill-treatment when they are arrested and detained, particularly during the interrogation process. As Addameer Prisoner Support and Human Rights Association (a Palestinian NGO that provides legal representation to detained Palestinians) reports,

*The majority of Palestinian women prisoners are subjected to some form of psychological torture and ill-treatment throughout the process of their arrest and detention, including various forms of sexual violence that occur such as beatings, insults, threats, body searches, and sexually explicit harassment. Upon arrest, women detainees are not informed where they are being taken and are rarely explained their rights during interrogation. These techniques of torture and ill-treatment are used not only as means to intimidate Palestinian women detainees but also as tools to humiliate Palestinian women and coerce them into giving confessions.*¹²

Torture and ill-treatment are not the sole purview of male Israeli interrogators and soldiers. While the Israeli military frequently touts its commitment to gender equality, for Palestinians under occupation, this simply means that the mechanisms of oppression and control are shared. It does not provide relief for arrested and detained Palestinian women. As noted by Addameer, "Israeli women soldiers deploy violent methods of control against Palestinian men and women in an effort to seek respect and recognition from male soldiers and their superiors."¹³

Under CEDAW's Recommendation 35, when assessing torture or inhumane and degrading treatment, "a gender sensitive approach is required to understand the level of pain and suffering experienced by women and that the purpose and intent requirement of torture are satisfied when acts or omissions are gender specific or perpetrated against a person on the basis of sex."¹⁴

8 Jelena Pejic, "Procedural principles and safeguards for internment/administrative detention in armed conflict and other situations of violence," International Review of the Red Cross, Vol. 87, No. 858 (June 2005), https://www.icrc.org/en/doc/assets/files/other/irrc_858_pejic.pdf

9 Addameer, "10 Facts about Administrative Detention," 5 November 2015, <http://www.addameer.org/Campaign/sheets-and-reports/10-facts-about-administrative-detention>

10 Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949., Art. 76 <https://ihl-databases.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>

11 Public Committee Against Torture in Israel and World Organization against Torture, "Violence Against Palestinian Women." July 2005, <https://www2.ohchr.org/english/bodies/cerd/docs/ngos/OMCT.pdf>

12 Addameer, *ibid*

13 *Id.*

14 UN Office of the High Commissioner for Human Rights, "General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19." <http://docstore.ohchr.org/>



Palestinian female detainees have repeatedly reported sexually harassing comments, threats against them and their families, repeated strip-searches and other forms of ill-treatment that directly target their lived experience as women.

Targeting prisoners' rights

While these circumstances and many others have been routinely documented for decades by Palestinian, international and even Israeli human rights organizations and justice advocates, Palestinian women prisoners are facing an intensified climate of repression and harsh attempts to claw back those rights that they have obtained through years of struggle inside and outside prison. Gilad Erdan, the Minister of Public Security in Benjamin Netanyahu's Israeli government, who supervises the Israel Prison Service, chaired a commission known as the "Erdan committee" to allegedly investigate "luxuries" enjoyed by Palestinian prisoners¹⁵. Many of these basic provisions, such as access to some remote education programs and separate kitchens or television channels, had only been obtained through years of hunger strikes and related campaigns.

Erdan, it should be noted, holds two positions within the Netanyahu government; he is also the Minister of Strategic Affairs, a department often referred to as the "anti-BDS ministry."¹⁶ Thus, he is also charged with international attempts to counteract and suppress Palestinian human rights organizations and international solidarity with the Palestinian people, particularly the Boycott, Divestment and Sanctions movement. In this context, Erdan has gone after organizations advocating for the rights of Palestinian prisoners, calling for these organizations to be defunded by international donors and labeling them "terrorists in suits."¹⁷ This campaign has targeted human rights defenders as well as solidarity organizations, including Addameer, Al-Haq, the Palestinian Center for Human Rights, the Union of Palestinian Women's Committees and Samidoun Palestinian Prisoner Solidarity Network. These

efforts, which have unfortunately resulted in new political conditions on support for human rights defenders by European Union officials, are the international corollary to the "Erdan commission's" attempts to roll back achievements of the Palestinian prisoners' movement over the years.¹⁸

Repression and surveillance

Several of the "Erdan committee's" efforts have focused specifically on the circumstances of Palestinian women prisoners. Erdan himself declared that "we must make conditions worse" and reduce living conditions to the "minimum required," making clear the odious intent of the policies¹⁹. One such action was the implementation of camera surveillance in the HaSharon prison yard, one of two Israeli prisons (both, notably, outside the 1967 occupied territories in violation of the Fourth Geneva Convention) housing Palestinian female political prisoners²⁰.

These surveillance cameras were activated in the collective kitchens used by women prisoners, washing machine areas and prayer areas as well as the recreation yards. All of the prisoners objected strongly to the placement of the cameras, especially knowing that male security guards and officials were likely to view the footage. For religiously observant women, these spaces were now rendered public areas for additional scrutiny, forcing them to cover up. As a result, women in HaSharon prison refused to go to recreation for over two months and demanded the removal of the cameras. Several years before, the cameras had been installed but were covered and deactivated after an extensive protest campaign.

The surveillance cameras were not the only repressive measures levied against the prisoners; Erdan's committee also imposed restrictions on water access for Palestinian prisoners, limiting the number of showers they could take, another issue of particular concern for detained Palestinian women. Thousands of books, which had been donated or gifted by family members, were confiscated from the wom-

15 Tamara Nassar, "Palestinians launch mass hunger strike against prison repression," Electronic Intifada. 12 April 2019, <https://electronicintifada.net/blogs/tamara-nassar/palestinians-launch-mass-hunger-strike-against-prison-repression>

16 Itamar Benzaquen and The Seventh Eye, "Israeli ministry paying for anti-BDS propaganda in major news outlets," 972 Magazine, 14 January 2020. <https://www.972mag.com/anti-bds-propaganda-ministry-media/>

17 "Israel labels BDS activists 'terrorists in suits' in new smear campaign," Middle East Monitor. 4 February 2019, <https://www.middleeastmonitor.com/20190204-israel-labels-bds-activists-terrorists-in-suits-in-new-smear-campaign/>

18 Tariq Dana, "Criminalizing Palestinian Resistance: The EU's Additional Condition on Aid to Palestine," Al-Shabaka. 2 February 2020, <https://al-shabaka.org/commentaries/criminalizing-palestinian-resistance-the-eus-new-conditions-on-aid-to-palestine/>

19 Nassar, *ibid*.

20 Samidoun Palestinian Prisoner Solidarity Network, "Palestinian women prisoners escalate struggle against repression." 31 October 2018, <https://samidoun.net/2018/10/palestinian-women-prisoners-escalate-struggle-against-repression/>



en's section of the prison²¹.

In response to the hunger strike, repression at HaSharon prison escalated. At one point, hot water was entirely cut off to the women's section, allotments of meat and vegetables were significantly reduced and significant fines, amounting to hundreds of USD, were imposed on Palestinian women prisoners as a form of punishment. Finally, all of the women prisoners were transferred en masse to Damon prison, an action firmly regarded as a heightened form of punishment and repression.

Dangerous conditions of confinement

Both prisons are known for repressive conditions, but Damon is particularly harsh, partially due to its history as a stable for horses, but also because of its distance from most Israeli military courts, where Palestinian women prisoners face multiple and ongoing hearings. As noted by Samidoun Palestinian Prisoner Solidarity Network, "Women prisoners have frequently cited the use of the 'bosta' – a vehicle used to transport prisoners, where they are shackled throughout the journey which often takes hours upon hours due to repeated stops, security checks and other delays."²²

The "bosta," named for its resemblance to a mail truck, is constructed of metal benches. Women on the bosta are often brought together with Israeli prisoners facing criminal charges, who in turn target the Palestinian detainees with racial slurs and abuse. Palestinian women detainees have repeatedly reported being denied the ability to use the toilet and the vehicle takes a circuitous route that makes what should be a short, direct trip an hours-long ordeal²³.

