Gender, human rights and legal pluralism

The global equality standard, CEDAW

Towards a gender neutral national law
Legal globalization on the ground – coexisting international, national and local norms

Legal centralism: State-law’s claim of universality, assume a single system

Legal pluralism: The operation of several normative orders in a social field (Anne Griffiths)

Law’s semi autonomy – law transmitted through social fields that have the capacity to generate norms

Weak legal pluralism – Tanzania’s and Pakistan’s official legal system

Strong legal pluralism – Informal law coexist and often overrule formal law
Different North/South scenarios

- Former colonies in the South – the unmaking of plural systems of law
  - * Pakistan – state-law, religious, customary
  - * Tanzania – state-law, customary law
  - * Women’s rights organizations – use CEDAW as a tool of change
    - Pakistan – the women’s rights organizations and CEDAW
    - Tanzania – the women’s rights movement and land
    - Litigation, South Africa, Tanzania, Botswana
Strategies to legitimize equal rights claims

• Pakistan, Islamic countries – reinterpretation of Islam, Shaheen Sardar Ali

• Regionalization – The Protocol to the African Charter on the Rights of Women, Fareda Banda

• Vernacularization – Sally Engle Merry – NGO engagement with local customs and practices
  * legal literacy
  * Coach claims in customary terms
The North Scenario – Norway as a case study

• Legal pluralism – not plural systems
• In Norway formal equality – unified legal system
  • coexisting customs in farming communities
  * coexisting customs in minorities – Sami/Roma
  * Coexisting norms immigrants – Somali or Pakistani muslims
Multiculturalist claims of recognition from minority groups/religious groups

- Claims of formal recognition from religious/customary norms and institutions from minority groups in Europe

- Susan Moller Okin – is multiculturalism bad for women?
Different feminist approaches to women’s human rights and multiculturalism

- Susan Moller Okin/Frances Raday assumes conflict – what takes precedence within state-law. Religion or equality

- Anne Griffiths – legal pluralist approach – assumes a complex interplay on the ground (see page 304 and 305)

- Helpful to obtain a picture of what influences women’s choices and lived realities on the ground
Vernacularization a tool for women’s NGO’s

- Sally Engle Merry, vernacularization:

- Vernacularization – the process whereby human rights concepts are adopted to local customary or religious concepts, but still maintain their content.

- Indigenization – the process whereby human rights concepts are made resonant with local customary or religious concepts, human rights are consumed.
Vernacularization in Peru, China, India and the USA

- How local NGO’s and ordinary women make sense of global norms and ideas – such as CEDAW

- Critique of:
  
  * Tendency to assume homogenization
    
    - Lack of understanding of hybridization
    - Focus on macro level without paying attention to the local
Vernacularization cont.

- Culture – dynamic/not static set of norms, perceptions and idea.
- What women’s human rights look like in the work of three different organizations in China, Peru, US and India.
- Global package of core of principles held by leaders – equality, empowerment, autonomy in marriage, right to own property and inherit, reproductive autonomy, secular concern with political and economic status.
Vernaculizors

- Women NGO leaders – mediate between international networks and local
  - Selected by international organizations because of eduction, class, local status
- Cosmopoitan elites in the organizations
- Beneficiaries – local members acquiring new knowledge and seeing new opportunities
Case study on women’s human rights and legal pluralism – legal literacy to Norwegian Pakistani women in Oslo

- Strong legal pluralism in Norway – Norwegian state-law coexisting with Islamic norms and customary practices
- How a Norwegian/Pakistani women’s organization makes law:
  - Available: Legal literacy about state-law
  - Acceptable: Comparative legal literacy
  - Accessible: Individual counselling
The CEDAW Committee’s engagement with legal pluralism

- CEDAW article 5 a – eliminate and modify customs, practice and beliefs that are based on gender stereotypes
- State resistance – gender stereotypes often part and parcel of national cultural and religious values
- Process – seek cooperation and dialogue between civil society and state.
- Example – CEDAW Committee comment to Nigeria.
CEDAW committee approach to legal pluralism – legal literacy

- CEDAW General Recommendation 26, para 24 b: "linguistically and culturally appropriate gender sensitive services for migrant women"

- Engagement with cultural and social context of women in legal literacy

- The aim – substantive equality and achievement of social and economic rights - need to engage constructively with difference
The special rapporteur on violence against women

“Where international attention and leverage are rooted in culturally sensitive strategies and locally supported, they can give strong underpinning to our situation-specific approaches and interventions on the ground” (Coomaraswamy 2005)
34. “Cultures are dynamic, subjected to many influences and internal debates and internal contestations, they change over time... It is myopic and misinformed to say that cultures are essentially pro- or anti-human rights. They are in fact neither of the two and a fertile arena for contestation”

35. Limitations in culture – must pursue a legitimate aim, be compatible with the nature of this right and be strictly necessary for the general welfare in a democratic society. Limitations must be proportionate, least restrictive means
55. Whose definition of shared values should the expert rely on? Values expressed in a non-discriminatory process with regards to sex, race, class, aged etc.

The expert sets out to identify best practices and obstacles in terms of structures, policies and measures.
Independent expert on Cultural Rights

- **Mandate:**
  - Universal human rights, cultural rights and cultural diversity
  - "...to integrate a gender and disability perspective into its work"

- Report of the independent expert Fareda Shaheed A/HRC/14/36
Independent expert

- 6-61 A gendered perspective on cultural rights
- “Noting that some cultural practices may be particularly detrimental to the rights of women and girls, and noting the work of the special rapporteur on violence against women... Will pay due attention to the need to implement cultural rights in a way that is respectful of the rights of women and girls not to be discriminated against...