

GENDER GAPS IN OUR CONSTITUTIONS

Women's Concerns in Selected African Countries



CONFERENCE DOCUMENTATION

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HEINRICH BOELL FOUNDATION

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Abbreviations

ACFODE	Action For Development
AWC	Association of Women's Clubs
CBO	Community Based Organisation
CEDAW	Convention for the Elimination of All Forms of Discrimination Against Women
CSW	Commission on the Status of Women
FIDA- K	Federation of Women Lawyers in Kenya
FIDA-U	Federation of Women Lawyers in Uganda
FOWODE	Forum for Women in Democracy
GDP	Gross National Product
HBF	Heinrich Boell Foundation
ICCPR	International Convention on Civil and Political Rights
IGAD	Inter Governmental Agency for Development
LAC	Law Development Centre
NAWOU	National Association of Women's Organisations in Uganda
NESINET	New Sudanese Indigenous Network
NCA	National Constitutional Assembly
MCH	Mother and Child Health
NAWOU	National Association of Women's Organisations In Uganda
NGO	Non-governmental Organisation
OSW	Office of the Status of Women (South Africa)
SPLA	Sudanese People's Liberation Army
SPLM	Sudanese People's Liberation Movement
PDI	Previously Disadvantaged Individuals
UN	United Nations
UNIFEM	United Nations Women's Fund
UMWA	Uganda Women Media Association
UWONET	Uganda Women's Network
VAW	Violence Against Women
WAG	Women's Action Group
ZWLA	Zimbabwe Women Lawyers' Association

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Preface

Several countries in Africa have over the last few years been undergoing the process of reviewing their constitutions. Most of these constitutions were written soon after independence and women were left out both in constitution-making and in the implementation process. This in turn resulted in laws that are not sensitive to women.

Under the Constitution of Kenya for instance, women cannot confer citizenship to their children or to their husbands. The Constitution is also insensitive to women in regard to succession and property-ownership.

Factors that determine the full and active participation in constitution-making in many African countries include the traditional set-up, customary laws and practices, modernity and religious factors. In some instances, customary law and religious beliefs override the Constitution.

Most countries in Africa have written constitutions, which guarantee both men and women equal rights before the law and prohibit any discrimination on the grounds of sex, race, colour and religion. However, the social life of women is influenced and shaped by customary laws and practices and most disputes are resolved outside the court system. Many women do not know their rights and entitlements. Others dare not claim them due to the adverse effects such a move would bear on them in given social contexts. As such customary practices that discriminate against women on inheritance, wills, divorce, property provision, child custody and maintenance are still embodied in the civil law.

In recognition of this, the East Africa and Horn of Africa Regional Office of the Heinrich Boell Foundation (HBF) held a Conference entitled, Women and the Constitution, in Nairobi, Kenya, from October 1-3, 2001 to share ideas and plan strategies on how this situation can be addressed. The conference was attended by 60 participants drawn from South Africa, Ethiopia, Zimbabwe, Somaliland, Uganda, Sudan and Kenya.

Participants included professionals working on legal issues concerning women who came together to analyse the constitutions and laws in the region and to critically examine how these adversely affected women in decision-making, property ownership and participation at both family and national levels. Also present were other professionals such as media, researchers and experts in gender. The participants shared their experiences in constitution-making, processes, challenges, constraints and opportunities.

Specifically, the objectives of the conference were fourfold: to provide

a forum for women dealing in the legal rights of women and gender justice to share experiences, exchange ideas and strategize on interventions that ensure implementation of non-discriminatory laws against women; to chart out awareness creation strategies to ensure that women are well informed of their rights and on how to challenge and claim them as embedded in the constitutions of their countries; to identify organizations that can be used to lobby legal institutions that perpetuate discriminatory legal practices to ensure implementation of laws that are beneficial to women and finally to identify future alliances.

Esther W. Kamweru
Gender and Communications Consultant

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Celebrating African Women (Opening Speech)

***Aseghedech Ghirmazion**, Resident Director,
Heinrich Boell Foundation, East and Horn of Africa*



Dear Friends, Ladies and Gentlemen,

I greet each of you warmly and with thanks for being here. For me it is an important occasion. I would like you to join me first in celebrating the African Women for their achievements by reflecting on the past, looking towards the future and re-dedicating themselves to themselves.

As the 21st Century approached, there were various multi-faceted efforts geared towards the critical review of development in Africa. The spirit of this reflection was on Africa learning from the past, and seizing the opportunity to formulate a vision for self-development and self-determination, in the new millennium. In this spirit of Africa taking responsibility for development, there was ambition and optimism expressed in the common question, “Can Africa claim the 21st Century?”

Some of the initiatives that addressed this question were the Millennium Renaissance Programme, the Omega Plan and the emergence of the African Union. Africans took the onset of the new Millennium seriously, and people from all walks of life such as leaders, politicians and scholars reflected on the prospects for Africa in the 21st Century.

When I now say Africa is experiencing a renaissance, so are women. It is not obvious that bold advances in the social condition of Africa’s peoples and particularly women are on the horizon. Indeed, the visionary reflections I have just stated seem completely counter intuitive at a time when many social indicators are in decline in Africa. So for the moment, please have a willing suspension of belief, for my harbouring this optimism.

We all know, women achieved a great deal, but we also know that we have a long way to go until we live up to its potential. Already the women of Africa have achieved a great deal. Their organizations and networks have repeatedly drawn attention to the needs, contributions and potential of women. Women have charted new visions and directions for peace and economic prosperity in Africa, helping societies to adapt to change and propelling societies through difficult times.

The women’s movement in Africa transformed the global feminist agenda by ensuring that development was high on the list. Today, that same movement is helping to transform Africa’s own development agenda.

From the start, women’s groups, working with governments, NGOs and other actors of civil society, provided the impetus for change. But at the international level, it was the series of global conferences—Rio de Janeiro, Vienna, Cairo and Beijing—which gave a new unity and sense of purpose to the cause of women.

The United Nations, encouraged by the example of African Women and urged on by them, has done much, but still has much to do. More than 100 countries worldwide have now reported to the U.N that they are implementing the various global conference action plans. The Beijing Platform for Action—the

first truly comprehensive action plan on 12 areas of critical concern to women's advancement—has become the focus for flagship programmes in several UN agencies in partnership with the international community and civil society.

There is no going back on the Platform for Action to enhance the social, economic and political empowerment of women: to improve women's health to advance their education and training; to promote their marital and sexual rights; and to combat gender based violence.

There is no going back on the Convention on the Elimination of all Forms of Discrimination Against Women, one of the most remarkable documents of our time. Over 160 states have ratified the convention. Those who are holding out, or have ratified the convention with reservations, are going against the tide of history. The major issue that has emerged from these global commitments is women's rights. As guaranteed in a number of international conventions, and in Africa's own charter on human and people's rights, women's fundamental rights include: qualitative education and health care; a life free of violence; participation in decision making and all political processes; and economic rights. Until these rights of women are fully observed, human rights will not be achieved.

Ultimately, in this struggle as in so many others, the responsibility for change still rests on African Women's shoulders.

It can no longer come as a surprise to anyone including the men of Africa that gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance.

It is these achievements, to name a few, that we would like to celebrate today.

While celebrating ourselves for our achievements, we know that poverty has a feminine face. The mounting evidence is overwhelming. But to say simply that if we fight poverty, we will help a lot of women is not enough. We turn it around; it is by empowering women that we will have a chance to eradicate poverty.

Women need to have their full share of power over local resources, get their land rights, and get access to credit and so on. If we don't understand the need for a gender analysis of irrigation, we need better schooling. And crucially, women should not have to waste intellectual and emotional energy on men in their lives who do not take full family responsibility. Investing in women and women's investment is indeed the key to development, not just the other way around. As with the fight against poverty, so it is with the fight for full political human rights. It is not just the case that more democracy will lead to the empowerment of women. We will turn it around; it is when women organize that a new democratic culture will emerge.

The Beijing Platform for Action called for all these and more. It is time for serious reflection and for national action on all these suggestions. It is time to

target and change those legal barriers that have constrained women's progress. It is time to change attitudes, to recognize the benefits that will accrue from bringing into the mainstream of policy and participation of women whose potential has been largely untapped. It is in this light that we are holding the Conference on Women and the Constitution.

In many Horn of Africa countries, women do not enjoy their constitutional rights. Most countries are characterised by a situation of legal plurality with a co-existence of civil, customary and religious legal codes. This has downplayed the enforcement of civil laws that would guarantee gender parity in that the traditional and religious practices elevate men to a higher position in society. In general, women remain unaware of their rights because of discriminatory social practices, low levels of education and inequitable participation in economic life and decision-making.

This problem is compounded by the tension between constitutional and civil law and the profound cleavage that exists between the formal legal and judicial framework on the one side and customary law and sense of justice and legitimacy they embody on the other. This conference aims to bring together professionals working on women legal issues to analyse the constitutions and laws in the region and critically examine how they adversely affect women in decision-making, property ownership, and participation at both family and national levels.

The conference will be attended by participants, mainly drawn from the countries in the region as well as other women from other countries (South Africa, Zimbabwe and Nigeria) who have gone through similar experiences and can enrich this process.

Women in the East and Horn of Africa, through women's organizations and networks, continue to create awareness on women legal rights and to demand for affirmative action on issues pertaining to the empowerment of women. However even in those countries with organized civil society, little gains have been made towards the implementation of non-discriminatory laws towards women.

Although most countries have written constitutions, which guarantee all persons equal rights before the law and prohibit any discrimination on the grounds of sex, religion or nationality, the social life of women is largely shaped by customary laws and practices and most disputes are resolved outside the court system. Women often neither know of their rights and entitlements nor dare to claim them due to the adverse effects such a move would bear on them in given social contexts. As such, customary practices that discriminate against women on inheritance, wills, divorce, property provision, child custody and maintenance are still embodied in the civil law.

It is therefore important for women to come together and look at various constitutions with the aim of strategising on how to intervene in implementation processes in order to ensure that laws practiced guarantee

equal rights to women. This would also enable them to exchange experiences and share ideas on awareness creation that enables women to challenge the existing laws as well as claiming what the laws entitle them to without fear.

This conference will also be used to identify organizations that could give support to and bring positive change in legal structures and institutions that are the main protectors of discriminatory practices against women.

Hence, the objectives of the conference are:

- ❑ To avail a forum for women dealing in legal rights of women and gender justice to share experiences, exchange ideas and strategise on interventions that ensure implementation of non-discriminatory laws against women.
- ❑ To chart out awareness creation strategies to ensure that women are well informed of their rights and on how to challenge and claim them as embedded in the constitutions of their countries.
- ❑ To identify organizations that could be used to lobby legal institutions that perpetuate discriminatory legal practices to ensure implementation of laws that are beneficial to women.
- ❑ To identify future alliances.

Strategy

The strategies used to achieve the objectives will be participatory in nature. This will include presentation of country reports from those who are working in legal issues and have successfully gone through the same process, plenary discussions and group work.

Expected Results

- ❑ Create a regional network for women legal rights.
- ❑ Awareness creation for women on their human and legal rights, and a greater guarantee of their enjoyment of these rights.
- ❑ More practical interventions in the implementation of constitutions and laws pertaining to women.
- ❑ Identify future partners.

Thank you and welcome once again.

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A Timely Forum for Women (Keynote Address)

*Jane Kiragu, Executive Director,
Federation of Women Lawyers, Kenya Chapter*



Summary

IN HER KEYNOTE ADDRESS, THE EXECUTIVE DIRECTOR OF THE Federation of Women Lawyers—Kenya Chapter, Jane Kiragu said discussions during the conference should focus on how women can influence the constitution-making process and come up with strategies to ensure that women are included in the process. Kiragu said most constitutions have claw-back clauses that give with one hand and take away with the other. She argued that constitutions must be the frameworks that shape women's rights in Africa. The conference therefore provided a forum for women to develop concrete proposals that will remedy injustices against women.

In the discussions that followed the speech, participants said women need to know where decisions are being made so that they can influence the decision making process. Women must also share what they have experienced separately and take concrete action. They said representation of women in constitution-making and in decision-making must be qualitative.

Distinguished delegates, colleagues in the legal profession, ladies and gentlemen, I am honoured to have this opportunity to make the keynote address at this very important meeting, where women's rights struggle for political space and representation is being discussed. First and foremost may I welcome all those delegates from different parts of Africa to Kenya and to also wish you a pleasant stay in our beautiful country.

The subject of Women and the Constitution cannot be discussed at a more timely moment than now. The new millennium presents great challenges for transforming the political landscape of various countries. In Kenya the Constitutional review process is just getting underway. Several historical and contemporary realities have shaped our current constitution and lie at the heart of why women must now demand inclusion in the process. Yet before I go into details of these realities, allow me to say a few words about FIDA Kenya.

FIDA Kenya is a non-political, non-partisan and non-profit membership organisation of women lawyers and women law students. FIDA-K was formed in 1985 following the Third Women's conference held in Nairobi. We are a non-profit, non-partisan and non-governmental organisation committed to the creation of a society that is free of discrimination against women.

We undertake our work through provision of legal aid, women's rights monitoring and advocacy, legal rights education and referral. Although we are an organisation of women lawyers, all the work we do with our various partners such as religious institutions, other NGOs, government departments and individuals is geared towards development of a society that recognises and facilitates true partnership between women and men and the strengthening of the family unit. A key component of our work is to analyse the legal, policy and social environment particularly in the context of women.

I have been informed that the various papers for discussion at this conference will revolve around key issues affecting the constitutions in the various countries represented. I therefore feel inclined to share with you in a very general manner how we in Kenya have been dealing with the same issues.

One of the crucial elements we have learnt in the process is that research, advocacy and lobbying are critical to ensure that omissions made in the past are not repeated in the present process and that Kenyans get a constitution that is responsive to the needs and aspirations of all, women as well as men.

What then are the issues that we have with regard to the current Constitution of Kenya? Many of these issues will be expounded during the course of this meeting by various resource people. To highlight a few:

The 1963 Constitution was the Constitution under which we ushered

in independence and the testimony of the loosening of the shackles of colonialism. Yet this same constitution that heralded a new and better era for Kenya was drafted without the input of women—only one woman attended the Lancaster conference. This seemingly insignificant oversight has had tremendous impact on the protection of women’s rights through the years since independence. The need for a Preamble that highlights the values and basis upon which the fundamental and most supreme law is developed cannot be overemphasised.

ii) Giving with one hand and taking with the other—
contradictions and tokens without meaning!

The Bill of Rights found in the Constitution is couched upon the international principles of inalienable human rights and the equality of all persons, often drafted in the spirit of the Universal Declaration of Human Rights. Yet practice has revealed that often only perfunctory homage is paid to these age-old principles. The constitution has failed to provide adequate protection for the disadvantaged and minority groups in Kenya. In fact the Constitution has entrenched the culture that denies women participation in all spheres of society on the basis of equality; specifically through the provision of Section 82(4) which allows discrimination with respect to matters personal – adoption, marriage, divorce, burial and dissolution of property upon death. The recognition of customary law as a tool to guide matters of personal law has led to untold violations of rights of women. Further, it has also led to inconsistency in the application of the law where conflict between the statutory and customary law arises. The inability of a woman to confer citizenship upon her spouse and children in SECTION 91 of the Kenyan Constitution further highlights the contempt with which the law looks upon her – despite the fact that she is a Kenyan citizen who ought to benefit and enjoy the rights provided under the Bill of Rights in the same Constitution.

The Constitution guarantees to women no higher than second-class citizenship. The laws that flow from the Constitution are equally wanting in the protection they promise.

iii) Appreciating the Constitution as the framework to shape
women’s rights in other legislation

Distinguished delegates, a Constitution is the fundamental framework upon which the rights of citizens are recognised, upheld and protected, consequently this forum is crucial to enable activists in the region build consensus on the strategy to position the struggle for claiming our rights.