Conditions in the "bosta" and in Damon prison overall are particularly difficult for women who have disabilities and other health care needs. As documented by Palestinian lawyer and human rights defender Sahar Francis,

Female prisoners suffer from systematic medical negligence. Despite the fact that there is a medical clinic in every prison, the treatment provided is largely insufficient to meet Palestinian women prisoners' needs. The prison administration does not provide adequate person-

*al hygiene items, forcing female prisoners to buy these items from the prison's canteens with their own money... Childbirth inside prison is particularly inhumane. The pregnant prisoner's hands and feet are shackled on the way to the hospital, and are only temporarily loosened during the final stage of labor (the actual birthing) after which they are put back on immediately...Female prisoners are also subjected to penalties and punishments that include...restricted access to bathrooms during menstruation.*²⁴

Palestinian women's resistance

As reflected in their response to the "Erdan committee" at HaSharon prison, Palestinian women political prisoners have found ways to continue their resistance and struggle behind bars. Nahla Abdo writes in her important book that studies the lives of imprisoned Palestinian women,

*Resistance, struggle, and fighting against oppression do not stop at the doors of prisons or detention camps. The commitment to freedom, the love for the homeland, and the determination to struggle against oppression – elements which make up the agency of women fighters and drive them to resist – continue to be the driving forces for their survival in prisons or detention camps. Methods of resistance used by most female political detainees include hunger strikes, refusing to leave their cells, disobeying the orders of prison guards, persisting in making demands and the already discussed dirty protests. Resistance, in other words, can be active and direct or else passive. The social and political consciousness-raising provided by the older and younger generations of political detainees for new arrivals is also common among many political detainees globally. Resistance education in prisons, expressed in formalized education sessions, seminars, workshops and literacy awareness classes is also practiced by female political detainees.*²⁵

In April 1970, Palestinian women prisoners at Neve Tirza prison launched one of the first collective hunger strikes of the Palestinian prisoners' movement when they refused food for nine days. They demanded access to women's sanitary supplies as well as an end to beatings and solitary confinement²⁶. Palestinian women have been consistently involved in general hunger strikes and protest actions throughout all prisons. These include specific strikes of women prisoners in 1985, 2004 and 2019, as well as on

21 Id.

22 Id.

23 Leena Jawabreh, "Facing Imprisonment in Israeli Jails: A Palestinian woman's testimony," Samidoun. 22 September 2013, <https://samidoun.net/2013/09/facing-imprisonment-in-israeli-jails-a-palestinian-womans-testimony-by-leena-jawabreh/>

24 Sahar Francis, "Gendered Violence in Israeli Detention," Journal of Palestine Studies, Vol. XLVI No. 4 (Summer 2017)

25 Nahla Abdo, *Captive Revolution: Palestinian Women's Anti-Colonial Struggle Within the Israeli Prison System*. 2014, Pluto Press, p. 34

26 Mustafa Abu Sneineh, "Beds, kettles and books: How hunger strikes changed the cells of Palestinian prisoners," Middle East Eye. 1 May 2019, <https://www.middleeasteye.net/news/beds-kettles-and-books-how-hunger-strikes-changed-cells-palestinian-prisoners>



multiple other occasions. These struggles have inspired international feminist campaigns to support the strikes²⁷.

As Abdo notes, resistance education is also part of Palestinian women's experience inside Israeli prisons. While Palestinian women have written for many years about the "revolutionary education" they have received from other prisoners, this has also been experienced by imprisoned teen girls, engendered by the Israeli authorities' denial of their right to education. Teen girls are imprisoned with Palestinian adult women political prisoners, previously in Neve Tirza and HaSharon prisons and currently in Damon prison. As is the case for male Palestinian child prisoners, these girls frequently lose a year or more of their high school education because they suffered a gap of more than three months in their education.

Denials of the right to education

Palestinian girls are affected by military orders that direct Palestinian children's cases to be handled by military courts that fundamentally lack basic fair trial rights and protections, a completely different system than that used for Israeli children. Once imprisoned, Palestinian children receive at most 20 hours a week of education, compared to 35 hours in regular schools, while at least 25% received no education at all. On the other hand, Israeli child prisoners receive a comprehensive educational program that prepares them to pass the national high school graduation examination²⁸.

In 2018, Palestinian girls at HaSharon prison obtained no education for several months, prompting Palestinian women, led by prominent feminist, leftist, political detainee, advocate and legislator Khalida Jarrar, to develop a self-organized education program. This program included high school exam preparations in math, science and languages for the minor girls as well as human rights and international

law education, including studying CEDAW²⁹. Israeli prison officials attempted to stop the classes, causing Palestinian women prisoners to return meals and launch protests to protect their right to education³⁰. As Addameer noted,

*What is currently taking place at HaSharon prison is not only a denial of education, it is also an attempt to curtail female prisoner's ability to better understand their own oppression. These sessions are about the fundamentals of human existence, rights. The Israeli occupation forces, are not only violating IHL and IHRL but are also attempting to erase an understanding of the acts of the oppressor and to distort the Palestinian consciousness.*³¹

Urgent need for action and solidarity

The insupportable circumstances of Palestinian women political detainees implicate not only the Israeli occupation and state structures, but also the international parties that continue to provide support for its ongoing and blatant disregard for international law and international human rights law. For example, the United States provides \$3.8 billion in military aid to Israel every year. Several members of Congress have introduced legislation to forbid this aid from being used for the detention and military trial of Palestinian children, but this bill has faced fierce opposition from the Trump administration and Israel lobby organizations³².

The European Union has intensified political conditions on the aid it provides to some Palestinian human rights organizations, which are already facing difficult and extreme obstacles to the enjoyment of their rights. Rather than taking action to hold the occupying power accountable for its ongoing violations against Palestinian human rights defenders, including Palestinian women like Khalida Jarrar, EU officials have required Palestinian organizations to pledge that their staff and members are not members of political parties³³.

27 AWID, "Feminist perspectives on the Palestinian prisoner hunger strike," 26 May 2017. <https://www.awid.org/news-and-analysis/feminist-perspectives-palestinian-prisoner-hunger-strike>

28 Addameer, "Education within the Israeli Prisons: A Deliberate Policy to De-Educate," 9 June 2019, <http://www.addameer.org/publications/education-within-israeli-prisons-deliberate-policy-de-educate>

29 Jaclynn Ashly, "Khalida Jarrar: 'I will never stop speaking out,'" Electronic Intifada, 28 March 2019, <https://electronicintifada.net/content/khalida-jarrar-i-will-never-stop-speaking-out/26961>

30 Samidoun, "Imprisoned Palestinian girls denied educational rights as women self-organize high school exam preparations," 13 April 2018. <https://samidoun.net/2018/04/imprisoned-palestinian-girls-denied-educational-rights-as-women-self-organize-high-school-exam-preparations/>

31 Addameer, "No Education, No Awareness for Female Minors in Detention," 11 April 2018, <http://addameer.org/news/no-education-no-awareness-female-minors-detention>

32 Rep. Betty McCollum, "Resources on HR 2407, Promoting Human Rights for Palestinian Children Living Under Israeli Military Occupation Act." <https://mccollum.house.gov/palestinianchildrensrightrights>

33 Yumna Patel, "Palestinian NGOs launch campaign against EU 'anti-terror' funding requirement," Mondoweiss, 24 January 2020. <https://mondoweiss.net/2020/01/palestinian-ngos-launch-campaign-against-eu-anti-terror-funding-requirement/>



This mirrors the demands by Erdan – the same Israeli official who stated his intention to reduce Palestinian prisoners' living conditions to the "minimum possible." These restrictions have sparked a new protest campaign by Palestinian human rights defenders, as they highlight ongoing international complicity in Israeli violations of the rights of Palestinians, including and particularly those of Palestinian women.

