

Lawyering for Change 2022 Conference

SUMMARY

How can judiciary and non judiciary tools be used to fight violence against women more effectively?

Workshop - Wednesday October 12th 2pm-3:20pm

Speakers:

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- **Gonzague Dupas** - Legal advisor, Avocats Sans Frontières Canada (France)
- **Gaëtane de Crayencour** - Lawyer at the Brussels bar and member of Fem&Law (Belgium)

Moderation by **Insaf Bouhafs** - Programme officer, Avocats Sans Frontières (Tunisia)

1. How to define « violence against women »?

« Violence against women » (VAW) has a wide range of definitions. While in some countries, it is limited to violence between spouses, in others, it concerns political, economical, domestic and other gender-based violence against women. Thus, ASF Canada prefers to use the expression « gender-based violence » to cover the entire spectrum of gender and to not limit itself to the binarity between women and men, and to include the LGBTQI+ community. In its actions, the Belgian Association Fem&Law suggest to use the term « male violence », inspired by the more activist expression « machist violence » adopted in Spain, as it allows to point out the structural character of this violence and to make visible not only the victims but also the perpetrators of this violence.

On the legal side, it seems that, in many countries, laws concerning VAW do not define it but rather outline the necessary elements of VAW to make it punishable by law.

2. Limits of formal and informal mechanisms for providing justice to women

Access to formal justice is made difficult by several barriers: the insufficiency of the law in itself, the weak or non application of the law by actors supposed to do so, the material and economic challenges to access to courts, lawyers etc.

In Mali, the lack of lawyers, the depreciation of women who dare to denounce rape and domestic violence, the custom dictating the necessity to maintain harmony between spouses at the expense of women's well-being and security, discourage women from taking the path of formal justice and push them to informal justice mechanisms. However, it is not uncommon for the latter to perpetuate gender stereotypes, beliefs and to make decisions to the disadvantage of women.

Similarly, in Uganda, the informal path is often chosen « by default » by women victims of violence because of the limits of the formal justice (slowness of procedures, inefficiency, fear of social and community rejection following the use of formal justice). If mediation, in some cases of domestic violence, can be efficient, this efficiency is temporary because it is not rare for violence to occur again in the future.

As opposed to Mali and Uganda, where both paths of justice are distinct, the formal and informal justice systems are both institutionalized in Belgium. The latter takes the form of Alternative Dispute Resolution (ADR) mechanisms, whose decisions are homologated by courts. However, the barriers remain because of social, financial and temporal pressures that push women to choose the ADR mechanisms. Among these modes, mediation for separation is framed by principles, some of which do not allow to tackle domestic violence (which increases during and after the separation). The principle of neutrality prevents the mediator from reporting to judges detected violence but also to take into account structural inequalities between both parts. Moreover, the decision taken during mediation can not be appealed.

3. Conclusion

Both forms of justice present significant challenges and constraints but also advantages and guarantees. But, before embarking in a reflection on the complementarity of those forms of formal and informal justice, it is necessary to underline the risks, present in both systems, of perpetuating the patriarchal structures, especially when it comes to domestic violence, which is relegated to the private sphere and therefore tends to be depoliticized. It is crucial to work on the systemic and structural aspect of these violence and to get it out of the patriarchal path and out of the private and individual sphere. Hence the necessity to combine the judicial and the social actions, as civil society actors are doing today combining different aspects of care (legal, social and psychological) with awareness-raising empowerment and advocacy actions.