The outrage of injustice cannot be demonstrated in a more practical manner than what this conference intends to do; that is develop concrete

proposals and recommendations that will remedy the injustice.

It is critical to note that while every law must protect the right of equality of men and women, until the principle of gender equality is embodied in the various African constitutions, this right remains a mere aspiration. It is not sufficient to let case law determine the rights of individuals, as has been the case in questions of matrimonial property. The constitution must set out these rights clearly and indelibly without lending judicial discretion to be applied widely and variedly.

iv) Challenge for reforming the Constitution

The challenge now lies in ensuring that the Constitution is gender sensitive and responsive and ensuring that the highest law of the land guarantees the right to equality for men and women irrespective of their status. The rights set out in the Constitution must conform and guarantee no less than the protection provided in international law. For us in Africa, we refer to our governments' numerous treaties and conventions ratified or acceded, which must be made accessible to the lay person to protect her or his human rights. As activists we must position ourselves to meaningfully influence the constitution-making process; we must work tirelessly and have zero tolerance to the injustices meted out against women through constitutional provisions, yet we must be strategic as we encroach on space that has long been a preserve for the male species.

Ladies and gentlemen, I believe that through your exchange of ideas and experience at this meeting, meaningful contributions to enhance the status of African women will be made. It is my sincere hope that the Conference's follow up strategies will be developed following the lessons learnt in sharing so that with one strong voice we can reverse the error of history that has excluded women's recognition and participation and to guarantee equality of all in the constitution of our various countries.

Thank you very much.

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Constitutionalisation of Women's Rights in Kenya

***Judy Thongori**, Deputy Executive Director,
Federation of Women Lawyers, Kenya Chapter*



Summary

IN THIS PAPER, JUDY THONGORI, DEPUTY EXECUTIVE DIRECTOR and Head of Litigation, FIDA-Kenya states that Kenya is undergoing a constitutional review process. Some women are aware of the process while others are not but what was common between them is that there is no gender equality in the country. She points out that Kenya has ratified several international conventions and declarations in regard to gender equality. These include CEDAW, the Beijing Platform for Action, the Universal Declaration of Human Rights, the African Charter on Human and People's Rights, the Convention on the Rights of the Child and the African Charter on the Rights of the Child. Yet, she argues, there has been no domestication of these into Kenyan laws. However, there are various Bills pending in Parliament that would achieve similar goals as the international conventions including the Family Protection Bill/Domestic Violence Bill, the Criminal Law Amendment Bill and the Equality Bill.

Thongori argues that there is obvious discrimination of women in the Constitution and within other laws and cultures. This applies, especially in matters of marriage, inheritance, burial, divorce and adoption among others.

Reacting to the paper, participants said there is need to look at customary law and how it affects the lives of women. They recommended that Kenya study the Uganda Constitution in order to learn from it.

Background

Kenya became independent on 12 December 1963. Since 1964, the country was a *de facto*, and from 1982, a *de jure* one-party state. In December 1991, Kenya became a multiparty state through the repeal of the one-party provision of the Constitution.

Kenya is well placed to serve as an engine of growth in East Africa, but its economy is stagnating due to poor management and uneven commitment to reform. Long-term barriers to development include electricity shortages, a deteriorating infrastructure, the government's continued dominance of key sectors, and endemic corruption. About 75% of Kenya's work force are engaged in agriculture, mainly as subsistence farmers. Agriculture contributes about 26% to GDP. Industry covers light consumer goods, agricultural products processing, oil refining, cement and tourism. Exports focus on tea, coffee, horticultural products, and petroleum products. Nairobi continues to be the primary hub of East Africa. It still enjoys the best transportation linkages, communications infrastructure and offers a wide range of trained personnel.¹

Introduction

Kenya is currently undergoing a constitutional review process. The process has been awaited by the people of this country anxiously for the last 10 years or so. The women of Kenya have even more anxiously awaited the review process, consciously for some, and unconsciously for others. Arguably some women are aware of the need to review the Constitution, while others are not, but what is common to all these women is the recognition that there is no equality of sexes in Kenya and that therefore the status must change.

For our constituents, the constitutional review process represents hope that the rights of women will be mainstreamed and constitutionalised. It also provides the medium through which equality will be enshrined in the Constitution and through which the jurisprudence of the international human rights covenants should be incorporated in our Constitution.

International Conventions and Declarations

Kenya has ratified and even acceded to several international conventions and declarations including the Convention for the Elimination of All forms of Discrimination Against Women (CEDAW), Beijing Platform of Action, the Universal Declaration of Human Rights, the African Charter on Human and People's Rights, the Convention on the Rights of the Child and African

Charter on the Rights of the Child.

Kenya does not have an automatic domestication clause in respect of ratified international covenants. Consequently domestication of such conventions has to be through legislation. So far there is no domestication of the conventions into Kenyan laws. However, there are various Bills pending in Parliament that seek to afford protection to women and children in the same manner as in the covenants. Such pending Bills are:

- (a) The Family Protection (Domestic Violence) Bill which defines Domestic Violence to consist of:
 - Physical abuse.
 - Psychological abuse
 - Sexual abuse
- (b) The Criminal Law Amendment Bill which seeks to streamline the law on rape and afford children better protection under the law.
- (c) The Equality Bill, which seeks the equality of all the Kenyan people regardless of their race, colour, geographical location, creed, etc.

It is hoped that these Bills will become law in the near future. In the meantime and as detailed hereunder, there is obvious discrimination against women within not only the Kenyan Constitution but also within the other laws and cultures.

Discrimination Against Women within the Constitution

The Judicature Act, Chapter 8 of the Laws of Kenya sets out the sources of Kenyan law and places the Constitution as the supreme law of the land. In the event of conflict of laws, the constitutional position prevails. The Constitution is supposed to embody all the fundamental principles and values of the Kenyan people and ensures that these values are given the fullest legal protection and grounding.

Despite the inclusion of sex as a basis of discrimination in 1997, the Constitution of Kenya in Section 82 (4) reserves the right to discriminate in matters of marriage, inheritance, burial, divorce, adoption and other matters of law. These are the areas where women's rights are affected most.

SECTION 82 (4) also reserves the right to discriminate in the application of customary law in the case of members of a particular race or tribe. The following famous case illustrates the effect of Section 82 (4) on women.

Virginia Edith Wambui Otieno versus Joash Ochieng Ougo and Omolo Siranga, Customary Law, Family Law and the Constitutional Right to Discriminate.

The implications of Section 82(4) for women were made clear in the rulings in the 1987 S.M. Otieno case.² The S.M. Otieno case was a burial dispute in which the Kenyan Court of Appeal decided that a widow does not have rights over the body of her husband because under his customary law, the wishes of the widow and the children are 'irrelevant'. Wambui and S.M. Otieno had a statutory law marriage and were from two different Kenyan ethnic groups. Although through choosing a statutory law marriage the couple had chosen not to be ruled by their respective customary laws, the burial dispute was settled based on S.M. Otieno's culture.

The essence of the ruling of the Court of Appeal in the case was that because a woman is married to a man from a different culture she must follow the dictates of his culture. Counsel for the late S.M. Otieno's brother, who was granted the deceased's body consistently argued that in 'African communities a man cannot change his tribal origins'. The Court of Appeal affirmed his position by stating that 'The Appellant (Wambui Otieno) as the deceased's wife had to be considered in the context of all wives married to Luo men, irrespective of their lifestyles, who become subject to the customary laws. The fact that her marriage was a mixed one would not confer on (Wambui Otieno) any special status under Luo customary law. (Sections 82(3) and 82(4)(b)) of the Constitution of Kenya allow for discriminatory rules respecting burial'. The S.M. Otieno case stands as authority on the issue of what 'personal law' means.

The S.M. Otieno case was a clear demonstration of the precariousness of women's legal rights that are not constitutionally grounded. By not guaranteeing women constitutional equality with men in Kenya, the state is in direct contravention of Article 2(a) of CEDAW.

Section 90 and 91 of the constitution also discriminates against women. Those sections allow men to automatically bequeath citizenship to their children and spouses. Women do not enjoy these rights. Section 90 reads:

'A person born outside Kenya after 11 December 1963 shall become a citizen of Kenya at the date of his birth if at that date his father is a citizen of Kenya.'

Consequently a child born outside of Kenya to a non-Kenyan father and mother is not Kenyan whereas, a child born to a Kenyan father is automatically Kenyan.

Section 91 reads:

'A woman who has been married to a citizen of Kenya shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Kenya'.

The famous case of Shaka Zulu Assegai, an African-American man

married to a Kenyan woman and wishing to acquire citizenship rights illustrated the trials undergone by Kenyan women married to non-Kenyan women when their spouses wish to acquire Kenyan citizenship.

Sections 90 and 91 contravene article 9 of CEDAW which states parties are obligated to “grant women equal rights with men with respect to the nationality of their children.”

Article 15 of CEDAW provides that state parties agree to accord men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domiciles.

Sections 90 and 91 generate the continuation of sexist immigration policies. In order to be registered for a national identity card, a married woman who wishes to change her name to her husband's must have her husband present physically.

A married woman cannot have her children endorsed onto her passport without their father's permission.

Case Study: Persona Non Grata! A Kenyan Woman's Experience of Registering for her National Identity Card

This is Irene Mullama's account of her experience of getting a second generation national identity card:

'On 15 January 1997, I went to get my second-generation national identity card. I wanted to add my marital name to my maiden name. I informed the Registrar, that I had the original, and a copy, of my marriage certificate. The Registrar informed me that I would have to come back with my husband. When I asked why my husband had to accompany me, I was informed that they needed him to sign my application and put his thumbprint on the form for my identity card. Furthermore they would have to compare my husband's thumbprint on the form with the one on his identity card and form, to ascertain that he was the person that he claimed to be. I asked what would have happened if my husband was deceased? I was informed that a widow who had not changed her name before her husband passed away would have to revert to her maiden name. My husband is out of the country and I am due to give birth soon, I fear that I will not be able to renew my identity card within the 31 January 1997 deadline declared by the Assistant Minister in the Office of the President.'

(Nb: Irene Mullama is a pseudonym, used on request by Mrs. Mullama.)

After Mrs. Mullama brought this policy to our attention, FIDA Kenya wrote letters to the Office of the President and the Registrar of Persons objecting to the sexist nature of the registration process.

Apart from the obvious discrimination, there are other areas of law

where it is evident that women's rights in Kenya are not fully protected and that in fact there are glaring gaps which lead to violations of women.

Right to own Property

Under the Constitution women can acquire, own and dispose of property as they wish. However, under the customary settings, women did not own property such as land. In any event, the Constitution allows discrimination and application of customary law and this can be used to deny women right to property.

As land is the most accepted form of security to acquire credit and because women generally lack land they cannot mobilize loans to enable them buy property.

Kenya has no local legislation on matrimonial property. We use the 1882 Married Women's Property Act although we now have a well-settled case law. However, the gains made are precarious and can easily be lost without legislative support.

Succession and Inheritance

The law does not distinguish between male or female heirs or married or unmarried heirs. However, culturally, women did not inherit from their fathers and more so married women.

Further, where a husband dies, his brother and parents in most cases will disinherit the widow. Many cases are pending in court where in-laws have lied to the court that their son had no wife or children. Some communities even practice widow inheritance and if a woman has property, then there was no way she could inherit another property.

Further, the law allows a woman to claim inheritance as a wife of the deceased even though the deceased has a subsisting monogamous union with another woman.

Marriage Laws

These are several and complex. It is difficult to know who is a wife and indeed what rights appertain to one. There is need for a uniform law and for a system under which all marriages are registered.

Child Support and Maintenance

A child can only be maintained up to sixteen years of age. In our country, that is completely unrealistic with the challenge of the ever-rising poverty.

Children complete secondary school at about seventeen or eighteen years of age and university education at around twenty-three years. And if

the law cannot compel a father to even educate his children, whose burden do they become: the mother's of course.

Children born out of wedlock cannot access maintenance from their fathers. The responsibility remains with their mothers and no wonder there are so many children without access to basic needs.

Violence

The Constitution disallows violence. However, there is a lot of violence against women and girls in our country today, including battery, defilement and rape.

The laws that flow from the Constitution are wanting in their enforcement mechanisms. For example:

- ❑ There is no offence known as spouse battery.
- ❑ Culturally, wife-beating was sanctioned.
- ❑ Many law enforcement officers are still insensitive to gender issues.
- ❑ Sentences meted out are not gender responsive.
- ❑ Evidence required is cumbersome.

Illustration

In January 1998 a woman in Kayole Nairobi is beaten until she falls into a coma. A broken leg of a stool is inserted into her vagina. The case is heard and the husband is fined Kshs. 10,000/= which he promptly pays and goes home to beat her again...

For these reasons, we need to have an offence known as wife-beating. We need to criminalize and specifically outlaw wife beating.

Sexual Offences

The law provides a maximum life sentence for rape but it does not provide a minimum. The obvious implications are that magistrates are at liberty to give any sentence and even a fine, occasioning a miscarriage of justice in many.

Illustrations

In a Kangundo court a man was given a two-year sentence for raping a pregnant woman.

Indeed too often, magistrates are heard to say that the rapist is a beast who does not deserve to live in civil society but a custodial sentence is what he gets.

One is reminded of the late Chief Justice Chesoni who in a seminar for magistrates remarked, "magistrates seem to develop pathological sympathy with the rapists by giving them four or five years with or without strokes of the cane where the maximum is life."

Defilement

The next area of concern is the rape of minors (below 14 years of age), otherwise referred to as 'defilement' and which carries a maximum sentence of 14 years and 5 years on attempt.

The justification for sentencing a rapist of a child to a lesser sentence is quite obviously non-existent. The rape of minors is on the increase and even children of just a few months old are being defiled.

A Case in Point

A girl was defiled and contracted HIV virus. The Magistrate in that case did the best she could. She imposed the maximum sentence of 14 years – not good enough but her hands were tied by the law.

The Evidence Act requires that the evidence of a minor be corroborated yet in offences of a sexual nature the defiler will ensure that he does so in complete secrecy – so where will the other witnesses come from.

Another Case in Point

Two girls in a Kikuyu Court allege their father defiled them. The court does not even put the man on his defence because there is no corroboration.

Women and Political Participation

There is nothing in the law that suggests that women cannot seek political seats. However, and culturally, women were led, and did not lead. Women aspirants are at a disadvantage. We need affirmative action. At least private members motion has been approved and we now await the introduction of the Bill.

What Efforts are Being Made

Over 50% of the Kenyan population lives below the poverty line. Access to justice is therefore a dream for most people. The Government has no legal

aid scheme in place. FIDA Kenya has stepped in to bridge the gap by offering legal aid, monitoring the violation of women's rights and legal awareness education.

FIDA Kenya has the main office in Nairobi and a legal aid clinic in Kisumu. Demand for services far outstrips the capacity and FIDA Kenya relies mainly on other lawyers to give their time free of charge.

FIDA Kenya is also involved in initiatives to ensure that the laws of this country are more responsive. The concern just now is mainly the Constitution, on sexual offences, equality and family protection.

Conclusion

Quite evidently, there is a long way to go before protection can be achieved. However, FIDA Kenya and other like-minded organisations are working with parliamentarians, Government departments and the private sector to ensure that the situation changes.

FIDA Kenya also continues to undertake litigation for equality and gains have been made. The greatest challenge is to mainstream those gains by having legislative backing.

The current constitutional review process must surely be the immediate point of entry. We must urge that women's rights be accorded the supremacy they deserve. It is the only way that our Kenyan women can effectively participate in the much-needed development.