The treatment of detained Palestinian women and girls once again highlights the reality of apartheid in occupied Palestine. It differs markedly and distinctly from the treatment of Israeli women and girls, as do Israeli policies ranging from education to military service to fertility. Despite extensive documentation of these violations, Israeli officials continue to enjoy impunity and declare that international law does not apply to occupied Palestine. A wide range of Palestinian women's organizations, including former Palestinian women political prisoners, have issued an urgent call to the world to support the campaign for boycott, divestment and sanctions against Israel. The BDS movement requires compliance with Palestinian human rights by ending the occupation, dismantling the wall, implementing Palestinian refugees' right to return and replacing apartheid with equality for all citizens³⁴. The circumstances faced by Palestinian women political detainees make the urgency of this call clear to all, particularly to women's movements concerned with global justice.

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³⁴ Palestinian Women Coalition, "Palestinian Women's Call for Worldwide Women's Endorsement of BDS," 8 March 2016, <https://bdsmovement.net/news/palestinian-women%E2%80%99s-call-worldwide-women%E2%80%99s-endorsement-bds>



State of Emergency in Turkey: An example of masculine backlash

SERIFE CEREN UYSAL

The coup attempt in Turkey on July 15, 2016, has paved the way to institutionalize the authoritarianism in Turkey. Following the attempted coup, a state of emergency (SoE) was declared on July 21, 2017¹, and it was extended incrementally seven times over two years. Today, there is enough evidence to demonstrate that SoE was used as an essential tool by the power structure to transform the state mechanisms, social relationships and relations of production. Even if it is no longer in effect, it is clear that the SoE has been institutionalized and normalized in Turkey and this process has had direct negative effects on the lives of women.

First, the dismissals and their consequences for women must be carefully examined. The women who were dismissed from public offices by governmental decrees comprise 23% (25.523 people) of the general dismissals (110.971). This basically means that 25.523 women have already lost their jobs, and a large number of them do not have the opportunity to find a job due to today's political circumstances². As a result, many of those women must receive support from their families and even had to return to their parents' homes, which means that they also have to deal with the neighborhood pressure.

The dismissed women were affected at different levels due to their class memberships, ethnicities, family structures, religions, marital status, ages, the number of children they have, etc. For instance, the dismissed academics do not have any other work experiences, which is a disadvantage. The women with children are compelled to deal with care work by themselves and they are regularly reminded of the "duty of motherhood." Single women are forced to go back to their parents' homes as a result of the family structure in Turkey³.

In addition to these different types of impacts, however, there is a common outcome of the dismissals: precarization. For instance, academics work mostly in short-term projects or they are working as translators. It means that

they are mostly working from home. The ones who were dismissed from public hospitals (nurses or doctors) were allowed to work in private hospitals. However, under current political circumstances, hiring a person who was dismissed is purely a favor. Thus, employers force these people to work longer than regular working hours, with less pay, and in more insecure circumstances. Likewise, teachers try to maintain their lives by giving private courses. These are examples of precarization. In addition, there is another common problem related to the precarization. Besides being paid less, isolated at home, forced to deal with care work alone, many women (especially the ones who are not a part of a collective struggle against dismissals) are made to feel worthless⁴.

Multidimensional empowerment of masculine domination

Concurrently, the Turkish government focused on policies that exacerbated a system masculine domination. Public institutions were restructured. Curricula were revised. Regulations on the protection of women were amended to favor men. As a result of these changes, physical and emotional attacks against women in everyday life increased exponentially.

The Commission on Preventing Divorces, which was established during the SoE, is a significant example of these grievous changes. This commission was criticized by many women's associations and activists as a tool to cut back on women's rights in Turkey, which have been earned over the years. The commission's priority was announced as "protecting the family structure."

The educational system has also been reorganized to the detriment of women's rights. The number of mixed gender schools is being reduced day-by-day. The schoolbooks' content has been revised. The report which was submitted by People's Democratic Party (HDP) includes dramatic examples from schoolbooks, such as: "Islam, in response

1 The decision of the Council of Ministers, (21 January 2019), published in the Official Gazette, numbered 2016/9064, <http://www.resmigazete.gov.tr/eskiler/2016/07/20160721-4.pdf>

2 Funda Şenol Cantek and Ilkay Kara, "İhraçların Toplumsal Cinsiyet Boyutu", KESK OHAL ve KHK Rejimi İhraç Kurultayı, 1-2 April 2017, Ankara.

3 Ibid.

4 Ibid, p.125.



to the responsibilities of man, wants women to obey her husband, and Islam regards this obedience as worship. The upbringing of children in the family is mostly carried out by the mother (...)”⁵

In the meantime, various statements made by the authorities have proved to be an important tool to strengthen the masculine domination within the society. For example, the Directorate of Religious Affairs is now accepted as a unique and significant institution in Turkey. In addition to technological developments, this institution has become a tool to interpret Islam and organize social life by answering personal questions online. For instance, on December 6, 2017, this institution published the following answer to an inquiry: “*a man can divorce his wife by phone, fax, post, message and through the internet.*” In the same statement, it was emphasized that a man can divorce his wife even in the absence of his wife⁶.

During this period, President Recep Erdogan also issued various statements that make women’s bodies a political battlefield. For example, Erdogan encouraged increased reproduction as an anti-terror strategy: “*What do our god and prophet say? The order is pretty clear. Get married and reproduce. It is imperative that Muslims reproduce. I trust Muslim women’s sensitivity to this issue. The terrorist group in Turkey is very sensitive on this. They have at least 10 to 15 children.*”⁷ This paragraph, together with the instrumentalization of the woman’s body, constitutes discrimination against the Kurdish people for their fertility rate, and exclusion of a sect of Muslims.

During the SoE, the feminist movement and the women in leadership positions in opposition political organizations were especially targeted by the ruling party. This targeting was a predictable attempt at the empowerment of masculinity. But it is also the result of the ruling party’s fear as new alliances form within the feminist movement. The government and its supporters do not only aim to trivialize feminism in general; they also are targeting Muslim feminists in particular. It is clear that in Turkey, feminism is gaining strength among Muslim women and the government wants to divide these new alliances through the religious discourse.

An examination of the SoE makes it apparent that clear signs of a masculinist backlash is occurring. However, an intersectional analysis of oppression mechanisms is a tool not just to understand the oppression itself, but it is also a tool to recognize the possibilities of resistance. Such an approach is not only significant for the women who are fighting against male dominance, but also for all who oppose authoritarianism in Turkey.

It is not necessary to start a competition between different groups of people who are suffering under the neoliberal authoritarianism, but it is necessary to understand them all with their own unique contradictions. We do not need to talk about an abstract “we”. We must be inclusive, but we also need to be exclusivist. An approach which analyzes the intersections of oppression and takes a position against it would be an important tool of resistance against the authoritarianism, but can also be a tool to oppose the masculine backlash.

Turkey is a good example to understand the new consensus of this masculine backlash, but it is also useful for questioning the margins of resistance. In this sense, these intersections underline the need to establish a position that opposes sexual, national and class exploitation, and which is anti-capitalist and antiracist.