Notes

- 1 Research Report by Education Centre for Women and Democracy
- 2 Correctly known as Virginia Edith Wambui Otieno versus Joash Ochieng Ouga and Omolo Siranga, Civil Appeal No. 31 of 1987

IN HER PAPER, MS. LUCY MAHLANGU, EXECUTIVE DIRECTOR OF

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Women and the Constitution in South Africa: A Vehicle For Change or “BLINDEMOCRACY”

*Lucy Mahalangu, Executive Director,
Tshwaranang Legal Advocacy Centre*



Summary

Tshwaranang Legal Advocacy Centre, Johannesburg, South Africa says Africans need to rediscover their African-ness as advocated by the African Renaissance. South Africa has had a long and tragic history occasioned by colonial conquest, racial domination, social injustice, economic exploitation, political oppression, judicial repression, gender discrimination and apartheid. It also went through a period of racial hierarchy that put the different races in the following order: White, Afrikaner, Indian, Coloured and lastly the Black.

South Africa has also gone through a period of restriction of movement for many of its citizens and inferior education for Blacks. Customary laws are used to oppress women by both whites and blacks. Mahlangu said a new constitution came into place in 1984 with the Government of National Unity. One of its tenets is equality for all. It also encourages positive discrimination that addresses inequality for Previously Disadvantaged People (PDP)

She states that the constitution of South Africa is regarded as women-friendly because women can vote and it allows women to keep their surnames. Ms Mahlangu however argues that the constitution is wanting in the following areas; recognition of habitation, adoption of children by gays and lesbians, and in the domestication of international instruments such as CEDAW. To her then, the application of the constitution in South Africa leads to “blindemocracy”.

A Brief History pre-1994

South Africa has a long and tragic history of:

- ❑ Colonial conquest
- ❑ Racial domination
- ❑ Social injustice
- ❑ Economic exploitation
- ❑ Political oppression
- ❑ Judicial oppression
- ❑ Gender discrimination
- ❑ Restriction of movement and influx control (Pass laws)
- ❑ Inferior education for blacks
- ❑ Oppressive laws (marital regimes of black marriages)

Constitutional Values for a New Democracy

- ❑ Human rights – casualty of this history
- ❑ The interim Constitution 1993-1996
- ❑ The New dispensation was based on the values enunciated in the Founding Provisions of the Constitution to redress this history which are:
 - Citizenship, national flag, anthem, language and the supremacy of the Constitution
 - Equality for all (positive discrimination)
 - Respect for human dignity
 - Social justice.

Table of non-derogatory rights

Section	Title of section	Extent of protected rights
9	Equality	No discrimination based on language, race, colour, ethnicity, gender, sex, religion
10	Human dignity	Total protection
11	Life	Total protection
12	Freedom and security of the person	Torture, cruel, inhuman and degrading punishment, medical experiments without consent
13	Slavery and servitude	Entirely
28	Children	Placing them at risk, child labour, separate detention – 15 years
35	Arrests and detentions	Cohesion, 48-hour court appearance, exclusion of unfair evidence

- ❑ Equality clause – Bill of Rights, ratification of CEDAW
- ❑ Provisions for Affirmative Action and all legislative measures protecting people who were previously disadvantaged (PDI)
- ❑ Sexual orientation and reproductive rights over one's body
- ❑ Land reform and access to natural resources for rural women
- ❑ Socio-economic rights in housing, basic education, health (free medical care for expectant women and children below 16 years of age), social security, access to water and food.
- ❑ Statements/laws/rules in customary law that are in conflict with the Constitution, the Constitution shall take precedence.
- ❑ Domestic Violence Act, Maintenance Act, Sexual Offences Act, Recognition of Customary Act, Equality Courts and Family Courts are some of measures used to promote and protect women's rights.
- ❑ Women in national government in South Africa the highest in the world at 8 per cent, three women judges sit on the constitutional court.
- ❑ Women's Budget Initiative to influence fiscal policy to reflect women's needs.

State Gender Machinery

- ❑ The Commission on Gender Equality
- ❑ The Office of the Status of Women (OSW)
- ❑ Parliamentary Portfolio Committee on the Status and improvement of life for women.

Human Rights Machinery

- ❑ Human Rights Commission
- ❑ Office of the Public Protector
- ❑ The Truth and Reconciliation Commission
- ❑ The Law Commission
- ❑ The Auditor General
- ❑ The Electoral Commission
- ❑ Independent Complaints Commission
- ❑ Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
- ❑ ICAS-Broadcasting regulatory body
- ❑ Land Restitution Commission

Implications of the Constitution for women (1996)

- ❑ It has been regarded as a 'woman friendly' constitution because women can vote! The Equality Clause removes the institutionalised subordinate and inferior status of a woman to a man.
- ❑ Previously, a reference to a 'masculine' was presumed to include the feminine so that women were left 'hidden' in the legislation, today however the Constitution specifically mentions both genders.
- ❑ Through the promulgation of various legislation such as the Domestic Violence Act, women can now get protection against abuse/violence by any member of her domestic family or household, child support and arrest of offending fathers, and companies are to deduct child support from the father's salary. Sex with a girl of 16 years is an offence even with her consent. Women can sue their spouses for marital rape. Women are no longer their husband's property as was the case according to the previous customary laws applying to most black culture and traditions.

Implications

- ❑ Positive discrimination is allowed in cases where it is intended to redress equality and human rights which were previously unfair and institutionally discriminatory.
- ❑ Pregnancy is not a good reason to deny employing a woman in any position.
- ❑ Labour laws have extended maternity leave for women as well as fathers; equality in the workplace; affirmative action; protection against sexual harassment.
- ❑ Choice on Termination of Pregnancy Act allows women the right to aborting, sterilisation and artificial insemination.
- ❑ Prostitution has been decriminalised (still a hot debate.)
- ❑ Testing of rapists for HIV/Aids so that rape victims can be given AZT drugs in state hospitals.

Conflict of Rights: Blindemocracy

- ❑ All people are equal before the law – this means that some private law rights will clash with the constitution and/or other values and tenets of democracy.
- ❑ Acceptance of international instruments like CEDAW is to be recognised as having *locus standi* if the instruments are not in conflict with the Constitution. In South Africa, we still have old statutes that encroach upon human rights like the Immorality Act which criminalizes marriages across the colour line and impacts on the laws that would govern status, citizenship and inheritance of children born out of that union. These

laws need official appeal, some municipal by-laws require ratification or an Act of Parliament to repeal them and this could mean a lengthy wait, while human rights continue to be transgressed. The conflicts are too many to enumerate. Suffice to say that we need to ensure that all pieces of Legislation are not in conflict with the Bill of Rights.

Conclusion

- ❑ Constitution reviews are conducted annually in South Africa this year being the first.
- ❑ NGOs, lawyers, communities, ombudsman and all other monitoring bodies play a crucial role in ensuring that all tiers of the state uphold these rights and make the constitution a living document.

PAUL MUTANGADURA OF THE ASSOCIATION OF WOMEN'S Clubs in Zimbabwe states that the Zimbabwean Constitution has nothing specific

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Handicaps to Women's Rights in Zimbabwe

Paul Mutangadura,
Association of Women's Clubs in Zimbabwe



Summary

on women. Further, the country does not have an automatic system to domesticate international treaties. However, he says, there are a few positive aspects covering women's rights including the Administration of Estates Amendment Act Number 6 of 1997 which allows for surviving spouses and family members in customary marriages to inherit property. Mutangadura cites five aspects in which the Constitution in Zimbabwe falls far short of international standards for women's empowerment. He however recognises that there are efforts aimed at rectifying the situation including the establishment of several organisations to deal with different issues concerning injustices against women. Another is the ongoing constitutional reform process.

Participants noted that there is need for concerted efforts to educate communities and to conduct a civic education exercises. Rural people need to access information especially since lack of knowledge is used to oppress them.

Background

Zimbabwe, formerly called "Rhodesia", attained its independence from Britain in 1980 after a long and bitter armed guerrilla war in which both men and women participated. Christianity is the majority religion of the country's twelve million, 52% of who are women. The legacy of colonialism left behind about 450,000 people of European origin who, by virtue of this, control the economy, while the indigenous population consists of two main ethnic groups (tribes!), Shona (80%), the Ndebele (18%) and a number of other minority groups constituting 2%. A political climate characterised by violence and intolerance prevails in the multiparty democracy, which, currently has only 20 women in the 150-member parliament. The economy is going through a harsh period, with up to 70% unemployment, ever escalating prices of basic commodities and unprecedented levels of poverty in a land of plenty. Let me hasten to add that whenever a situation like this develops anywhere in the Third World, the most adversely affected gender is the women.

Fundamentally, the cultures of all the groups, except whites, are similar because of their Bantu origin. It is a patrilineal society where the man is the head of the family. In marriage, the men pay "lobola" (cattle or money) for women who then become almost the property of their spouses without much say in the running of family affairs. All major aspects of society such as the right to property, decision making, access to resources are in favour of men.

The current Constitution was developed at the 1979 Lancaster House (London) Conference during negotiations to end the guerrilla war. At the time of its inception, the main concern was ending the devastating war and establishing the basic political rights such as enfranchising the hitherto discriminated indigenous population. Women's rights were not an issue. The constitution covers the standard Declaration of Rights with no specific reference to women as a historically and culturally disadvantaged group.

Zimbabwe has adopted all the international human rights legal instruments such as:

- The African Charter on Human and People's Rights, adopted by the OAU in Nairobi, 1981 and ratified by Zimbabwe in 1985;
- The United Nations Universal Declaration on Human Rights, adopted by the General Assembly in 1948 and ratified by Zimbabwe in 1991;
- The Convention on the Elimination of All Forms of Discrimination Against Women adopted in 1979 and ratified in Zimbabwe in 1991.

The country does not have a system which automatically incorporates the International treaties into the constitution. There are very many problems as we shall see later.

Hope for the rectification of the women's situation lies in the vibrant

civil society who are challenging the system and spearheading a reform process which may bring positive change. These organisations are demanding not only the incorporation of women's rights clauses in the constitution and laws, but also the establishment of practicable mechanisms to ensure implementation.

The Zimbabwe Constitution's provision and women's rights

It is regrettable that the current Zimbabwe Constitution, at best, merely glosses over women's rights. The adoption and ratification of the aforementioned International Conventions shows that the Zimbabwean Legislature recognises the cultural and historical discrimination suffered by women. But its lack of corrective action suggests treatment of this discrimination as a trivial matter.

Only a few positive aspects covering women's rights have been sprinkled into the country's laws but not the constitution. The most positive is the Administration of Estates Amendment Act Number 6 of 1997 which allows surviving spouses and family members in customary marriages to inherit property.

However, considering the historical perspective regarding discrimination against women, an affirmative action programme should have been implemented to ensure maximum contribution by both sexes in matters of development. Indeed, if this were a game where every member is supposed to be contributing towards attainment of goals, then chances of success would be minimal considering that more than half (women) of the players are improperly provided, disgruntled and probably fighting against their colleagues. This is the paradox. Women are expected to make maximum contribution to societal development, but they are denied ammunition to input at a maximum level. Could there be any worse recipe for failure (if not disaster)?

The affirmative action referred to means "temporary special measures aimed at accelerating de facto equality between men and women which shall not be defined as discrimination (which) shall be discontinued when the objectives of equality of opportunity and treatment have been achieved."

The Zimbabwe Constitution in five respects, falls far short of the international standards for women's human rights protection.

Firstly, the Declaration of Rights in Chapter 3 guarantees only civil and political rights of the first generation. The second generation rights (economic, social and cultural) and third generation rights (developmental and group) are not enshrined even in a cursory manner.

Secondly, in its protection of civil and political rights, the declaration is not gender sensitive. It fails to pay attention to the peculiar women-specific manner in which some civil and political rights are violated. Examples are the

freedoms of movement (Section 22) assembly and association (Section 21) expression (section 20) and freedom from torture, inhuman and degrading treatment which are routinely violated allegedly “in the course and scope” of marriage. Women’s freedom of movement is routinely curtailed with impunity in public places, both urban and rural by dangers of sexual assaults and in marriage by husbands. Law enforcement agencies invariably turn a blind eye to women’s complaints in this regard, referring to reports on wife battering as “domestic”. SECTION 16 only protects people from arbitrary deprivation of their property, but fails to guarantee women the right to acquire property in terms of Article 17 of the United Nations Universal Declaration on Human Rights. Women property rights, including those to land, have always been contentious and need constitutional entrenchment.

The third handicap of the Declaration of Human Rights in the Zimbabwean Constitution is a series of restrictions (claw-back clauses) on the rights that can be enjoyed in Zimbabwe. The introduction in Section 11 clearly limits rights applicable in Zimbabwe to “the fundamental rights and freedoms of the individual specified in this Chapter. Clearly, the numerous rights not mentioned in it cannot be enforced. Section 111 B (1) prevents the direct application into Zimbabwean law of international conventions mentioned earlier. Any international agreements can only be incorporated into Zimbabwean law if Parliament approves and passes a specific Act of Parliament to that effect. Section 25 empowers Parliament to make laws that contradict all these rights in the event of public emergencies.

The fourth handicap of the constitutional protection of human rights is the paucity of mechanisms for enforcing rights and obtaining remedies apart from the supreme court as given by Section 24. Not only is this court inaccessible to most women—the attitude of the legal system in general is unsympathetic to women’s problems. It would take immense courage and resources for a woman to have her case heard in the Supreme Court. The only other mechanism is the Ombudsman’s Office which is tasked to “investigate allegations that any provision of the Declaration of Rights has been contravened by public officers. There is no mention of private places where many of these violations occur.

The fifth handicap is the token provision outlawing gender discrimination, among other kinds of discrimination, in SECTION 23. It is called “token” provision because Subsection (2) of SECTION 23 claws back any positive implication of this law by stating that “it shall be lawful to discriminate on any of the mentioned aspects (i.e. tribe, race, place of origin, political views, colour, religion or sex) in the areas of family law, marriage, divorce, inheritance and customary law.” This law is thus not very useful because: -

- i) It outlaws only discrimination by the state (through its laws and officials) and not by private institutions or private persons.

- ii) It allows discrimination of women in such areas as:
 - (a) Matters of personal law (marriage, divorce, inheritance etc)
 - (b) parts of customary law which promote discriminatory cultural practices
 - (c) Ownership of land [section 23 (3f)]
 - (d) Public morality, safety, defence [section 24(5c)]
 - (e) Automatic right of foreign wives of Zimbabwean men to be registered as citizens while Zimbabwean women's foreign husbands do not enjoy the same rights [section 23(5a)]
 - (f) The exercise of discretion by judicial officers in litigation [section 23(4)]
- iii) It fails to provide for affirmative action; other countries' constitutions (Uganda, Namibia and South Africa) clearly provide affirmative action.
- iv) It does not categorically outlaw discrimination against women.

It can therefore be safely concluded that Zimbabwe's legislative protection of human rights in general, and women's rights in particular, is primitive.

Current activities to rectify the situation

Several organisations have been formed to deal with different issues concerning injustices against women. Examples are Zimbabwe Women Lawyers Association (ZWLA) which provides legal services to disadvantaged women; Musasa Project which does the same in addition to offering shelter to traumatised women, and Women's Action Group (WAG), which was formed originally to fight against arbitrary arrests of women on the grounds of prostitution.

An interesting development occurred which enhanced the fight for equality between men and women in Zimbabwe.

Analysts have concluded that the current political and economic problems bedevilling Zimbabwe are centred around bad governance, which itself is a result of constitutional flaws giving excessive powers to the executive. The analysts believed that meaningful improvement of the economic and political situation in Zimbabwe could only be brought about by the establishment of a new constitution giving real power to the people. This set forth what has come to be called "The Constitutional Reform Process" which started in 1999. An organisation called The National Constitutional Assembly (NCA) was formed to spearhead the drafting of this new constitution. It is an umbrella body consisting of over 50 NGOs, churches, political parties, trade unions and other associations and

organisations in the constitutional process in Zimbabwe.

Different women's organisations (such as ZWLA, Musasa, WAG referred to earlier) within this umbrella body realised the futility of fighting individually for the adequate incorporation of women's issues in the envisaged new Constitution. They decided to form a coalition, The Women's Coalition, tasked with developing a reinforced single voice on all aspects of women to be covered in the new constitution. To achieve authenticity, the coalition embarked on a massive exercise to consult with women from all walks of life throughout the country. Consultation workshops were conducted throughout Zimbabwe, including marginalised rural centres. It was a most exciting and exhilarating experience. The diversity of issues, problems and priorities was most amazing. The AWC, which I represent, with its over 60,000 members in all parts of Zimbabwe naturally played a critical role in bringing women to attend the consultations and helping them to express themselves freely.

The Women's Coalition eventually compiled a Draft Women's Charter, which is a synthesis of all issues expressed by women in the consultations, to be included in the new Constitution. It is interesting to note that women were foremost in rejecting a government sponsored draft constitution because it ignored their charter.

In a nutshell, the charter demanded:

- i) Equality between men and women
- ii) Promulgation of laws that protect the rights of women and ensure that all past injustices against women are eliminated,
- iii) Guaranteeing of access to all resources including property and land
- iv) Abolition of cultural and religious practices which directly or indirectly discriminate against women
- v) Protection of women against all forms of violence
- vi) Proportional representation of women in all institutions of governance
- vii) Guaranteeing education and training for the girl child and women
- viii) Measures to protect women's health, reproductive and sexual rights especially in the advent of the HIV AIDS pandemic.
- ix) Automatic incorporation into domestic law of all International Conventions, signed and ratified, promoting human and women's rights
- x) Establishment of practical implementation mechanisms and affirmative action programs to ensure the desired goal of achieving true equality between men and women.

The constitutional reform process is still continuing despite government

rejection. In its draft constitution launched last week late September 2001, the National Constitutional Assembly (NCA), in response to the effort by the Women's Coalition, suggested the establishment of a Gender Commission. One of its many functions is to recommend affirmative action programmes to achieve gender equality.

Conclusion

It is quite clear that women's rights are not adequately protected in the current Zimbabwe Constitution. Consultations held so far have revealed most, if not all, the issues required by women in the Constitution. It is thus hoped that the ongoing constitutional reform process in the country will succeed in rectifying the question of women's human rights and advance Zimbabwe's legal status to that of other African countries like Mozambique, Namibia, South Africa and Uganda. More importantly, establishment of true equality between men and women should enable maximum contribution by both sexes, thereby releasing the whole national human resource for development purposes. This should contribute towards guaranteeing progress.

6

Religious and Cultural Laws used to deny Women their Rights

Saud Ibrahim Abdi,
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Summary

SAUD IBRAHIM ABDI OF THE NAAGAD UMBRELLA ORGANISATION, Somaliland, begins her paper by stating that in traditionally patriarchal Somaliland where lineage is traced paternally through the male line, men are valued more than women yet women are regarded as the backbone of the society in terms of labour. A new constitution that emphasises the equality of men and women, respect for human rights and the State's adherence to international agreements, has been in place since May 2000. According to Abdi, the real situation is however very different. Customary law is often used to settle disputes and this is not favourable to women. She argues that factors excluding women from decision-making positions include Islam which many wrongly perceive as not allowing women to participate in decision-making processes at the public arena. Second is the Somali culture which puts women under the jurisdiction of men. She points out that women are now lobbying for positions in various political parties and are demanding commitment to the advancement of women.

In the subsequent discussion, participants noted that men use religion to frighten and harass women. Women should therefore be encouraged to study different schools of interpretation of Islam so that they can know their true position. They also said that existing strengths such as the fact that there is one language and one religion in the country should be used to reinforce the women's struggle.

Introduction

This paper will start with a brief background on the status of Somaliland women in respect to social, religious, economic, cultural and political perspectives. This will be followed by an analysis of the Somaliland Constitution with a view to identifying provisions that are safeguarding the human rights of women in Somaliland, and checking these against the realities on the ground. From there, the paper dwells on issues of human rights violations faced by women and touches on contributing factors as well as challenges faced. Finally, recommendations are offered aimed at soliciting support from the international community towards efforts of the Somaliland women to uphold their human rights.

Background

Traditionally Somaliland is a patriarchal society where lineage is traced paternally to the male line, a highly structured society in which their basic values and norms are enshrined in the traditional customary law (xeer), negotiated by clan elders. The xeer establishes the rights and the obligations of the individuals, families, clans and sub clans. It also provides the guiding framework for resolving disputes, making alliance and marriage arrangements within the society.

Moreover, the Somali culture is usually based on power demonstration of resources, where men are valued much more than women. From as early as age six, girls are trained in domestic chores while preparing them for future tasks as mothers and are often relegated to the confines of domesticity whereas boys are given the opportunity to develop their intellectual skills and explore the outside world. Women are assigned specific subordinate roles in the society and are denied most political, economic and social rights.

Generally women are regarded as the backbone of the society in terms of labour. Women pastoralists are known to work hard and are responsible for the collection of fire wood, fetching of water, tending the animals i.e. milking them and making butter. These women also dismantle and reassemble the nomadic huts whenever they move. Likewise, the agricultural women are responsible for all domestic chores, and in addition spend some of their time on other activities related to the farms. But in urban areas women find their responsibilities restricted mostly to the domestic chores. However, their status as women differs across social groupings between the rural and urban settlements. While women pastoralists have a substantial measure of authority over crucial and easily marketable livestock assets which can be sold to pay for health services for themselves and their children (UNICEF, 1998), most urban women have no control on such assets and have little knowledge about their husband's income.

The husband is the proprietor of the wealth owned by the family, which makes him the head of the family and this has given women a limited role in major decision making processes. They also have fewer rights in inheritance, divorce and other aspects such as health and education. Hence, illiteracy among women is extremely very high because of the low enrolment and the early dropout of girls which is widespread throughout the country. Many women also lack the basic skills [informal] to take advantage of opportunities that might be available.

Despite these problems, women have showed commendable courage during the difficult and extended period of political instability and social unrest resulting from the mass displacement of people within the country and across the border. Since 1988, Somaliland women played a significant role in the well-being of the society, particularly in their efforts in economic endeavours as breadwinners. Today most of the families survive on income generated by women. An estimated 52% of Somaliland's families have become female-headed households (UNICEF, 1998).

However, women still remain disadvantaged in terms of access to economical and social resources. In addition, women also lack the political voice to partake in decisions that effect them directly. From one corner of the country to the other women complain that in spite of the gains achieved [economic] in recent years their status [political] in the society remains at the minimum.

It is because of this sidelining that women felt the need to express their dissatisfaction at both national reconciliation conferences held in Borama and Hargeysa in 1993 and 1996 respectively. But their demands for representation fell on deaf ears and they were excluded on the basis of clan. In Somali culture a women is born into a clan but she leaves that once she marries and automatically becomes a member of her husband's clan. No clan is prepared to support a woman as a representative.

The Constitution vs. The Actual Situation

Somaliland is a de facto independent country (formerly known as North Somalia), which does not enjoy international recognition. It is an Islamic State run by a government elected by clan elders, a Parliament composed of two houses Wakiilada (i.e. Representatives) and Guurtida (i.e. Council of Elders) and has a judiciary in place. A new constitution has been in place since May 2000. Several articles in the Constitution emphasize equality between men and women, respect for human rights and the State's adherence to international agreements. These are summarized below:

Article 8 (1) Equality Before the law—provides that all nationals have equal rights before the law regardless of race, tribe, birth, language, sex, property ownership, seniority, view points, etc.

Article 10(2) Foreign relations – specifies that the Republic of Somaliland recognizes and adheres to international agreements entered under the umbrella of the United Nations; and will respect the Universal Declaration of Human Rights.

Article 15 (7) Primary education – provides that primary education will be available to all nationals at no cost; and obligates the government to ensure such service is available to all nationals.

Article 19 Well-being of vulnerable groups – Under this article, the Government is obligated to ensure the well-being of mothers, children and disabled people are taken care of in respect to health, education and care.

Article 22 (1) Political, economic and social rights – ensures that every national has the right to participate in political, economic, social and cultural activities in accordance with the constitution.

Article 22 (2) Voting and political rights – every citizen has a right to vote or be elected so long as he satisfies requirements as specified by law.

Article 36 Women's Rights – is devoted to providing certain rights to women. It affirms that:

- ❑ Women have equal rights as men as provided in the Constitution, except in the areas defined for each sex in Islam.
- ❑ Government will encourage laws that protect women from harmful traditional practices which affect them physically and morally and which are also not permitted in Islam.
- ❑ Women have a right to property ownership—manage it, supervise it, engage in work, and pass it over in line with the Sharia Law.
- ❑ In the interest of the family, women are entitled to economic education, technical education and adult education.

We now look at what is the real situation vis-à-vis the above provisions. Areas covered under each article are taken up point by point.

Equality before the law

Many women pursue legal actions when the need arises. The process is, however, often interrupted by the intervention of elders who often like to apply customary law especially in cases of divorce, custody of children and maintenance. In most cases, women yield to such pressure and are known to have withdrawn their cases prior to judgment being passed at court. Sadly, the customary law doesn't pass favourable solutions for women because often elders rule with a view to compromises being made rather than passing on a fair judgment. And usually women end up being the compromiser and hence denied certain rights, such as alimony, child custody and child support.

International Agreements

Somaliland is not recognized internationally as an independent sovereign state. Therefore, it is not a signatory to any of the international human rights covenants and conventions. However, since the Constitution provides that all United Nations agreements are binding on the State, women see this as an opportunity to demand rights provided especially under the International Covenant on Civil and Political Rights (ICCPR) and CEDAW (The Convention On The Elimination Of All Forms of Discrimination Against Women). Despite the obligation on the State to observe international law, none of the provisions in these laws have to-date been domesticated.

Primary Education

Primary education is available to both sexes. The entry age of both girls and boys is 6 years. Not all schools are necessarily free of charge despite governmental obligation to provide free primary education to children. Families are required to pay school fees of SLShs. 15000 per month, which is equivalent to US \$5. The average Somaliland family has six children and if these are especially all of school-going age then there is preference to send boys to school and keep girls at home to assist with the domestic chores. The Ministry of Education's statistics department show that boys' enrolment exceeds the number of girls enjoying primary education. The percentages are 32 % girls to 64 % boys.

There are several factors that could be attributed to this fact. First because girls are expected to be dependent on their father, brother or husband, little value is given to the girl's education while boys are envisaged as future providers of the family. Secondly, the fact that many women are fully engaged in the market, to earn family income has forced families to keep their girls out of school in order to do the domestic chores. Finally the traditional notion of the resentment of girls' exposure to higher education, is justified on the grounds that girls should not live among strangers as they can be easily exploited.

However, there is no governmental policy or directives that encourage or lend support towards increasing the number of girls joining primary schools. Some local organizations have initiated informal charity schools providing grown up girls opportunities to become literate and develop basic skills that might come in handy later in life.

Well-being of Vulnerable Groups

The situation of physically and mentally disabled people especially girls/women and orphaned girls is depressing. The burden of their care falls mainly on their families despite the government's obligation to provide them with the necessary care. The national budget has no specific allocation to cater for these vulnerable members of the society. At least orphans are getting some support from NGO's.

Care for mothers, especially from poorer families is also not adequately provided for. Mother and Child Health (MCH) Centres are providing minimum care. The burden again falls on families and well-wishers.

Voting and Political Rights

Women have for a long time enjoyed their voting rights since independence from the colonial power (United Kingdom). However, in 1993 and 1996 when the Somaliland communities held their first and second Congresses to elect the President and the Vice-President and approve a national charter, women were only given observer status and denied to vote. The justification given was that the voting procedure would be by clan representation and so women could only participate if they were representing their clans. Traditionally, only men can represent their clans.

In May 2001, a referendum was held to vote for the adoption of the new Constitution, which has provisions allowing women to exercise their voting rights. And this was the first time, women could publicly go to the polls and cast their vote. The Constitution also provides for multi-parties and women are eager to exercise further their voting rights when presidential elections come up in 2002.

Despite the fact that women constitute a significant portion of the population, they are not given due share to take part in the decision making process and bodies concerning national affairs and issues that concern them directly. They are excluded not only from the three main institutions (house of elders, representatives and the executive branches) but are also denied to take up administrative positions at high level. In addition to that, women were also denied the right to be members of the committee drafting the constitution.

Generally, there are two main reasons that exclude women in decision-making. Firstly is Islam, which the majority of the people misperceive as not allowing women to participate in decision making processes at the public arena. Secondly, the Somali culture puts women under the jurisdiction of men. While this is the case, women made an attempt to demand their rights of participation in the last Somaliland reconciliation meeting held in 1996. One woman stood up for the presidential race in 1996 and it was rejected.

For the same reason, women were also denied to take seats in the Parliament (Wakiilada and Guurtida). Although the constitutional committee of Somaliland had raised the issue of whether women should be allowed to be members of the institutions, their proposal was defeated on the grounds that it is up to clans to nominate women from their respective clans to represent them. As a result, all the clans made reservations to nominate a woman from their respective clans.

Women are now lobbying for positions in the various political parties that have emerged recently and are demanding commitments to the advancement of women and accepting their political participation for them to consider giving support to any political party. There are about 40 women who became members of the central committee of newly formed political parties.

Economic Rights

The majority of the people in Somaliland are primarily dependent on livestock and agriculture production, and most of the foreign exchange comes from the livestock trading. Skin hides and frankincense also earn some money. All these sectors remain in the male dominated sector of the business where women have no place because women's role in the economic sector is regarded as producers not consumers and spend most of their time herding and caring for the livestock due to the lack of economic base. For example, for one-day sale in the livestock markets, a woman can buy only 120 heads of sheep maximum whereas a man can buy 3000 head of sheep. This pattern shows the disparity between the two where a woman's purchasing power is much lower than her male counterpart's. In addition to that, women take their animals to Djibouti whereas men export to much more lucrative markets in the Gulf.

For this reason the majority of Somaliland women occupy the informal sector of the business [petty trade] selling a variety of commodities in the market. Some of them get small loans from relatives while others receive credit loans from projects run by some international and national NGO's. But there are those who are not so lucky and remain in the periphery trading from small economic activities. The one contribution provided by the Government is the rehabilitation of some of the markets improving their environmental conditions. The obligations of the government to provide skills—training support to women still remains unrealised. This type of service is offered by some NGO's but very few market women benefit.

Property Ownership

Women's entitlement to property ownership is provided for in Islam and as such it has never been questioned. Therefore, Somaliland women have always enjoyed their right to property ownership. But because many women have been denied to enjoy other rights (education, work, etc.) women do not have equal capacity as men to acquire property. Few have succeeded to do so.

Employment

As governmental structures emerged following the civil war, there was a high competition for jobs because of the inflated unemployment situation faced by both men and women. Traditionally, men always came first in terms of accessibility to gainful opportunities. Again, traditionally, work outside the house was given to men and women will only come in second. So, it was not surprising that women were pushed to the margins as clan elders lobbied for their clan men to acquire positions in the various government departments. Today, undoubtedly, most of the working women are either secretaries or operators, mostly holding clerical posts. A lady who has been a civil servant for about 22 years and works as senior secretary in one of the ministries told me that all higher positions are reserved for men, not a single woman is found even as head of section. She also told me that it is common to see a man with little experience in a higher position than a woman with higher qualifications.

The government needed the support of clan elders and so entertained their wishes instead of taking an equality stand and offering employment on merit basis. There is no quota policy either that would avail women public employment. The few women who managed to enter the public sector came with support from certain influential people including family members. The bulk of women remain self-employed at the market. Few work for international organizations and NGO's.