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5 The report can be downloaded via: <https://www.hdp.org.tr/en/news/from-hdp/report-on-womens-rights-violations-in-turkey/10887> (accessed: 05.02.2020)

6 The Directorate of Religious Affairs: The divorce can occur via SMS, fax or a post, 06.12.2017, t24 Newspaper, <https://t24.com.tr/haber/diyabet-isleri-baskanligi-sms-faks-ve-mektup-ile-bosanma-gerceklesebilir,506270> (accessed: 06.02.2020)

7 President Erdogan insults Kurds in Turkey over their fertility rate, 12.11.2017, the Stockholm Center for Freedom, <https://stockholmcf.org/president-erdogan-insults-kurds-in-turkey-over-their-fertility-rate/>, (accessed: 06.02.2020)



Women lawyers under attack: Beleaguered Pinay people's lawyers for justice and accountability

WOMEN AND CHILDREN'S COMMITTEE, NATIONAL UNION OF PEOPLE'S LAWYERS OF THE PHILIPPINES (NUPL)

The “Dark Ages” finds a parallel with the first half of the Rodrigo Duterte government for lawyers and human rights defenders. Lawyers, who are breathing life into their oath as officers of the court and as defenders of truth and justice, have become targets of violence and other forms of human rights violations themselves. President Duterte, despite being a lawyer, has openly and publicly criticized his brothers and sisters in the legal profession who are prosecuting cases of human rights violations and defending drug-related offenders. Worse yet, lawyers who are representing and protecting the interests of human rights defenders, peasants, workers, indigenous peoples and those who belong to the marginalized sectors, have been indiscriminately demonized and tagged as “protectors of terrorists” by State agents. After being branded as such, they are either hauled into the courts on brought up on fabricated criminal charges or are targeted at gunpoint.

NUPL in the crosshairs of the Duterte Administration

Members of Philippine-based National Union of Peoples' Lawyers (NUPL) have not been spared from the wrath of a government that seems to incite and tolerate violence against all its critics. For more than a decade, NUPL has criticized government laws and policies that trample on basic human rights, particularly that of the marginalized, and representing victims of rights violations before local courts and international tribunals and mechanisms. As a result, NUPL has been arbitrarily red-tagged by government officials as a front organization of the Communist Party of the Philippines and New People's Army (NPA), along with other non-government organizations which are likewise on the front lines of defending rights and seeking accountability. The vicious red-tagging has led to the killings and attempted killings of NUPL lawyers.

Human rights lawyer and NUPL founding member Benjamin Ramos Jr. was shot dead by motorcycle-riding gunmen in Negros Occidental in November 2018. Prior to his

cold-blooded murder, Ramos was branded as an “NPA's (New People's Army) lawyer” in briefings conducted by the military before village leaders. His photo was included in a poster that identified personalities of the CPP-NPA-National Democratic Front of the Philippines (NDFP) in the province. These posters were circulated in the town of Moises Padilla. Ramos had handled cases of sugar farm-workers, youth leaders and a number of political prisoners.

This devious act of “red-tagging,” without any competent, admissible and independent evidence, is being carried out by military and civilian officials of the Duterte government, through its National Task Force on Eliminating Local Communist Armed Conflict (NTF-ELCAC). These officials have traveled around the country and even overseas for this smear campaign against lawyers and human rights defenders, with a hefty amount of money from the national coffers used for their travels. Furthermore, this Task Force, in a conference briefing with the Integrated Bar of the Philippines (IBP), publicly branded NUPL, its affiliate member Union of Peoples' Lawyers in Mindanao (UPLM), and the Public Interest Law Center (PILC) as “communist fronts” with no evidence except alleged “military intelligence.”¹

In August 2017, anonymous graffiti accusing NUPL of being a “Legal Protector” of the NPA was displayed along a national highway in Nueva Vizcaya. In addition, NUPL lawyers in Nueva Vizcaya have been reportedly subjected to various forms of harassment.

Meanwhile, Mario Laude of the “No to Communist Terrorist Group Coalition” indiscriminately linked the NUPL to the chief peace negotiator of NDFP. Without providing any competent and credible evidence, Laude accused NUPL of being the “legal arm” of the NDFP. Laude also referred to the NDFP as a “Communist Terrorist Group.”²

NUPL and its officers were also falsely included in a “de-

1 Lian Buan. (2019). “Amid crackdown, IBP agrees to ‘briefing’ by anti-communism body”. RAPPLER, Accessed at <https://www.rappler.com/nation/245518-crackdown-ibp-agrees-briefing-anti-communism-body>.

2 Philippine News Agency. (2019) “Hold NDFP negotiator accountable for part in NPA crimes: group”. Accessed at <https://www.pna.gov.ph/articles/1063066>.



stabilization matrix” in February 2019. This matrix linked NUPL and its officers to a person who released videos accusing President Duterte and his family of having linkages with the illegal drug trade in the country. The matrix was released by Dante Ang, President Duterte’s special envoy for international public relations, in the newspaper Manila Times. The matrix was released with the authority of the President, according to his spokesperson Salvador Panelo.

Attacks against Filipina Peoples’ Lawyers

Photos of NUPL individual members, some of whom are its Filipina lawyers, have been publicly displayed in what appears to be a rogues’ gallery of government enemies.

In Cagayan Valley, NUPL founding member lawyer Catherine Dannug-Salucon was included in leaflets containing a list of alleged NPA members. These leaflets were distributed by the Philippine Army during an activity of the provincial government. An alleged high ranking NPA member purportedly identified Atty. Salucon to be an NPA lawyer. A military lawyer had been monitoring her during the trial of the alleged NPA member. In one hearing, a police officer had taken her photo. She confronted the policeman and asked him why he had taken her photograph. She was later reprimanded by a police official on radio for what she had done. This is not the first time Atty. Salucon has been tagged as a “Red lawyer” and has experienced state-sponsored harassment. In 2014, Atty. Salucon was subjected to surveillance by military and police personnel. A civilian asset of the Philippine National Police (PNP) Intelligence Section informed her that there was a standing order from the PNP Isabela to conduct a background investigation of her to see if indeed she was a “Red lawyer.” She was being tailed and was asked about her daily activities. What made it worse was that her paralegal was killed by unknown assailants after he advised her of the need to beef up her security measures to ensure her safety.

Meanwhile, photographs and names of women lawyers Crizelda Azarcon-Heredia and Geobelyn Lopez-Beraye from NUPL Panay chapter were posted on electric posts in Iloilo City, along with seven other lawyer members with the NUPL logo, labelling them “lawyers of terrorists” and members of the CPP-NPA-NDF. The posters came out after they held protest actions in commemoration of International Human Rights Day and after forging an alliance with other lawyers in Iloilo against human rights violations and continued attacks on the people.

Similarly, three women lawyers of NUPL and its affiliate UPLM namely, mother and daughters Beverly Musni, Czarina Musni and Beverly Ann Musni Yr., were also tagged as members of the Communist Party of the Philippines-New People’s Army-National Democratic Front of the Philippines in Cagayan de Oro City in Mindanao. They were among 19 individuals and four organizations tagged as communists in the province. The Musni mother and daughters have been involved in handling and prosecuting human rights and public interest cases.

After being tagged as lawyers of rebels and terrorists, these officers of the court were either put in harm’s way or are dragged in to answer to fabricated criminal charges.

In September 2019, Lawyer Crizelda Azarcon-Heredia survived an ambush in Capiz City in Panay island. Unidentified men fired nine gunshots at Heredia, while onboard her private vehicle with her client and daughter. Atty. Heredia just had just come from a hearing when the incident occurred. They were lucky enough to survive this attempt on their lives, with bullets barely missing their car head rests. The frustrated ambush took place less than a year after her photos were circulated in Iloilo City labeling her as a CPP-NPA-NDFP lawyer.

Meanwhile, NUPL Women and Children’s Committee head Katherine Panguban was charged with non-bailable offenses of Kidnapping and Serious Illegal Detention. Atty. Panguban was accused of detaining her clients, the child survivor of the massacre of nine farmworkers in Sagay, Negros Occidental and his mother. The mother and the child sought sanctuary from the Sagay police, who were compelling them to relinquish the child’s custody. Sagay police insist that the child could identify the perpetrators responsible for the massacre, despite the child’s repeated assertions that he could not do so since the massacre was carried out in the middle of the night. The case was eventually dismissed, when the child and his mother denied the accusations against Atty. Panguban.

Recently in February 2020, law student and engineer Jennifer Aguhob, of UPLM and Karapatan-Western Mindanao, was arrested on trumped-up charges of murder. The warrant of arrest was issued on July 26, 2019 by Judge Victoriano Lacaya, Jr. of Regional Trial Court Branch 9 in Dipolog City. While studying law, Aguhob served as paralegal for the case of Bishop Carlo Morales of the Iglesia Filipina Independiente (IFI), who was also arrested in May



2017 on fabricated criminal charges. NUPL, together with UPLM, represented Bishop Morales in the case. Aguhob is scheduled to take the Bar Examinations in November 2020 to become a full-fledged lawyer. Prior to her arrest, Aguhob was subjected to harassment and intimidation by members of the Philippine Army led by Major Alvin Arellano and Rex Madrid in 2017. The military had asked about her identity, activities and whereabouts since mid-year of 2017. Aguhob was also tagged by the military as the holder of bank accounts that were used to finance and support the activities and members of the Communist Party of the Philippines³.

Hampered Exercise of the Duties and Obligations of the Lawyer's Oath

These attacks on lawyers have created a climate of fear and impunity. With literally no one having been held to account for these attacks, lawyers have been afraid to prosecute human rights violations and to handle the defense of alleged drug offenses. They fear that government forces will go after them for representing these cases before the courts. The situation has been aggravated by ineffective and diluted domestic legal remedies ranging from skewed investigation and improper gathering and preservation of evidence, to a protracted and complicated legal procedure. Even the legal recourse of the Writ of Amparo, which is supposed to protect anyone from violations of their rights to life, liberty and security, and had been utilized by NUPL to protect its ranks, has been dismissed by the Court of Appeals on pure technicalities. The case remains pending with the Supreme Court.

These attacks demonstrate that the Duterte administration has flouted the basic principle of international law that "lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."⁴ State forces have blatantly disregarded the right of lawyers to "take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by

reason of their lawful action or their membership in a lawful organization."⁵

Not only did the Duterte administration violate the basic tenets of international law on the role of lawyers, these attacks, particularly against women lawyers, are also violate the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Beijing Platform of Action. These international instruments set forth the government's obligation to ensure the full participation of women in public and civil affairs. In particular, Article 7 of CEDAW recognizes the equal right of women to participate in civil and political affairs of society.⁶ This guarantee was bolstered by the Philippines' adoption of the Beijing Platform of Action. It declared the States parties' determination to "develop the fullest potential of girls and women of all ages, ensure their full and equal participation in building a better world for all and enhance their role in the development process."⁷

Subjecting women lawyers to attacks that imperil their lives, limbs and security has hampered their ability to fully discharge their duties as members of the legal profession. Their legal skills could have helped innocents and the wrongfully arrested regain their freedom and put behind bars those who are responsible for human rights violations. Despite the continuing attacks, Filipina peoples' lawyers have remained committed to becoming instruments of truth, justice and accountability, which are fundamental components in the development and attainment of a just society. However, defenders like them must likewise be effectively protected from violence and rights violations, especially so they are able to fully discharge their functions in the public interest.

The NUPL Women and Children's Committee is part of the National Union of People's Lawyers of the Philippines, a nationwide voluntary association of human rights lawyers in the Philippines, committed to the defense, protection, and promotion of human rights, especially of the poor and the oppressed.

3 "Free Engr. Jennifer Aguhob." Statement of the Obispo Maximo Iglesia Filipina Independiente, February 6, 2020. Accessed from < <https://antonio-ablon.com/2020/02/07/free-engr-jennifer-aguhob/> > on February 23, 2020.

4 Paragraph 18, United Nations Basic Principles on the Role of Lawyers. Accessed at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>

5 Paragraph 23, *ibid*.

6 Convention on the Elimination of All Forms of Discrimination Against Women. Accessed at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>.

7 Paragraphs 31 and 34 of the Beijing Platform of Action. Accessed at <https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf>.



25 years after Beijing: Two steps forward or one step backward for women in Japan and South Korea?

OSAMU NIIKURA AND YOUJEONG JEONG

Summary

The Beijing Conference marked a milestone for protest movements against military crimes in Japan. Since that time, however, the situation of violence against women is nearly unchanged. As the concluding observations of the Human Rights Committee for the 6th National Report for Japan indicated, there is still much to do in solving the problems of gender inequality.

The situation of “comfort women” is another major concern that requires a further immediate and comprehensive response.

Is Rape a Banal Military Incident?

September 4, 1995, three US military servicemen sexually assaulted a twelve-year-old elementary school girl in Okinawa, a prefecture where 15 % of its mainland territory is occupied by US military facilities. More than two-thirds of all U.S. troops in Japan are stationed in Okinawa. Participants in the 4th World Conference on Women in Beijing returning to Okinawa swiftly raised their voices against the victimization of a young girl. Similar incidents of sexual assault have occurred repeatedly over the half-century of U.S. military presence following World War Two. There have been frequent protests against the long-standing practices that have seen perpetrators rarely brought to justice, due to a dubious application of the Status of Forces Agreement (SOFA). When the rule of law is impeded by the SOFA, it can block the implementation of justice for crimes or incidents committed by US military service personnel.

Another incident which occurred in South Korea illustrates a different kind of military recklessness and violence affecting women.. Seven years after the Okinawa incident, in 2002, two junior high school girls in South Korea were struck and killed on their way to school by a US military vehicle stationed in the country. Soon furious movements and protests emerged throughout the countr. In Seoul, protestors organized candlelight vigils and demonstrations every evening.

These two cases are just the tip of the iceberg. The rights of women in both countries are at stake under a heavy burden of a policy of “National Security First” with insufficient legal institutions to protect and promote human rights for women and, indeed, for all people. Surprisingly the situation has not improved in these twenty-five years.

Revisionist Politics and the Status of Women

Since Prime Minister Shinzo Abe, the leader of the Liberal Democratic Party known for his revisionist historical view and his avid support for constitutional change, took over the government from the Democratic Party of Japan in December 2013, the situation surrounding women in Japan has changed little or even worsened. It is true that the Administration created a general “Plan for Dynamic Engagement of All Citizens” that included some mechanisms for improvement, especially regarding the situation of child-care and nursing in Japan.¹ However, the Plan’s prospective target focuses on economic growth, and it is almost a copy of the National Economic Growth Plan of late 1980s. The plan lacks concrete target figures for improving the status of women both qualitatively and quantitatively and, overall, remains in dismal shape. Japan must make a big change in this regard. It is preferable to take into account a proposal made by OECD Tokyo Center, “Beyond GDP – Development of Measures for Understanding Well-Being.”²

In South Korea, which suffers from deep-rooted social structures of gender inequality, the #MeToo movement’s swelling impact since 2018 has shaken the society with women’s demands for fundamental change. In particular, these protests have focused on ending discrimination against women and combatting social and personal violence against women. On the contrary, in Japan, no palpable movement can be seen in regard to #MeToo, sexual harassment and workplace discrimination. In 2019, South Korea went further to establish a social infrastructure for gender equality on the initiative of the Ministry of Gender Equality and Family, which has taken substantial measures

1 The Japan’s Plan for Dynamic Engagement of All Citizens, 2016, https://www.kantei.go.jp/jp/singi/ichiokusoukatsuyaku/pdf/gaiyou_e.pdf

2 Beyond GDP - Development of Measures for Understanding Well-Being, OECD Tokyo Centre. http://www.oecd.org/tokyo/publicationsdocuments/Beyond_GDP_Servicology2020.pdf



to reform core social structures and to promote wider participation of female representatives in the political sphere and other public sectors.