Apart from the public service, the private sector, which also offers better employment opportunities falls in a similar state. Not all private companies employ women and those that do usually underpay them compared to their male counterparts. In addition, male employees get salary increments or promotion and training from time to time while women remain in the same position. Women are also not allowed to work in remittance service companies and other businesses run by the Islamist groups. In addition, a married woman has fewer chances than the unmarried woman, as prospective employers are concerned about maternity leave.

Issues of Human Rights Violations and Discrimination Against Women

This part of the paper touches on those issues that are not adequately dealt with by law and which are being discussed among women as a problem infringing on their human rights.

Denial of Political Participation

As mentioned earlier, women were denied equal participation in politics: to take up senior positions in government or be elected to Parliament on the grounds that their clans had not nominated them to represent them in these institutions. From then on, women have gathered to unite their voices and strategize on winning political space to exercise their right. This was the main issue that brought women together under the umbrella of an organization called Nagaad Umbrella Organization.

Polygamy

Somaliland is an Islamic state and polygamy is not seen as a problem. But it impacts negatively on women who also don't see it as a problem. Islam has set out conditions for polygamy to take place; and Allah has stated that it is hard for man to meet these conditions and so advised that men stick to a monogamous marriage. However, men who enter into polygamous marriages do not pay attention to these conditions and their marriages suffer. It would be an obligation of the State to ensure that men who want to enter into polygamous marriages are capable of meeting the preordained conditions; but that doesn't happen and as a result men behave irresponsibly and women suffer the consequences.

Domestic Violence

There are no records to give a sense of the number of domestic violence cases in the country. It is considered taboo to discuss family matters outside the house and only family members get involved in settling disputes that arise between husband and wife. On the other hand, society believes that the husband has a right to discipline his wife and domestic violence is seen as a disciplinary act, and not an abuse. There are hardly any cases taken to court; but now and then one would see or hear of a courageous woman who left her husband despite the pressure of the family to stay in the marriage for the sake of the children. Due to sensitisation activities, women who are associated with women's organisations are slowly beginning to share their

stories and seek social counselling from fellow women who have had or are having similar problems.

Divorce

Due to the collapse of the government, little progress has been made to reinstate much of the country's laws, be it civil or penal. Therefore, most of the civil laws that are in place today in Somaliland are a combination of customary law and religious law, while the penal law is that of the previous government. For this reason, many families prefer to solve their problems through the *xeer* and Sharia, it is only after these fail that they opt for the courts. However, article 7 of the Civil Code designates that the District Courts handle family issues related to marriage, divorce, inheritance, child custody, feuds etc. In addition to that, it is again article 7 of the Civil Code that states that Family issues will be settled by the *xeerka qoyska* (family Law) which is deeply founded in Islamic law.

The Islamic system has an established and complete legal system for the family, but these are often not used. An example is the law that governs divorce. It is the prerogative of the man to pronounce divorce, but also the Sharia allows a woman to demand to be divorced from her husband for reasons prescribed in the law; such as lack of family maintenance, being away for a long period, or threats to her life. In spite of these rights, women still suffer when seeking divorce from the courts. A woman might not be divorced without the consent of the husband, even if the above reasons prescribed in the Sharia are valid. For example, courts force a woman to forfeit alimony from her husband, if she opts for divorce including her rights of child custody and maintenance. This is increasingly becoming very common and many women face the burden of feeding their children single-handedly.

Female Circumcision

Female circumcision is an old traditional practice that still prevails in the country. It is done in different forms:

1. Clitoridectomy – partial or total removal of the clitoris;
2. Excision – the removal of the entire clitoris and the cutting of the *labia minora*
3. Infibulation – the removal of all external genitalia and the stitching together of the two sides of the vulva, leaving only a very small vaginal opening.

All Somaliland girls are circumcised upon reaching the age of 8 years or even younger. Families believe that their daughters will remain unmarried if they are not circumcised. Circumcision is considered to be a prevention method against losing one's virginity and all circumcised girls are assumed to be virgins.

Traditionally, infibulation (which is the most extreme) was the preferred form but nowadays there is a shift to excision following intensive campaigning against the practice by women's organizations, international organizations, NGO's and a group of Islamists. There is no law banning the practice and government has not publicly denounced it nor developed a policy to eliminate the practice. This is in contradiction to the Constitution and CEDAW whose provisions are also recognized by the Constitution.

Factors contributing to the prevalence of human rights violations and discrimination against women

Culture/Patriarchy

The Somaliland culture is one of patriarchy and the cultural mindset is one endured for generations whereby men always come first, children second and women third. This old cultural mindset has instilled in women the traits of obedience, tolerance, forgiveness while men developed the traits of demanding, controlling, dictating and leading. For example, in *xeer* (customary law) a woman doesn't stand as an independent person, she is always under the domain of man. Before marriage, she is the responsibility of the father, and if married she falls under the control of her husband. If the father dies before she is taken under the responsibility of other male relatives such as her paternal uncle, brother or cousin. For this reason, decisions are taken on her behalf and she is expected to oblige. But women who had the privilege to get an education, learn of other cultures, learn the Koran, etc. have now stood up to challenge the status quo but it would take time and processes before many women and men accept changes.

Government Will

There is lack of government will to address discrimination and abuses against women. To date government has not passed laws that are committed to upholding the human rights of women. This lack of interest paves the way for the continuation of attitudes and practices that are discriminatory and abusive to women.

Lack of Awareness

On the whole, the majority of women are still unaware of their human rights as stipulated in the Constitution, in Islam and in international law, which the Somaliland Constitution embraces.

Other Priorities

Stakeholders seem to have other priorities, which do not include abuses, and the discrimination that women face in private and public life. Government is most concerned with “bigger national issues” and won’t bother much with women issues. Women themselves are more focused and engaged in providing the daily food for their families and would think last of their own situation. Some women won’t even have time to participate in educational activities to raise awareness of their rights when they know they have six or so kids and an unemployed husband waiting to be fed at the end of the day.

Challenges

Limited Resources

Those most concerned about the human rights violations and discrimination against women are the women themselves and organizations working on their behalf. Sadly, they are faced with limited resources and could do only small interventions, which might not have a significant impact. These few interventions could only reach a small segment of the population.

Islamists

A group of Islamists (Al Itihad) who have ample resources from religious organizations are against the idea of women’s advancement. They are die-hard traditionalists and they use religion as a weapon to deny women rights that even Allah has granted them. They have a vast network across the country and have ongoing campaigns, which are centred on spreading the Islamic religion, but they use this opportunity to also downplay the rights of women. They are especially against:

- ❑ Women getting into political positions
- ❑ Complete elimination of the practice of female circumcision
- ❑ Women taking certain employment activities

Women are calling for:

- ❑ Women to remain housewives
- ❑ Polygamy to prevail
- ❑ Education for all but that only Islamic education is necessary
- ❑ Application of Sharia Law

Recommendations

- ❑ For women to succeed in acquiring their human rights, it is important to intensify their campaigns and be equipped to launch effective campaigns. These won't be possible without sufficient resources and training women activists in acquiring the necessary skills to articulate the agenda issues.
- ❑ Research into women and Islam needs to be undertaken to clarify women's rights so that not only are misconceptions removed but also women themselves are educated on these rights. It is important here to build alliances with Somali religious leaders

7

Women: The Oppressed
of Oppressed

Suzanne Jambo,
New Sudanese Indigenous NGOs Network



Summary

MS. SUZANNE JAMBO OF THE NEW SUDANESE INDIGENOUS NGOs Network (NESI-NETWORK) states in her paper that the women of the Southern Sudan are among the most oppressed of the oppressed. Double standards exist that serve to marginalise the women by virtue of colour, religion and sex. Oppression exists that pits women against human rights abuses of rape, violence, death, early and forced marriage and slavery. She states that while Sudan is supposed to be multi-cultural, multi-ethnic and multi-religious, the Constitution is not clear on such issues as it is derived from Islamic Sharia Law. In a sense, in Sudan, two different forms of laws exist, the one in the north and the other in the south. In the south, the law in operation is modern and is infused with aspects of customary practices. Jambo reiterates that a pressing concern that needs careful analysis is the question of who makes the law. One wants to see a process that is amenable to sensitisation and pressure.

When it comes to the question of modern law, she states further that the south Sudan is dominated by the SPLM/A administration. In several documents, the SPLM has affirmed that it is bound by all international human rights and humanitarian laws without any reservation whatsoever. Among such rules are those on nation-building, mobilisation, respect for human rights as stipulated in international conventions, participatory democracy, justice and equality, promotion of self reliance and economic self sufficiency and the emancipation of women with development of youth. Jambo argues that while the articles may be optimistic, clear practical implementation policies and mechanisms are needed to enforce these provisions.

Southern Women: An Overview

Southern Sudanese women are the *oppressed of the oppressed* in Sudan. They are doubly marginalized—for being women and for being African. In a country such as Sudan where the colour of your skin, religion, ethnicity and gender determine your citizenry rights and social and otherwise status, for southern women, it has been, and continues to be, almost hell on earth! She is a daughter that is not allowed to go to school for her 'bride price' is far more important than her education. She is a wife for whom dowry or bride price was paid and therefore who has no voice in her matrimonial home. She is a silent partner that endures so much without complaints for divorce is a taboo. She is the sole breadwinner in most parts of war-torn south Sudan while a significant number of men are at war or dead, but with hardly any recognition for her reverse and newly found role. She is the one who keeps families and communities together with very little notice of this effort. She is trying her best to survive in a land full of turmoil, she is on one hand subjected to all kinds of human rights and political violations including systematic rape, ethnic cleansing, slavery, abductions – mostly by Sudan government troops. And on the other hand culturally and traditionally, she continues to suffer from forced marriages, arranged marriages, wife-inheritance, aerial bombardment, displacement and harsh refugee conditions and much more. Her education, training and public participation is discouraged and frustrated – indeed, it is a miracle how she is still surviving.

At this African Women's Forum, a constitutional regional forum is to be found whereby African female and gender-sensitive lobbyists have come from different corners of the continent in order to join hands and efforts towards the realization of a fair Africa. Before I start to tell you about southern Sudanese women's constitutional rights, please allow me to start with a brief background on the history of the conflict in the Sudan. I need to put you in a holistic picture of what the average southern Sudanese woman goes through in her every day life.

Dear African Sisters and Brothers, the continent needs to rise up against injustices committed against fellow Africans. We need to look beyond our individual countries' borders. For what happens in Sudan for example matters in Kenya, and what happens in South Africa matters in Mozambique and vice versa etc. And unless we get to know about each other and regionalize our efforts, there can never be sustainability in whatever we do wherever we are.

The History of Sudan's Conflict

Sudan's conflict is Africa's longest running one in recent history. There have been two civil wars in the country since 1955 to date, with a brief relatively

peaceful period. The conflict is of a rather complex nature. The media likes to simplify it as one of northern Arab/Islamic domination against southern African/Christian resistance. However, civil wars in Sudan were started due to a much deeper-rooted cause. The current power structure in Sudan and the impact it has on its people reflects the development of over 400 years of centralized political bodies whose elite enriched themselves by exploiting the human and material resources of the marginalized groups. Traders from the Arabian Peninsula started arriving into the Sudan, a land of plenty, and gradually started to inter-marry with local African girls. Their breed, northern Sudanese, ensured their Arabic ancestral claim more than the African one. Being a Muslim and an 'Arab' became virtually synonymous with the privilege of full membership of the state, and a defence against exploitation. Slave raiding into the peripheral lands was originally a state activity, a means of obtaining soldiers and slaves for the domestic and international slave trade. State expansion southwards was effectively halted by such southern Sudanese peoples as the Dinka and the Shilluk, until the Turco-Egyptian conquest of 1821 –1883.

Egyptian forces penetrated the southern Sudan bringing in their wake northern Sudanese and European merchants. Commercial networks of northern traders known as 'Jellaba' expanded deep in the south and west and the growth supply of slaves led to their being used increasingly as domestic servants throughout the Egyptian territories in northern Sudan. This marked the beginning of a North-South divide, with the independence of southern Sudanese people and kingdoms either destroyed or seriously undermined by a Muslim state in collaboration with its Arabic-speaking Muslim subjects. Northern Sudanese generally regarded the south as an anarchic land of opportunity where fortunes could be made in trading and warfare, and the southern Sudanese as part of a large labour reservoir. Sadly and very unfortunately, African women and girls formed the majority of these exploited people.

In a nutshell, social infrastructure such as education in south Sudan was badly neglected. Economic development was also severely restricted and commerce remained in the hands of northern Sudanese merchants 'Jellaba' and Khartoum-based companies. By the time the British realized that it had to prepare the South for Sudanese independence, the South lacked a substantial educated elite who could significantly contribute to the running and maintenance of education, commerce or administration. Needless to add, southern Sudanese women remained at the bottom of the list of oppressed groups.

The national political scene from 1956 to 1969 was characterized by Muslim sectarian domination of the main northern political parties, very few southern political organizations, regional discontent in the under-developed south, east and west of Sudan, and failure to reach a national consensus

on the form of constitution to be adopted after independence. Southern demands for a federal constitution attracted the support of some Nuba, Beja and Fur (periphery). Religion became a political issue when Khartoum attempted to create an Islamic national identity. Arabic was introduced as the administrative and educational language.

The imposition of Sharia (Islamic) laws in 1983 and the discovery of oil in southern Sudan led to the current civil war waged by the SPLM/A.

Women in the Southern Sudanese community setting

As seen above, discriminatory policies by northern/Arab/Islamic government systems at the centre has negatively affected the development of the south both in terms of human resources and land infrastructure. The situation of southern women, as can be imagined, has been much worse than the one of men. As a result of many years of conflict there are at least two entities in Sudan today; southern and northern entities. I will only discuss the southern entity versus women in my discussion paper here. I will discuss the different forms of laws found in the south, with a particular focus on SPLM/A's modern laws as well as traditional laws (customary) versus women's rights issues.

To talk about the issue of women and their absence in any effective decision and policy-making processes is paramount to looking into the root cause of their marginalization. Negative traditional attitudes and practices have time and again made women subordinate to men. Girls are looked upon by their communities as sources of wealth and not as full members of the family. However this is not the case here. In traditional African communities and other parts of the world, once a man could "afford" a girl's dowry or bride price, she is expected to succumb to this and be taken to her new family. Note that the age of these girls is normally quite tender. In their marital home, women are expected to give birth to children, raise and unite families. Silently they endure tremendous amounts of responsibilities and burdens without complaining or being disgruntled. Yet, there is hardly any recognition. Being responsible for the reproduction system of entire nations and generations seem to be completely trodden on. It is as though bearing children and giving birth was a crime for women.

Continuous conflicts and civil wars in Sudan have further aggravated this state of affairs. Women's traditional role of "in the kitchen" has had to adopt to absent husbands due to fighting or loss of lives in the war. Hence, women's traditional roles have somehow been changed or reversed. A significant number of families are headed by women. Women are increasingly learning to come to terms with this "new style of living". Women are households' heads, mothers, food providers, domestic carers,

peacemakers, farmers, teachers, etc. Despite all these developments and changes, what appears to be the case is that women remain oppressed. High illiteracy rates are rampant amongst women and, hence, they are more likely to be less professionally trained than men. For traditionalists, this seems to be a good enough excuse not to include women in effective decision-making levels. It is strongly believed that prejudices and stereotypes against women are the main factors behind the marginalization of women.