The Human Rights Committee delivered “concluding observations on the sixth periodic report of Japan” on August 20, 2014³. Gender equality is one of the four major concerns expressed by the Committee, as follows⁴:

Gender equality

The Committee is concerned at the State party's continuing refusal to amend the discriminatory provisions of the Civil Code that prohibit women from remarrying in the six months following divorce and establish a different age of marriage for men and women, on the grounds that it could “affect the basic concept of the institution of marriage and that of the family” (arts. 2, 3, 23 and 26).

The State party should ensure that stereotypes regarding the roles of women and men in the family and in society are not used to justify violations of women's right to equality before the law. The State party should, therefore, take urgent action to amend the Civil Code accordingly.

While welcoming the adoption of the Third Basic Plan for Gender Equality, the Committee is concerned at its limited impact, in view of the low levels of women carrying out political functions. The Committee regrets the lack of information regarding the participation of minority women, including Buraku women, in policymaking positions. It is concerned about reports that women represent 70 per cent of the part-time workforce and earn on average 58 per cent of the salaries received by men for equivalent work. The Committee is also concerned at the lack of punitive measures against sexual harassment and the dismissal of women as a result of pregnancy and childbirth (arts. 2, 3 and 26).

The State party should effectively monitor and assess the progress of the Third Basic Plan for Gender Equality and take prompt action to increase the participation of women in the public sector, including through temporary special measures, such as statutory quota s in political parties. It should take concrete measures to

assess and support the political participation of minority women, including Buraku women, promote the recruitment of women as full-time workers and redouble its efforts to close the wage gap between men and women. It should also take the necessary legislative measures to criminalize sexual harassment and to prohibit and sanction, with appropriate penalties, unfair treatment based on pregnancy and childbirth.

Gender-based and domestic violence

The Committee regrets that, despite its previous recommendations, the State party has not made any progress in broadening the scope of the definition of rape in the Criminal Code, setting the age of sexual consent above 13 years and prosecuting rape and other sexual offences ex officio. It notes with concern that domestic violence remains prevalent, that the process to issue protection orders is too lengthy and that the number of perpetrators who are punished for that offence is very low. The Committee is concerned by reports of the insufficient protection provided to same-sex couples and immigrant women (arts. 3, 6, 7 and 26).

In line with the Committee's previous recommendations (see CCPR/C/JPN/CO/5, paras. 14 and 15) the State party should take concrete action to prosecute rape and other crimes of sexual violence ex officio, raise without further delay the age of consent for sexual activities and review the elements of the crime of rape, as established in the Third Basic Plan for Gender Equality. The State party should intensify its efforts to ensure that all reports of domestic violence, including in same-sex couples, are thoroughly investigated; that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions; and that victims have access to adequate protection, including through the granting of emergency protective orders and preventing immigrant women who are victims of sexual violence from losing their visa status.

“Comfort women”

The Human Rights Committee also delivered recommendations in regard to sexual slavery or “comfort women.”⁵ The Committee's expressions of concern place further pressure on the position taken by the Japanese Govern-

3 CCPR/C/JPN/CO/6, UN Human Rights Committee, Concluding Observations on the Sixth Periodic Report of Japan, August 20, 2014 <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsuBJT%2Fi29ui%2Fb4Ih9%2FUIJO9nQa93Boy0croOoLTDvEP-GY0kptzyF26TNPPD6smh3p9YJ5KgXGU0vYZb1NM8mpET5PRv%2FLCx0HP6sZ3QjgcWI> See also <https://www.mofa.go.jp/mofaj/files/000054775.pdf>.

4 Id.

5 CCPR/C/JPN/CO/6, p. 5. Recommendations are as follows: “The State party should take immediate and effective legislative and administrative measures to ensure: 1. That all allegations of sexual slavery or other human rights violations perpetrated by the Japanese military during wartime against the “comfort women” are effectively, independently and impartially investigated and that perpetrators are prosecuted and, if found guilty, punished; 2. Access to justice and full reparation to victims and their families; 3. The disclosure of all available evidence; 4. Education of students and the general public about the issue, including adequate references in textbooks; 5. The expression of a public apology and official recognition of the responsibility of the State party; 6. Condemnation of any attempts to defame victims or to deny the events.”



ment, which sometimes swings for or against reconciliation with surviving victims. It states:

The Committee is concerned by the State party's contradictory position that the "comfort women" were not "forcibly deported" by Japanese military during wartime but that the "recruitment, transportation and management" of women in comfort stations was done in many cases against their will, through coercion and intimidation by the military or entities acting on behalf of the military."

It further charges that "all claims for reparation brought by victims before Japanese courts have been dismissed, and all complaints to seek criminal investigation and prosecution against perpetrators have been rejected on the ground of the statute of limitations", and then it says that this situation reflects ongoing violations of the victims' human rights, as well as a lack of effective remedies available to them as victims of past human rights violations (arts. 2, 7 and 8).

In the six years that have followed, the Government of Japan has failed to take any action, good or bad, whatsoever. One problem is that a gap between the governments of Japan and South Korea is yet to be filled.

Japan claims that former South Korean President Park Guen-hye accepted an accord in December 28, 2015 to set up a foundation to grant a support fund to victim-survivors and family members of the deceased. However, the succeeding government of South Korea, led by President Moon Jae-in rejected the accord because it fails to sufficiently reflect the will of the victims or satisfy the demands of survivors. As a result, there has been no convincing final solution or reparations for the suffering of the "comfort women". Hopefully a comprehensive approach will be taken to provide a permanent solution and permit reconciliation between both nations. This may include not only the issue of sexual slavery, but also compensation for conscripted workers before and during wartime or even further cooperation to promote common understandings of historical events.

We anticipate the 7th National Report of the International Covenant on Civil and Political Rights, which is expected to be released in the near future.

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#CSW64: Avances de los objetivos de la Declaración y Plataforma de Acción de Beijing

NELLY MINYERSKY Y SILVANA CAPECE

English Abstract

On the occasion of the CSW64 we analyzed the degree of progress of the points proposed by the Beijing Declaration and Platform for Action in the case of the Argentine Republic. We compared the 2015/2019 administration, in which the political signals from the government and its economic policy were aligned with a neoliberal market vision and a marked model of public debt, and the measures adopted recently, since the change of government on November 12, 2019. We restrict the analysis to Parity, Reproductive rights and abortion, comprehensive sex education, Theory of care, violence, and its extreme expression: femicide. We start from the necessary institutional support of the State in the implementation of public policies to that effect. Finally, we would like to highlight the participation of the women's movement, which has not only supported the struggle for women's rights, but has also spread it to all sectors and age groups, like the green tide, emerged in mid-2018.

La Declaración y Plataforma de Acción de Beijing, resultante de la Cuarta Conferencia Mundial sobre la Mujer, celebrada en el año 1995, se constituyó como un hito en la lucha por la igualdad de género y el empoderamiento de las mujeres en el mundo mediante la elaboración de un compromiso estratégico para promover los derechos de las mujeres.

En el marco de la #CSW64 (ONU. Comisión de la Condición Social y Jurídica de la Mujer), se conmemorará el vigésimo quinto aniversario de la Cuarta Conferencia Mundial sobre la Mujer y la adopción de la Declaración y Plataforma de Acción de Beijing. Se celebran igualmente los cinco años de Objetivos de Desarrollo Sostenible de la Agenda 2030. De cara a la referida conferencia analizaremos el grado de avance de los puntos propuestos por la Declaración y Plataforma de Acción de Beijing. Resulta inescindible del análisis, ponderar los efectos que la implementación de modelos económicos neoliberales, generan en las sociedades.