Ruling classes and groups articulating laws and defining development are men. Thus, advancement of women requires changes in existing laws and formulation of new laws, the law-making process is a crucial area of concern. Some of the mind-boggling concerns that we need to critically look into include: Who makes law? Is that process amenable to sensitisation or pressure? Is the women's movement strong or organized enough to influence the legislative process? The prospect for law reform which promotes women's interests lies in the type of answer to these and similar questions. In addition, to understand the current legal system in most African countries one has to appreciate the historical imposition of the British colonial legal system, which destroyed some organic legal institutions while preserving others. The co-existence of two different value systems, i.e. in the case of south Sudan, one system is the Spam's (modern or western style) and the other is the traditional system (customary laws) this presents a range of unique problems to the resolution of the "Woman Question". "Depending on the mood, whim or politics of the situation, African culture may be invoked to oppress women or modern society cited in efforts to eliminate the very cultural practices which safeguard the rights of women". Quite a dilemma indeed!

I. Customary Laws and Women's Rights

This is the most commonly applied system. Traditional courts, 'manned' by male judges situated in every community deliberate on the different legal cases. For the sake of my discussion, I would like to briefly outline negative customs and way of life that greatly affect the judicial system in the area. Below are some of the most common negative customs prevalent in south Sudan towards women and girls.

Women's Position in the Family: The south Sudanese community is predominately patrilineal; authority, decision-making and control is in the hands of the man as being the father and the head of the family. Women's roles as wives is usually submissive with slight difference in power depending mainly on her personality, number of children and her social background.

Marriages and Women: Dowry or bride price is the number one major violation of women's and girl's rights in south Sudan. So much abuse and exploitation for quick enrichment has made this practice an issue of 'sell

and buy' as far as the women and girls are concerned. Paying the bride price is considered as the legal contract by which the husband and his family have power over the bride forever.

Arranged Marriages now Forced Marriages: Traditionally, among most tribes of south Sudan elders chose a 'good' girl to be a wife for their son. This according to customs, ensured that the boy would marry into a good home and have a successful marriage. Forced marriage is a very common violation against girls. It is commonly practiced, under the name of customs; extremely young girls are forced to marry almost anyone who could afford her dowry. Under the pretext of arranged customary marriages, forced marriages are increasingly being practiced among certain south Sudanese tribes both inside and outside Sudan.

Wife-inheritance: Traditionally, this meant that once the husband dies, the wife is 'inherited' by the brother but based on her 'choice'. The concept behind it was to ensure that the deceased's children will remain in the same family and that they are taken care of.

Multiple Polygamy: Because of extreme poverty and short-lived ambition for quick enrichment, multiple polygamy is the most common and 'trendy' practice in south Sudan. Traditionally, polygamy was practiced in 'modest' ways and for 'genuine' reasons. Infertility and sickness of wives led men to marry other wives. Furthermore, it was also part of prestige, i.e. among chiefs and so forth. However, this has drastically changed. Increasingly, many young and old men are marrying up to a minimum of 10 wives and could reach up to 100! As a result there are many widows, 'single' mothers and real poverty. *Ironically, most families are female-headed. Marriages are just a matter of a man 'being able to afford' dowry and it ends there. Women, actually are the ones who provide food and general households' needs.* Basically, the original concept that men are the ones taking care of families has changed drastically due to the war. Hence, men no longer are taking care of families' welfare. A man who is married to 10 or more wives does not provide for these wives and their children any longer. It is the women who do so. Instead, men are becoming more dependent on their wives for feeding etc. The roles have changed.

Denial of property rights: Among most tribes, women do not have any rights to ownership of property. For the belief that anything that a woman owns belongs to her husband (the one who has paid bride price).

Divorce Settlement: As discussed under Dowry, divorce settlement, among most tribes in south Sudan is largely dependent on bride price paid (dowry). Divorce is not directly allowed in the southern society outside a court (normally traditional courts). If it is the wife who wants to divorce, she first has to consult her father, brother and those relatives who received her dowry. Once divorce is granted, she has to return part of the bride price, this depends on the number of children she has had with her husband.

Basically, divorce is not encouraged and remains extremely difficult due to the fact that dowry has to be returned. 'Dowry ensures the marriage to continue'. This is seen by most community members as a healthy factor or a defence to their insistence on dowry as a price for marriage.

Negative Social and Cultural Attitudes towards women: With the above discussion on the different forms of negative customs and traditions (including conflict-acquired ones), there are numerous negative cultural attitudes practiced against women in different events and occasions. Young girls, single, married and widowed women suffer from one form of such attitudes or another at some point in their lives (if not all through).

Women and girls position in the community is tainted with the above negative customs to the extent that their subordination and unequal treatment shall continue for as long as these negative customs continue to prevail.

Customary Laws and Women's Rights: How much rights? From the above female-perspective discussion it is clear that not all customs and traditions are women-friendly. In fact, in many ways, these aspects have greatly contributed to the double marginalization of women in south Sudan.

2. War-torn south Sudan: Modern Laws

The South of the country has the most marginalized areas of the Sudan. These areas lack any form of development compared with the vast resources it has naturally. The British colonialists ensured a traditional way of rule known as the Closed District Order whereby the south was isolated from the rest of the country. As such, in the south rule of law has been dominated by traditions and customary laws. To-date this still remains almost the same, albeit it may vary slightly. Since the south has a few different political entities, some factional groups may not necessary have any form of set laws to guide that entity. For the sake of this discussion, I will talk about the case of areas administered by the Sudan People's Liberation Movement/Army (SPLM/A), which, is the mainstream southern opposition group and has the largest population and geographical coverage of all other southern factions.

In August 1998 Sudanese women representatives from the grassroots, internally displaced and refugees and the Diaspora held an historic and first of its kind Women's Conference in Sudan's history. The outcome was a policy document (by the women) outlining their demands for their greater and more effective participation in policy and decision-making processes of the SPLM/A. The women clearly outcried any motives/frustrations to sideline them from effectively participating in the nation building (including peace efforts) of the south Sudan. They further added their voices to the on-going efforts to the rehabilitation and strengthening of the civil society.

The SPLM/A has in several documents stated that it affirms and is bound by all international humanitarian and human rights laws without any reservations whatsoever. For example, The SPLM, in ARTICLE 3 of its Constitution has committed itself to respect human rights as stipulated in international conventions and covenants. This is extremely helpful when addressing the rights of all individuals. International human rights and humanitarian laws have attempted to address the respect to all kinds of human rights matters. The case in point here: How can women find ways to make the most out of this rigorous commitment by the SPLM? Has the SPLM fulfilled this commitment?

The SPLM Constitution, ARTICLE 3 has a number of positive issues, which if implemented fairly, would guarantee an optimistic proportion of equality between men and women. Of these positive issues they are nation-building mobilization, respect for human rights as stipulated in International Conventions and Covenants, participatory democracy, justice and equality, promotion of self-reliance and economic self-sufficiency and emancipation of women and development of youth. However optimistic this may sound, what are still missing are clear, practical, implementable, policies and mechanisms, which would be able to enforce these provisions. Paramount and what is needed actually is the political will to achieve gender equity.

However, it is worth mentioning here that in the same Constitution, ambiguity remains yet another catch. For example, filtering through the other parts of the SPLM Constitution, examples where clear policies can be incorporated and would hence be more explicit is ARTICLE 6 which is on the Village or Ward Meetings: The wording of this provision says that “the village or ward shall consist of from ten to several hundred persons occupying the same geographical territory or work place”. For practicality’s sake, and given the background of the socio-cultural position of women, the SPLM’s policy is recommended to explicitly say something to the effect that every effort should be taken in order to involve women at this level of authority. Furthermore, this should ensure a certain percentage of seats to be reserved for women. This is particularly important with rural women who make up a formidable backbone of their communities and are proportionately larger in number than men and thus should be given an order of importance to participate effectively.

Other examples of the SPLM authoritarian bodies which form the Movement’s Constitution are: ARTICLE 9 on Regional Congress: the recommendation here should be that the wording should read “delegates which form it should include women. Furthermore, ARTICLE 11: says that the National Liberation Council (which performs actions necessary to give effect to the policies of the National Congress), we hereby recommend that this Article should read as follows: their election should pay particular

attention to a quota just reserved for women.

Despite the fact that there is a provision of a commendable part of this Constitution, for instance, the provision on Duties and Rights provides that all SPLM members are obligated to fight staunchly against tribalism, nepotism, favouritism and any other practices that might jeopardize social harmony. However, gender discrimination should have been included explicitly in this article as something that needs to be fought staunchly. Social harmony should mean in reality harmony, between women and men.

Recommendations and the Way Forward:

Chieftains and Women:

There are no women chiefs. This is despite the fact that traditional courts and other village matters are deliberated and decided mostly (in consultation with the elderly) by chiefs. It is hereby strongly recommended that comprehensive awareness has to be conducted in collaboration with the local authorities (SPLM/A included) to sensitise the community for women to be appointed as chiefs. Once women are appointed as chiefs a lot will change for the better in achieving justice.

Women: Policy and decision-making processes

As seen from the above, laws seem to be moving towards recognizing the rights of all individuals. The big question is: Why is it that women are still demanding for more recognition, effective participation in the decision and policy-making levels and for gender disparity programmes? The answer is simple: despite all these positive provisions, women are still marginalized. Women are not in any major decision-making positions and hence policies are still silent on how to practically implement these legislations. Unless women form a formidable part of this policy-making process, policies will not be able to address women's fuller recognition. Women's socio-econ-legal and political representation has separately and collectively been severely affected by the predominant negative attitudes.

Constitutional order, intent and governance, negative customs and culture, education and training, political and economic empowerment of women, poverty and sustainable development policies and various socio-legal issues—all have to be clear with the treatment of women and the role they play.

In addition, health matters, employment, violence against women and stereotype stigmatisation of women need to be fully reviewed. Studies on women in armed conflict have to be carried out so as to address issues

pertaining to violent crimes specifically committed against women, this needs to be addressed and exposed, perpetrators should be dealt with accordingly.

Cases of systematic rape and forced marriages should be explicitly provided for in the Constitution, in other enforcement agencies and policies. Peace-building efforts should look into ways on how women can be more effectively involved in resolving conflicts. Women should have a say in trying to influence policies with regards to matters related to peacekeeping, preventative diplomacy and related activities and in all stages of peace mediation and negotiations.

The Legislative Process

No legislation in south Sudan has been formulated in answer to the “Woman Question” or motivated by feminist concerns, more so, not even at the national level for that matter. Note that most would argue that laws provide for equality of the sexes and that women should take advantage of this equality. In reality, the question still remains whether formal judicial equality translates into substantive socio-economic and political equality. It is a fact that no women have been consulted in making and drafting of our laws, neither their implementation for that matter!

To overcome this obstacle, the following is strongly recommended:

- ❑ Legislative processes must be made sensitive to women’s concerns. This will require comprehensive articulation of these concerns in the context of national politics, and upon consultation with women.
- ❑ A Law Reform Commission is a promising institution which could be used as a bridge between women’s researched issues (crucially locally specific-based research to be part of this) and the legislative process.
- ❑ More women legislators should be elected; awareness campaigns should help in this process.

The Judicial Process

The judicial process is an important medium for posing and resolving the “Women Question” in at least three ways. First, a sensitive judge can use his/her interpretative discretion in favour of a feminist issue. Second, a sensitive attorney can push for feminist concerns in his/her arguments and submissions thereby opening room for adjudication on the issue. And thirdly, the judicial process holds promise for public interest litigation on various relevant issues which can easily articulate women’s concerns. In the context of New Sudan, men dominate the judiciary (and lawyers) and law

enforcement agencies. Again, my recommendations would include that some of these positions need to be staffed by women. This will be an important beginning in sensitising the judicial process. Also women can form part of traditional courts acting as judges. In addition, paralegal training can also help with women's more effective involvement in the judiciary system.

The Administrative Process

The administrative process can be used to articulate women's concerns in at least two ways. First, laws must be implemented to be effective. An administrator may simply ignore the law or apply it to defeat the legislative intent. This happens when the administration lacks staff or other resources, even more so when the administrator does not understand or believe in the policy(s) to be implemented. Secondly, legislation normally is phrased in such a way that power becomes vested in the administration to formulate the rules for implementing the policy. Again, here it depends on how the administration understands or abuses the policy.

Thus the gender comprising administration really matters here. *Given the powers of the village, country, and national administrators over the daily lives of citizens – a majority of whom are women: why then not consider the impact of women chiefs, village administrators, commissioners and even governors on the Woman Question?*



Women Recognised only when
Married or as Mothers

Samia Hashmi,
Mutawinat Benevolent Company, Northern Sudan



Summary

SAMIA HASHMI OF MUTAWINAT BENEVOLENT COMPANY, Northern Sudan notes that since independence in 1956, Sudan has passed six constitutions. The current constitution, in force since 1998, is divided into nine parts and has provisions for women. The state assumes responsibility for caring for the institution of the family including child upbringing, marriage, pregnant women and mothers. Hashmi however concludes that the provisions on reflection only reduce and exclude women from decision-making. The state, one notes, recognizes women only when they are married, as mothers or if they are pregnant. The state recognizes only the reproductive function of women.

According to her, contradictions exist between statutory laws, customs, and religion. The constitution has claw backs clauses and it is these which have made it imperative for the women of Sudan to continue lobbying and advocating through workshops for the articles to be amended accordingly. There are also contradictions in the constitution in regard to women, she notes.

Participants were emphatic that the wrong interpretation of the tenets of Islam was responsible for much of the women's suffering in both north and south Sudan and therefore, there was need to harmonise the constitution and other value systems and practices.

The constitution is the highest legislation in any state, as it reflects the form, political structure and citizen's rights benefits. As such, the Constitution is the mechanism which organizes the relationship between power and freedom.

Since its independence in 1956, Sudan has passed six Constitutions on the following dates:

1. The first one was the Constitution of 1956.
2. The second one was the Temporary Constitution of 1964.
3. The third one was the Permanent Constitution of 1973.
4. The fourth one was the Transitional Constitution of 1985 and as amended in 1978.
5. The fifth one was the Constitutional Orders of 1989
6. The sixth one is the current Constitution, which has come into force on 30/6/1998.

The 1998 Constitution consists of 140 Articles in 9 Parts:

1. Part one deals with the State and Directive Principles.
2. Part two deals with Freedom, Sanctities, Rights and Duties.
3. Part three deals with Leadership and the Executive Organ.
4. Part four deals with the Legislative Organ.
5. Part five deals with the Justice System.
6. Part six deals with the Federal System.
7. Part seven deals with Other Systems and Organs.
8. Part eight deals with State of Emergency and Declaration of War.
9. Part nine deals with General and Transitional Provisions.

Provisions dealing with Women have been mentioned in ARTICLE 15, under the title "Family and Women", it reads as follows:—The State shall care for the institution of the family, facilitate marriage and adopt policies to purvey progeny, child upbringing, pregnant women and mothers. The State shall emancipate women from injustice in all aspects and pursuit of life and encourage their role thereof in family and public life.

As specified in ARTICLE 15, the State shall take care of women in the following aspects:

1. The state shall care for the institution of the family.
2. That it shall facilitate marriage and adopt policies to purvey progeny, child upbringing.
3. The state shall care for pregnant women and mothers.
4. The State shall emancipate women from injustice in all aspects and pursuit of life.
5. The State shall encourage the role of women in family and public life.

As seen, part one of the constitution deals with directive principles for the State and its organs and as such, they are not compulsory for the state to abide by them or to take them in consideration in its projects, and legislative organs in law. Therefore, they are not defined as rules controlled by constitutional adjudication. We feel that it is serious to leave women's rights unprotected by the constitution.

In light of this, what are the actions by the State in regard to family welfare, medical care and education and child upbringing? What does the State offer mothers and pregnant women? And what are the measures and actions or legislations taken by the state to emancipate women? In reality, nothing. Women are still suffering from unsafe pregnancy and delivery, illiteracy and are excluded from decision-making positions and peace negotiations.