Citamos el caso de la República Argentina, gestión 2015/2019, en los que el signo político del gobierno y

su política económica se encontraban alineados con una visión neoliberal de mercado y un marcado modelo de endeudamiento público.

Nos referiremos a los siguientes temas respecto de los cuales circunscribimos el análisis: Paridad, Derechos reproductivos y aborto, educación sexual integral, teoría de los cuidados, violencia y su expresión extrema: el femicidio. Partimos del necesario apoyo institucional del Estado en torno a la debida implementación de políticas públicas tales efectos.

Todo lo contrario sucedió en el período referido 2015-2019, ya que asistimos al desmantelamiento de las políticas públicas que, lejos de encaminarse al cumplimiento de los objetivos de la Declaración de Beijing, los tornaron inaccesibles.

Con el restablecimiento de las relaciones con el Fondo Monetario Internacional a partir del año 2016, organismo al cual nuestro país había dejado de requerir asistencia en el año 2005, señalaremos una serie de medidas adoptadas que se orientaron en contra de garantizar los derechos humanos de la ciudadanía ya que en palabras del propio organismo, se dijo "fortalecer el manejo del gasto público, mejorar la gobernabilidad e incrementar la eficiencia del gasto público".

1) Degradación del rango ministerial a secretaría del Ministerio de Salud (Decreto de Necesidad y Urgencia 801/18) y una marcada subejecución de su presupuesto. Ello generó el debilitamiento de muchas políticas destinadas a la provisión de insumos fundamentales para la salud, por ejemplo escasez y falta total de vacunas obligatorias por ley.

2) Debilitamiento del Programa Nacional de Salud Sexual y Procreación Responsable cuyo objetivo se orienta a la prevención de embarazos no planificados, abortos, acceso a tratamientos de fertilidad, distribución de métodos anticonceptivos gratuitos en todo el país, capacitación de equipos de salud, acceso a información de calidad sobre salud sexual y reproductiva. Destacamos los nefastos efectos de ese debilitamiento, tales como: multiplicidad



de muertes e internaciones hospitalarias post abortos clandestinos; abusos sexuales con la consecuencia de embarazos prematuros de niñas.

3) Derogación de la Actualización del Protocolo para la interrupción legal del embarazo (Decreto 785/19). El objeto de la actualización del protocolo es hacer efectivo el cumplimiento de la norma vigente desde 1921 que legaliza el aborto en los supuestos de violación y/o peligro de la salud de la mujer (Artículo 86 C.P.N), garantizando la dignidad y derechos de toda persona con capacidad de gestar y, por lo tanto, potencial sujeto de derecho a la interrupción legal del embarazo.

4) Desmantelamiento del Programa de Educación Sexual Integral (ESI), creado por Ley 26.150, con importantes recortes presupuestarios y la suspensión de las capacitaciones masivas a docentes. La ESI busca garantizar el derecho de los y las estudiantes de todo el sistema educativo a recibir “educación sexual integral en los establecimientos educativos públicos, de gestión estatal y privada” de todas las jurisdicciones. Esta norma prevé la incorporación de la temática a la currícula, llevando este enfoque a los distintos niveles del sistema educativo. Señalamos que resultó insuficiente el plan ENIA (Plan Nacional de Prevención del Embarazo No Intencional en la Adolescencia) adoptado por el gobierno anterior con el objeto de prevenir el embarazo adolescente.

5) Deficientes políticas públicas destinadas a combatir las violencia intrafamiliar, interpersonal e institucional. Debemos señalar el incremento de la tasa de femicidios, como forma más brutal y extrema de la violencia sobre las mujeres. Según el Observatorio de las Violencias de Género, al menos 30 mujeres fueron asesinadas por el sólo hecho de serlo durante el mes de diciembre. A fines de noviembre, el Observatorio contabilizó 297 femicidios en los primeros once meses de 2019: el 63% fueron cometidos por parejas o ex parejas; 267 niños y niñas quedaron sin sus madres. Con los datos de diciembre el número ascendió a 327 niñas y niños. Este trágico hecho social debe combatirse a través de múltiples acciones interdisciplinarias del Estado y la sociedad civil.

6) Severo desmantelamiento del programa Remediar. Ese programa fue uno de los primeros planes sanitarios lanzado tras la crisis de 2001, ante la delicada y preocupante situación, en particular entre los niños, niñas y embarazadas. El objetivo era garantizar gratuitamente

casi el 90% de los medicamentos para las enfermedades más frecuentes de quienes acceden a la salud pública en el Primer Nivel de Atención, es decir, a los Centros de Atención Primaria.

7) Recorte presupuestario de la Dirección Nacional de SIDA y Enfermedades de Transmisión Sexual, Hepatitis y Tuberculosis, que ocasionó la falta de stock de medicamentos.

8) Desfinanciamiento del Instituto Nacional de la Mujer (Decreto 698/17), creado en reemplazo del Consejo Nacional de las Mujeres. El Instituto era el organismo encargado de velar por la prevención, sanción y erradicación de las violencias contra las mujeres.

9) No existieron políticas de cuidado, entendiendo los cuidados como todos aquellos bienes, servicios, valores y afectos involucrados en la atención de la población con algún nivel de dependencia (niñas y niños, adultos mayores y personas con discapacidades). Numerosos estudios pusieron de manifiesto el déficit y la creciente inestabilidad de la organización social del cuidado, y la consiguiente necesidad de su reconocimiento como un derecho, que no sólo incluya un papel más activo del Estado y de los mercados, sino que además promueva la participación de mujeres en el mercado laboral, la vinculación de los hombres en las tareas de cuidado y la protección social para cuidadoras y trabajadoras domésticas.

10) Implementación de una prestación previsional, con carácter no contributivo, la Pensión Universal para el Adulto Mayor (Ley 27.260), que representó, en los hechos, el incremento del requisito de edad de las mujeres para poder acceder a una cobertura previsional básica. Vale destacar que esta prestación equivale al 80% del haber jubilatorio mínimo, no genera derecho a pensión y resulta incompatible con el desempeño de cualquier actividad en relación de dependencia o por cuenta propia.

Podemos afirmar, a partir de la comprobación empírica reciente que, la adopción de modelos económicos neoliberales de endeudamiento, que comprometen seriamente el funcionamiento del propio Estado, se presentan como obstáculos insalvables para la concreción de los derechos enunciados en la Declaración y Plataforma de Acción de Beijing. El pasado 10 de diciembre de 2019, luego de un proceso electoral inobjetable, asumió en la República Argentina un nuevo gobierno.



En los breves meses de gestión, señalamos determinadas políticas públicas que, a priori, lucen coincidentes con los objetivos de la Plataforma:

- 1) Creación de Ministerio de las Mujeres, Género y Diversidad (Decreto 7/2019), como respuesta al compromiso asumido con los derechos de las mujeres y diversidades, frente a toda forma de discriminación y violencia, y en pos de la construcción de una sociedad más igualitaria que promueva la autonomía integral de todas las personas, sin establecer jerarquías entre las diversas orientaciones sexuales, identidades o expresiones de género, siendo estos objetivos prioritarios de gobierno;
- 2) La recategorización a rango de ministerio, del Ministerio de Salud y del Ministerio de Trabajo, Empleo y Seguridad Social de la Nación (Decreto 7/2019).
- 3) Aprobación del Protocolo para la Atención Integral de las Personas con derecho a la Interrupción Legal del Embarazo (Resolución del Ministerio de Salud 1/19, 13/12/2019).
- 4) Efectivo cumplimiento con la capacitación obligatoria en la temática de género y violencia contra las mujeres para todas las personas que se desempeñen en la función pública en todos sus niveles y jerarquías en los poderes Ejecutivo, Legislativo y Judicial de la Nación (Ley 27.499 – Ley Micaela).
- 5) Creación de la Secretaría de Cuidados Personales cuyo propósito es iniciar políticas de cuidado en todo el país.
- 6) Anuncio del Sr. Presidente de la República Argentina que presentará al Poder Legislativo un proyecto de despenalización y legalización del aborto.

Finalmente destacamos la participación incansable del movimiento de mujeres que, a lo largo del tiempo, no solo ha sostenido la vigencia de la lucha por los derechos de las mujeres, sino que además la ha extendido a todos los sectores y todas las franjas etarias. Ejemplo de ello es la marea verde surgida a mediados del año 2018. Si bien es prematuro expedirse acerca del resultado de las medidas adoptadas por el gobierno argentino, es esperable que se traduzcan en hechos concretos para que, de manera contundente, se inicie el camino hacia realización de los derechos de las mujeres, en consonancia con el compromiso asumido por la República Argentina al suscribir la Declaración y Plataforma de Acción de Beijing.

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Un breve análisis sobre la aplicación de la Declaración y Plataforma de Acción de Beijing en la República Bolivariana de Venezuela

MARIA LUCRECIA HERNÁNDEZ

Resumen

Durante los últimos 20 años se han producido avances significativos en la protección de los derechos humanos de las mujeres en Venezuela, a través de la creación de una institucionalidad y un marco normativo acorde con los instrumentos internacionales de derechos humanos, declaraciones, plataformas y agendas desarrolladas al respecto. Sin embargo dos situaciones han afectado la progresividad de los derechos en esta materia: la primera tiene que ver con las prácticas patriarcales que existen en nuestra sociedad que dificultan la realización efectiva de los derechos, y la segunda se liga a la aplicación de medidas coercitivas unilaterales contra el pueblo venezolano que impactan fundamentalmente a mujeres y niñas.

English Abstract

For the last 20 years there have been significant advances in the protection of women's human rights in Venezuela, by building an institutional and legal framework, in compliance with related international human rights instruments, declarations, platforms and agendas. However, two situations have affected the principle of the progressivity with regard to the application of human rights: firstly, the patriarchal practices that exist in our society that hinder the effective realization of rights, and secondly, the application of unilateral coercive measures against Venezuela that have impacted, in particular, women and girls.

En Venezuela, desde la entrada en vigencia de la Constitución de 1999, se han venido desarrollando un conjunto de cambios desde el punto de vista normativo como institucional para reorganizar y fortalecer la protección de los derechos humanos de las mujeres, a fin de garantizar la progresividad de sus derechos. Ello supuso la adopción de un conjunto de medidas para velar por la aplicación de la Declaración y Plataforma de Acción de Beijing, y más recientemente de los Objetivos de Desarrollo Sostenible, así como el cumplimiento de los instrumentos internacionales de derechos humanos suscritos por el Estado para la protección de este colectivo.

El marco jurídico y administrativo se ha venido ampliando

de manera sustantiva para garantizar avances en la igualdad y equidad de género. En ese sentido un conjunto de importantes leyes se dictaron al respecto, tales como: la Ley Orgánica sobre el Derecho de las Mujeres a una Vida Libre de Violencia, que rompe con la visión de pensar el tema de la violencia contra la mujer como un asunto del ámbito privado y regula diversos tipos de violencia; Ley de Promoción y Protección de la Lactancia Materna, que tiene por objeto promover, proteger y apoyar la lactancia materna a fines de garantizar la vida, salud y desarrollo integral de los niños, niñas y las madres; la Ley para Protección de las Familias, la Maternidad y la Paternidad que establece el derecho que tienen las madres a amamantar a sus hijas e hijos, con el apoyo de los padres, del Estado y la participación solidaria de las comunidades; la Ley Orgánica para la Protección de Niñas, Niños y Adolescentes que regula de manera expresa los deberes y derechos de los padres y madres en relación con sus hijas e hijos y promueve la igualdad de género.

También se dieron importantes reformas a la Ley Orgánica del trabajo a fin de garantizar la protección de la maternidad y la paternidad, como la extensión de los permisos pre y postnatales durante seis semanas antes del parto y veinte semanas después. Esto incluye a la madre que adopte un hijo o hija menor de tres años. Destaca asimismo, la extensión de la inamovilidad laboral del padre a dos años después de nacido el hijo o hija y se recoge la licencia de 14 días para el padre por nacimiento, ambas establecidas en la Ley de protección a la familia, la maternidad y la paternidad. Desde lo institucional y organizativo, se crea un Ministerio dedicado a atender y garantizar los derechos de la mujer “Ministerio del Poder Popular para la Mujer y la Igualdad de Género”, fortaleciendo y creándose las estructuras necesarias para satisfacer y dar protección a las mujeres en los distintos ámbitos de su vida. En igual sentido, se crean instancias organizativas y espacios en las comunidades donde las propias mujeres denuncian y gestionan la protección de sus derechos.

A pesar de los avances en la materia que se tradujeron en el empoderamiento de las mujeres en Venezuela, dos cuestiones o circunstancias, consideramos que deben superarse para una garantía efectiva y real de sus derechos: una



primera que podemos caracterizarla como endógena, está relacionada con la imperante cultura patriarcal que sigue teniendo un peso fundamental en la sociedad, perpetuando la posición de poder de los hombres frente a las mujeres, causando en la práctica situaciones de subordinación y exclusión. A pesar de los discursos que tienden a minimizar y tratar de la eliminar esta situación, las prácticas cotidianas arraigadas aún tienen un peso importante en la configuración de las relaciones de poder, lo que se constituye uno de los principales desafíos a superar.

La segunda cuestión que podemos definir como exógena o impuesta, tiene que ver con un proceso que desmejora las condiciones y calidad de vida de la población venezolana producto de la aplicación de medidas coercitivas unilaterales contra el país a partir de 2014. Debido al bloqueo por parte del Gobierno de Estados Unidos y sus aliados, se han impactado con más fuerza los sectores en condiciones de mayor vulnerabilidad, en especial, las mujeres y las niñas, traduciéndose en un retroceso en la progresividad de los derechos alcanzados hasta esa fecha. Este impacto se ha visto con mayor fuerza en la garantía de los derechos a la salud, a la alimentación y al desarrollo socioeconómico del pueblo venezolano, toda vez que Venezuela importa la mayoría de los medicamentos que necesita para cubrir sus necesidades. Esto se realizaba desde los países que han impuesto este bloqueo económico, financiero y comercial contra la principal empresa del Estado, Petróleos de Venezuela, que produce más de 95% de las divisas necesarias para la inversión social.

Aun cuando los niveles de organización comunitaria de las mujeres y las redes de solidaridad que se vienen construyendo, han permitido aminorar los efectos de la aplicación de las medidas coercitivas unilaterales y en alguna medida disminuido el impacto mayor en la brecha de género, el bloqueo que sufre el país limita la posibilidad de comprar alimentos, medicinas y bienes de primera necesidad. El bloque, por ende, genera un desmejoramiento en el nivel de vida de la población, produciendo sufrimiento, migración masiva por razones económicas, además de afectar el derecho a la salud y la vida, especialmente, de mujeres, niñas y niños, configurando de esta forma un delito de lesa humanidad.

En este contexto, el logro del cumplimiento con la Declaración y Plataforma de Acción de Beijing, y de los Objetivos de Desarrollo Sostenible, supone desarrollar varias acciones, tales como: fortalecer los niveles de co-

operación con el sistema de Naciones Unidas, desarrollar una agenda de solidaridad internacional para la denuncia de los efectos negativos en los derechos humanos debido al bloqueo, además de ser necesario superar las prácticas machistas producto de una sociedad patriarcal. Esto puede lograrse mediante acciones tanto desde las instancias del Estado, como desde las organizaciones sociales, comunitarias y desde las familias.

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