Some remarks on the article: -

1. The article tackles and deals with married women, pregnant women and mothers. It therefore excludes unmarried and working women.
2. The wording of the said Article is general and vague.
3. Women's rights as stated in the said Article are limited under and by the constitution as specified in Article (19) of the Constitution.

On Women Rights: -

- ❑ Mothers shall be accorded care and attention and the state shall ensure adequate guarantee for mothers and working women. ARTICLE 55 of the Permanent Constitution of 1973 on Women, Children Rights.
- ❑ Mothers and children shall be accorded care and attention and the state shall ensure adequate guarantee for mothers and working women.
- ❑ ARTICLE 21 of the current constitution on the Right to Equality: All people are equal before the courts of law. Sudanese are equal in rights and duties as regards to functions of public life. There shall be no discrimination only by reason of race, sex or religious creed or wealth.

Reflections of equality in the said article are that there is:

1. Equality before the courts of law.
2. Equality in rights and duties as regards positioned functions in public life.
3. No discrimination by reason of race, sex or religious creed.
4. Equality in eligibility for public posts and offices.
5. No discrimination on the basis of wealth.

Despite the provisions of this Article, we think that there is discrimination against women in regard to employment in public institutions and offices. Some public and private institutions refuse to employ women under the

pretext that it goes against the Islamic code of conduct, which however does not prevent women from working. Sometimes some institutions add the line “only for males” when they advertise job vacancies.

Remarks on article 21: -

1. They use the term “All people are equal before the courts of law” instead of “All people are equal before law” because equality before the courts of law is different from equality before law, any law.
2. They use the word “only” while dealing with discrimination on the basis of race, sex and wealth, etc
3. Article 25 of the said draft Proposed Constitution reads “All people are equal before the law, Sudanese are equal in rights and duties; and there shall be no discrimination by reason of race, sex or religious, or opinion.”

ARTICLE 23 of the current constitution deals with freedom and right of movement: Every citizen shall have the right of freedom of movement, residence in, exit from and entry into the country; and his freedom shall not be restricted save under safeguards of the law. The Constitution shifted the organization of the right of movement to be governed by the law, and it is not mentioned if this law is in compliance with the constitution or not. As a result of this, women are facing unjust regulations in regard their movement.

ARTICLE 22 of the current constitution deals with nationality. Every person born to a Sudanese mother or father shall have a non-alienable right to enjoy the country’s nationality and its rights and bear its obligations. This was the first instance that a Sudanese woman could confer nationality to her children. In the past, only children born to a Sudanese father would automatically bear Sudanese nationality. However, there is need to amend the Nationality Act of 1997 as it does not comply with the constitution in regard of this Article.

The Position of Women in Part Three

Leadership and the Executive Organ

In the current constitution, women are eligible, and have the right to be nominated for Presidency of the Republic. However, women cannot practice this right unless they are educated and empowered.

The Position of Women in Part Four

Legislative Organ:

The current National Assembly is composed of: -

- 1) 75% by way of general direct suffrage from the geographical constituencies.
- 2) 25% by special or indirect suffrage representing women as well as scientific and professional classes representing states or national electoral colleges.

Therefore, women can be members of the National Assembly through direct or indirect suffrage. It is not clear however what percentage of the 25% is for women or how the state will stick to it.

The involvement of women in public life, decision-making or political participation is not a matter of mere rights guaranteed under the constitution. It is a long process that starts with education, mobilisation and empowerment of the woman. While struggling for their rights and recognition, women should bear in mind that the functions of the National Assembly are: -

- a) Pass plans, programmes and policies relating to the State and the society;
- b) Pass the draft constitutional amendments and pass legislative bills and provisional decrees;
- c) Pass the general budget of revenues and expenditure;
- d) Pass bills ratifying international conventions and agreements;
- e) Monitor the performance of the Executive;
- f) Initiate or participate in political and social mobilization;
- g) Issue resolutions on public affairs.

The Position of Women in Part Five

Justice System:

The Judiciary in Sudan is responsible for its performance before the President of the Republic. According to the Constitution, the President shall appoint the Chief Justices and other Judges upon the recommendation of the Supreme Council of the Judiciary.

So far, no woman judge has been a member of the Supreme Council of the Judiciary. Since 1989, no female judge has been appointed in the judiciary although competent candidates applied for the job.

The Position of women in Part Seven

Other Systems and Organs:

1. **Disciplined Forces:** women are now eligible to be appointed and promoted in the disciplined forces.
2. **The Public Service:** the State shall practice fairness in assigning public posts on the basis of academic and practical qualification with regard to due balance in gender. In reality however, women are excluded from certain jobs despite these provisions.
3. **Employees Justice Chamber** has competence to consider and determine the grievances of employees. The supervision and appointment of the Chamber shall be by the President of the Republic or the Governor of the State as the case may be.
4. **Public Grievances and Corrections Board:** this board is not part of the Judicial System and it is not mentioned in the Constitution. Furthermore, it is not mentioned whether this board shall not pass any decisions in accordance with any rights secured by the Constitution International Conventions. So, decisions will be subjected to the person who takes such decisions (the standard will be subjective not objective).

9

Great Gains Made But Still a Lot to Be Done

Jackie Orach, FIDA Uganda



Summary

MS. JACKIE ORACH OF FIDA-UGANDA NOTES IN HER PAPER THAT THE government of Uganda has attached importance to the emancipation of women through policy and legislation. This is indicated in the current constitution, which unlike the previous ones, has made adequate provisions specifically addressing the rights of women. Women are accorded equal treatment with men in the political, economic and social activities. She states that the constitution outrightly prohibits laws and customs which are against the dignity, welfare or interests of women or which undermine their status.

But according to her, the constitution may seem very positive and encouraging for women. However, she noted some customary and religious practices are detrimental to the enjoyment of women's human rights. There are also discriminatory provisions in domestic and property laws as well as ineffective legal protection for women, she argues. She outlines useful strategies that women could use in implementing or being part of the process of constitution making and makes suggestions for a way forward.

Participants noted that in Uganda, there is a lot of political goodwill to see that the tenets and provisions of the constitution are adhered to. However, they noted that the progress made should be monitored and evaluated continuously through a clear mechanism. FIDA (Uganda) has put in place a checks and balances system; the government also has a Human Rights Commission, which is mandated to submit a yearly report.

However, it was observed that there are certain customs and aspects of religion which need to be carefully analysed as they have tenets that are actually of value to women and safeguard their rights.

I. Introduction

In recent years, governments in many parts of the world are attaching importance to the emancipation of women through policy and legislation. Uganda is no exception.

Uganda has a total area of about 241,500 square kilometres and a population of approximately 21 million. Forty-seven percent of the population is under 15 years of age.¹ Women constitute 54% of Uganda's population, but up to 60% of those living below the poverty line are women. Although women constitute 70% to 80% of the agricultural labour force, only about 8% own land while 30% have access or control over proceeds.²

In the education sector, gender imbalances are evident in the literacy rates and access to education. According to the Population and Housing Census (1991), 61.3% of females are illiterate as compared to 38.7% males.³

The greatest proportion of the illiterate population in Uganda therefore comprises women. The Government thus initiated affirmative action programmes aimed at addressing this imbalance. This included increasing admission of female students to the largest government university (Makerere University) by virtue of an additional 1.5 point bonus to the total score of female entrants.

Similarly, gender imbalances are evident in the health sector. As such, the health status of women and children is particularly poor. This is attributed to the long standing wars which resulted in destruction of infrastructure and deterioration of the health care system and the HIV/AIDS epidemic which has a gendered impact. Women's lower social status and discriminatory cultural practices relating to marriage, sexuality and reproductive rights increase their vulnerability to infection.

Regarding employment, according to the Uganda Manpower Survey of 1988, women make up 20% of formal sector employment and are mainly concentrated in lower paid jobs. Women in the skilled category comprise only 26% of the total number of women in the formal sector. Eighty percent of women work in the informal sector. Many are engaged in agriculture but few have control over land or its produce due to socio-cultural factors that promote male control of productive assets.

In the political arena, more women have in recent years contested for political leadership, though discrimination is still rife on the basis of sex. Uganda has over 50 districts, each of which is represented in parliament by a woman Member of Parliament in addition to Members of Parliament representing constituencies in each district. At the moment, there are less than 15 female ministers and only ten female judges in addition to the Vice President. The first female Deputy Chief Justice assumed office this

year. The mandatory representation of women in the local governance structure has improved women's participation in the local councils (i.e. one-third). Few women are serving on constitutional bodies such as the Uganda Human Rights Commission, Electoral Commission and Education Service Commission, among others. As mentioned before, the prevalent negative social and customary practices have created a negative impact on women's welfare and advancement.

II. The Legal and Institutional Framework in Uganda

It is imperative to examine the legal and institutional framework that has been designed to address the rights and welfare of women for purposes of assessing where we are now and what needs to be done for purposes of improvement.

The Constitution

The previous Constitutions of Uganda of 1962 and 1967 had no adequate provisions specifically addressing the rights of women as a marginalised group. The 1995 Constitution of Uganda, which was adopted on 8th October, of the same year, is a landmark in the promotion of constitutionalism in Uganda, having been written and promulgated through representatives of the people. Its provisions regarding women are noteworthy. Some relate to human rights in general while others specifically relate to women.

Some of the general provisions on human rights governing women include the following: -

- ❑ Equality before and under the law in all spheres of political, economic, social and cultural life, in every other respect and equal protection of the law.⁴
- ❑ Not to be discriminated against among others on grounds of sex, ethnic origin, tribe, religion, or social or economic standing, political opinion or disability.⁵
- ❑ Not to be subjected to torture, cruel, inhuman or degrading treatment or punishment.⁶
- ❑ Not to be held in slavery or servitude.⁷
- ❑ Right to own property individually or in association with others.⁸
- ❑ Right to a fair hearing.⁹
- ❑ Freedom of conscience, expression, movement, religion, assembly and association.¹⁰
- ❑ Right to education.¹¹

- ❑ Right to marry and have a family and to equal rights in marriage and at its dissolution.¹²
- ❑ Right to live with, care for and bring up children.¹³
- ❑ Right to equal pay for equal work, adequate rest, collective bargaining, to practice one's profession and to carry out any lawful occupation, trade or business.¹⁴

The provisions specifically relating to women are as follows: -

- ❑ To be accorded full and equal dignity of the person with men.¹⁵
- ❑ Right to equal treatment with men including equal opportunities in political, economic and social activities.¹⁶
- ❑ Right to affirmative action for purposes of addressing the imbalances created against them by history, tradition or custom.¹⁷
- ❑ To be accorded protection during pregnancy and after birth.¹⁸

Pursuant to the above, the Constitution obliges the state to do the following for purposes of bringing the said provisions on women's rights to fruition:

- ❑ To establish an equal opportunities commission for the purpose of addressing the existing imbalances against women.¹⁹
- ❑ To provide the facilities and opportunities necessary to enhance the welfare of women to enable them realise their full potential and advancement.²⁰
- ❑ To protect women and their rights, taking into account their unique status and maternal functions.²¹

The Constitution thus outrightly prohibits laws, customs, cultures or traditions which are against the dignity, welfare or interest of women or which undermine their status.²² As to whether these provisions are being adequately implemented is yet another matter.

Other national legislation

The government of Uganda has in the past five years made efforts towards improving the legal status of women geared towards gender equality and equity through law reform. The Law Reform Commission has played a significant role in this area.

The Land Act 1998

The Land Act 1998 came into force among others to streamline management and ownership of land. It gave special protection to spouses and children among others. As such, one cannot dispose off or enter into any transactions

regarding family land or that from which the family derives sustenance without the written consent of the other spouse, the dependent children and minors.²³

Further, the Land Act specifically provides that any decision taken in respect of land held under customary tenure whether in respect of land held individually or communally which denies women or persons with disability access to ownership, occupation or use or violates the constitutional provisions safeguarding women, children and persons with disabilities shall be null and void.²⁴

Women are also entitled to be represented on land administration bodies. However, there are still notable lacunas in this law as we are yet to witness the inclusion of the co-ownership clause of land by spouses.

The Local Government Act, 1997

In addition is the Local Government Act 1997, which provides for women's representation in political leadership from village to district level (one-third).

The Children Statute 1996

The Children Statute 1996 came into force among others to provide for the care and protection of children and set up the enforcement mechanisms. The provisions of the Statute if adequately realised would contribute significantly towards stability of families as it has adequate provisions emphasizing the rights and welfare of children. It is however worth noting that there are still some operational discriminatory laws including the domestic laws governing marriage and divorce and property yet the family is the natural and fundamental group unit of society and is thus entitled to protection by the society and the state. This can be achieved among others by using the law. It therefore poses a big problem if such laws are discriminatory.

The Domestic Relations Bill 2000

The said Bill which arose from that of 1999 is to date still pending in the shelves of parliament as the previous parliament neglected to pass it into law. Some of the provisions of the Bill which are geared towards reviewing the discriminatory domestic laws and filling in existing gaps in the law if passed are: -

Offence of adultery

To be deemed to be committed if a party to a marriage has sex with another

party i.e. both parties would be guilty. The present law defines adultery as sexual intercourse between a married woman and any man not being her husband and for a man as only committed when he has sex with a married woman.²⁵

Sex without the consent of the other spouse (marital rape) To constitute both a criminal and civil wrong. The said provision would require consent to sex in recognition of equal rights in marriage especially that of women who are traditionally perceived as having no say in the matter.

Matrimonial property

The Bill advocates for protection of matrimonial property and consideration of contribution of spouses, both monetary and non-monetary upon divorce. In most cases women have been oppressed due to bad customs and the fact that their contribution is normally non-monetary such as domestic work and child care.

Irretrievable breakdown of marriage

The Bill proposes that this should be a sole ground for divorce. The present divorce law permits divorce only after the grounds adduced have been proved. The grounds are not uniform as a husband can be granted divorce on grounds of adultery alone while a woman must in addition to adultery adduce another ground and is not entitled to damages.²⁶

National Policies

Relevant national policies put in place include that of the Ministry of Gender, Labour and Social Affairs namely the National Gender Policy 1996 and the National Population Policy 1995 geared towards eliminating gender imbalances.

The Ministry of Water, Lands and Environment established the Land Act Implementation Steering Committee and Sensitisation Task Force for purposes of protecting the land rights of disadvantaged groups through policy making and sensitisation.

The Justice, Law and Order Sector under the Ministry of Justice and Constitutional Affairs seeks to cover civil, criminal and administration of justice and improving maintenance of law and order. The process has just begun so its impact is yet to be seen.

Institutions and enforcement mechanisms

Institutions in the justice system comprise mainly the Ministry of Justice and

the Judiciary. Other key ministries concerned directly with the rights and advancement of women as seen include that pertaining to Land; Gender, Labour and Social Affairs; Local Government (decentralisation); Health and Education among others.

Alongside these ministries, it is worth mentioning law enforcement agencies such as the police, local councils and probation and social welfare officers who have a very crucial role to play in protecting the rights of women and children so as to contribute to the process of good governance.

Constitutional bodies are also playing their useful role in society in promoting observance of human rights generally. Notable among these is the Uganda Human Rights Commission, which has set up regional offices within the country. The Commission carries out rights awareness, research, monitors the human rights situation, and investigates complaints of violations of human rights among others. The Human Rights Tribunal hears cases of rights violations and awards remedies.

The Electoral Commission among others has a duty to organise elections and implement civic education programmes. However in the last elections the latter was not effectively done owing to time factor and inadequate funds.

International Instruments

Key international instruments which Uganda has ratified and is therefore bound by their provisions include:

- ❑ The Universal Declaration of Human Rights.
- ❑ The International Bill of Rights including:
 - The UN Charter.
 - The Covenant on Economic, Social and Cultural Rights.
 - The Convention on the Rights of the Child.
 - The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Those relating specifically to women ratified include:

- ❑ The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) which is the most comprehensive codified international legal instrument articulating equality between men and women and sets out the Bill of Rights of Women. Uganda ratified CEDAW without reservations in July, 1985.
- ❑ Vienna Treaty On Human Rights.
- ❑ Vienna Program of Action.
- ❑ Declaration of the International Conference on Population and Development (ICPD).
- ❑ ICPD Program of Action.

Other regional human rights instruments ratified by Uganda are:

- ❑ African Charter On Human and People's Rights.
- ❑ Convention on the Rights Of the African Child.

Uganda has also participated in international conferences aimed at promoting human rights in general and that of women and children such as:

- ❑ World Conferences on Women in Beijing (1995); Mexico City (1975); Copenhagen (1980) and Nairobi (1985).
- ❑ Summit on Children, New York (1990).
- ❑ International Conference on Population and Development, Cairo (1994).
- ❑ Social and Development Summit, Copenhagen (1995).

III. Barriers faced

Customary, religious and social practices

As stated earlier, many deeply rooted customary, religious and social practices still pose a major challenge to women's advancement. Examples of such negative practices are:-

- ❑ The patriarchal nature of society which views women as inferior to men. Even enlightened women are treated as such. Hence, the widespread discrimination against women in the political, social and economic spheres. This explains why many men termed FIDA (U) as housebreakers/ wife spoilers even after being enlightened about FIDA (U)'s mission and objectives.
- ❑ Women denied a say in reproductive matters. Society deems children born in marriage as belonging to a man, therefore the husband's view should prevail regarding family planning. Consent of husbands or their spouses is thus at times required.
- ❑ Marriage is not considered complete and binding without children. Society thus allows extra-marital affairs to enable a husband whose wife is barren to get children.
- ❑ Barren women are thus many times thrown out of home or disinherited on their husband's death.
- ❑ Women are not supposed to own property especially land. Upon the death of their spouses, they are disinherited by the clan (comprising of men). Even where wills are made, the law is often not followed. In some cultures, girls do not own land (e.g. among the Lango, Alur, etc.) yet women are the producers of wealth.

- ❑ Career women, too are oppressed by their husbands. Sometimes matters of promotion, appointment and transfer are discussed with the latter before decisions are made. This coupled with the fact that they have to devote much time looking after children, the family and attending to other domestic chores prevents them from pursuing their careers to the best of their abilities.
- ❑ Wife beating is customarily allowed to the cruel extent that it is seen as a sign of affection or influencing behaviour.
- ❑ It is not permissible for a woman to question a man's authority i.e. a man is free to do what he wants regardless of the consequences.
- ❑ In some areas (e.g. eastern and northern Uganda) education of girls is still seen as a waste of resources.
- ❑ Bride price which has a tendency of lowering the status of women to a level of acquired property to be handled in a manner deemed fit by the property owner.
- ❑ Existence of customary practices that directly endanger women's health, at times resulting in death. E.g. female genital mutilation whose grave consequences range from urinary complication, shock, pain and difficult sexual intercourse, severe haemorrhage, infertility and severe difficulties in child bearing and deliveries.
- ❑ The fact that children are deemed to belong to their fathers. Many mothers have been denied custody on this basis while others simply give up their rights.
- ❑ Some women do not work for gain owing to outright refusal by their husbands yet some are irresponsible or unable to provide adequate maintenance for their families.
- ❑ Polygamy is generally recognised. In some societies, marrying many wives and having many children is still seen as a sign of prestige despite the AIDS scourge and prevailing economic conditions which dictate upon couples to have manageable numbers of children.

The list of customary practices that are gender insensitive and a violation of women's human rights cannot be exhausted.

Other problems faced

- ❑ There are still many discriminatory laws as seen including the domestic relations and property laws.
- ❑ There are gaps in effective legal protection due to gender "neutral" legislation that consequently fails to tackle existing de facto gender discrimination e.g. in the land legislation.
- ❑ Failure of the legal system to acknowledge the existence of certain practices that are rampant and yet violate women's human rights such as domestic violence and marital rape.

- ❑ Much as there is rights awareness going on, many women still do not know their rights and so are unable to speak out when abused.
- ❑ Even where there is rights awareness, many are unable to speak out due to fear or embarrassment and the fact that they may be economically dependent on their male companions or spouses and so would rather succumb to the mistreatment or rights abuse as they are unable to redeem themselves. Some are unable to opt out of brutal and unhappy marriages as their parents are unable to refund the bride price.

Constraints women face in accessing justice include:

- ❑ Gender bias in administration of justice even where gender responsive laws exist. No wonder law enforcement agencies at times offer little or no help when crimes are committed against women terming them 'private matters' to be resolved at home or within the family context as the home and the family are considered private and outside the jurisdiction and protection of public institutions.
- ❑ Location and geographical distance from formal courts coupled with lack of control over financial resources in the household.
- ❑ Delays in the justice system due to inefficiency, inadequate resources and corruption among other factors that necessitate frequent visits over long periods, thereby aggravating these costs.
- ❑ Low education levels, foreign language of the courts (English) and fear of the difficult and unfamiliar court process.
- ❑ Inadequate funds and human resources by the State. In large districts probation officers cannot serve the entire district. Law enforcement agencies are most times not sufficiently facilitated in their work. The state has to date failed to implement some of the salient provisions of the Land Act e.g. establishment of land tribunals which would bring justice nearer to the people (access to justice) and ensure quick resolution of disputes.

IV. The Role of International, Local and National Non Governmental Organisations, Civil Society and the Media in Combating Gender Discrimination

Role of International, Local and National NGOs

Non Governmental Organisations (NGO's) play a very significant role in promoting protection of human rights. The political climate in Uganda has enabled an effective and well co-ordinated women's movement for women's rights and emancipation. NGOs such as Akina Mama Wa Afrika, National Association of Women Organisations of Uganda (NAWOU), Action

for Development (ACFODE), Forum for Women in Democracy (FOWODE), Uganda Women's Network (UWONET), Land Alliance and FIDA (U), etc. are playing a big role in promoting the role and rights of women in Uganda and advocating and influencing policy change towards women's emancipation.

Success stories in which FIDA (U) and other NGOs actively participated in are the Land Act 1998. We are yet to witness a similar process regarding the Domestic Relations Bill 2000.

The 1995 Constitution of Uganda in its National Objectives and Directive Principles of State Policy requires government to guarantee and respect the independence of NGOs that protect and promote human rights.²⁷

Government has thus expressed commitment to do the following:

- ❑ Provide additional incentives for high quality NGOs that operate in isolated locations; and
- ❑ Be more deliberate in contracting NGOs with the necessary capacity to implement or supervise publicly funded programmes.

At the district level, the government has undertaken to issue clear guidelines on how best to integrate NGOs in district planning and monitoring arrangements.

At the district and national level, NGOs play a role as advisors, service providers and change agents. It is thus not surprising that the government has adopted a consultative and inclusive approach to NGOs in the human rights sector through the Justice, Law and Order sector for purposes of coordinating the activities of such NGOs to complement each other's efforts.

Other general interventions by NGOs relate to:

- ❑ Carrying out rights awareness.
- ❑ Highlighting the special needs of women.
- ❑ Highlighting the discriminatory practices against women and the girl child.
- ❑ Spearheading advocacy process on gender equality.
- q Strengthening women's economic position by affording them credit facilities from institutions like Uganda Women's Finance and Credit Trust, the revolving fund popularly known as *entandikwa*, etc.

FIDA (U)'s role in creating a more enabling legal environment for women

FIDA (U)'s mission is to empower vulnerable groups, especially women and children, to achieve social justice by promoting equality and equity under the law. Currently, FIDA (U) operates through a secretariat and three branch offices in eastern, western and northern Uganda. FIDA (U)'s objectives are thus to:

- ❑ Increase access to justice and legal protection of members of vulnerable groups particularly women and children through legal advice and implementation.
- ❑ Build capacity within communities to mediate and transform conflict through skills training and linking to peace processes.
- ❑ Raise awareness in communities on human rights through legal education and gender sensitisation.
- ❑ Influence the enactment of gender responsive legislation through information and advocacy.
- ❑ Strengthen the collaboration between actors working towards women's attainment of justice and development.
- ❑ Provide a platform for the professional development of women lawyers.

FIDA (U) has recognised the need to create a more strategic focus by addressing both the practical and strategic needs of women and children to enable it sustain and consolidate its gains.

FIDA (U)'s programmes thus encompass interventions at the different levels at which gender inequality is sustained from the local to the national levels. These are:

- ❑ Household level – Legal aid service is offered to individuals seeking redress or mediation of inter-personal conflicts primarily within families.
- ❑ Community level interventions – Legal education and mobile clinic programmes in areas of operation, organised groups and other parts.
- ❑ District level – Training of Community Based persons (paralegals) and law enforcement officers on basic laws affecting the community and redress procedures, and building local partnership with the districts for purposes of sustainability.

FIDA (U) networks with government, other legal aid service providers, law enforcement agencies and NGOs dealing with similar issues for purposes of more effective implementation of programmes.

FIDA (U) has over the recent years become a leading advocate on issues of women's rights. It initiated the first legal aid and legal education programmes in Uganda in the eighties.

The organisation has thus gained recognition in the line ministries of Gender, Labour and Social Affairs and Justice and Constitutional Affairs. It is consulted by government departments on issues relating to women's human rights, gender and the law as a recognized key actor.

FIDA (U) further realised the need to strategise viz public interest or strategic litigation for purposes of constitutional interpretation, as legal precedents and jurisprudence are lacking in many areas of the law that

affect women and children. This would mobilise the society to recognise and actively fight for their rights, thereby strengthening civil society. Public interest litigation would also offer an opportunity to NGOs concerned with social justice to fuse their educational, advocacy, and counselling and litigation roles into an integrated, coherent, people based movement for justice. As such, one member's private firm is handling a court case on issue of property distribution under the Divorce Act and damages for adultery (in favour of husbands only). FIDA (U) is providing support (legal research).

FIDA (U) is also in the process of submitting memorandum to the Constitutional Review Commission on proposals for amendment of the Constitution. The main areas targeted relate to gender equity, equality and women's advancement.

Some of the success stories of FIDA (U) towards creating a more enabling legal environment for women are:

- ❑ It has spearheaded many advocacy campaigns. Notable is the reform of children's laws viz the enactment of the Children Statute 1996.
- ❑ It is the lead NGO in the legal aid working group of the Justice, Law and Order Sector.
- ❑ It is a member of both the steering committee and sensitisation task force of the Land Act Implementation Steering Committee and Sensitisation Task Force. Hence, FIDA (U) was commissioned by the ministry responsible for lands to disseminate the Land Act to various districts at grassroots level.
- ❑ Key government agencies such as the Directorate of Ethics and Integrity; Administrator General's Office; Directorate of Public Prosecutions, etc. refer many women to FIDA (U) for legal representation where the women are unable or unwilling to obtain private legal representation.
- ❑ Many cases relating to marital disputes, maintenance and child custody are resolved through mediation.
- ❑ Many of such other such cases are successfully concluded in court by FIDA (U)'s legal officers and external advocates.

At the global level, FIDA (U) has participated in advocating for a more favourable environment for women on issues such as discrimination, gender violence and HIV/AIDS. FIDA (U) participated in lobbying within the African caucus at the Commission on Status of Women (CSW) for inclusion of Africa women's concerns in the UN agenda on discrimination and HIV/AIDS among others. It is hoped that through this conference, FIDA (U) will strengthen further strategic partnerships with its allies for better attainment of its objectives as stated.

It is evident that civil society's role in promoting women's emancipation and observance of human rights as a whole must not be downplayed. In line with this, the preamble to the Constitution of Uganda binds the people

to build a better future by establishing good governance based on the principles of unity, peace, equality, democracy, freedom, social justice and progress. Every citizen is thus duty bound to acquaint him/herself with the provisions of the Constitution and to uphold and defend the Constitution and the law. It is worth noting that one cannot demand for his/her rights if he/she is ignorant of the law. The state thus has a duty to promote public awareness of the Constitution. As such, the 1995 Constitution of Uganda was translated into the four major languages of the country for this purpose. Other salient laws such as the Land Act have also been translated in some languages and are being disseminated to the grassroots. FIDA (U) continues to contribute to this process by translating and disseminating laws that affect the community. Other NGOs are also involved in this process and others targeting communities.

The judiciary too has a duty to develop the Constitution in order to secure democracy and people's political, social and economic rights. Hence, any person or organisation may bring an action against the violation of another person's or groups human rights.²⁸

The Constitution further authorises any person who alleges that an Act of Parliament or any other law or anything in or done under the authority of any law or any act or omission by any person or authority is inconsistent with or in contravention of a constitutional provision to petition the Constitutional Court for a declaration to that effect, and for redress where appropriate.²⁹

Individuals and institutions are beginning to invoke these constitutional provisions on interpretation. However, the courts are yet to provide clear avenues for constitutional development through such interpretation. As such, the gains so far made in this area are very minimal, coupled with general lack of awareness, inability to afford private legal services and undue technicalities in procedure.

For civil society to operate effectively, there is also need for an enabling environment, progressive legislation and institutional mechanisms in which organisations which are committed to human rights can operate, coupled with the need for such organisations to directly engage social and economics issues from a rights- grounded perspective.

The Role of the Media

The Constitution of Uganda clearly spells out the right to freedom of speech and expression, which includes freedom of the press and other media.³⁰

The media has a crucial role to play in championing human rights and the women's cause (tool of advocacy). The media has contributed significantly to this process as government, NGOs and civil society all use it for this purpose. However, members of the press have often been victimised and charges framed against them (sedition) attributed mainly to political

dissent. The media has not given up despite such persecution.

The media also highlights negative occurrences in society which constitute gross violation of human rights for purposes of influencing attitude and sensitising the public on the existing mechanisms for redress. However, the media has at times created a negative impact by virtue of unresearched information, gross exaggeration of facts, biased reporting or coverage of news items, unnecessary criticism, etc.

Notwithstanding the above, there is need to raise the quality of reporting on legal processes and informing and enlightening the public about the legal system through sensitisation and skills training because as the saying goes 'no one is above the law' and 'ignorance of the law is no defence.'

FIDA (U) has plans in this direction to develop and build strategic partnerships with the media and media organisations such as Uganda Women Media Association (UMWA).

V Looking Ahead

In spite of the gains achieved in improving the legal status of women, there is not yet equal protection for women. There is therefore need by all stakeholders involved to critically examine and analyse the social and economic conditions that underpin the legal order and perpetuate gender violence for purposes of initiating practical and long-term solutions.

The following measures are proposed:

- ❑ All stakeholders should promote the quest for justice through continuous and increased sensitisation, advocacy and qualitative activism on legal and human rights as it is only people who are aware of their rights that can pursue remedies for their violation.
- ❑ From past efforts this can be complemented by non-professionals (paralegals) who could also give advice at the lower levels; direct persons where to seek legal redress or services; draw simple documents including commercial documents, wills and court papers; represent others in judicial fora and participate in legal literacy programmes. Such efforts would counter the existing gaps in the administration of justice and access to justice.
- ❑ Similarly, continuous sensitisation of law enforcement agencies and relevant actors would enable them have a positive attitude towards the plight of women and hence handle cases professionally and expeditiously.
- ❑ Lessons learnt from the past call for a comprehensive policy and call for a scheme by governments on legal aid. Legal aid in Uganda is presently being offered by NGOs such as FIDA, Legal Aid Project of Uganda Law Society (LAP) and Legal Aid Clinic of the Law Development Centre (LAC).

The arrangement by government to have private advocates represent persons charged with capital offences (state briefs) is insufficient. Yet, government is obliged to substantially contribute to access to justice by all citizens.

- ❑ Intensify public interest litigation so as to create legal precedents and jurisprudence. The benefits as already discussed would promote gender equity and equality and constitutional development. The judiciary must also effectively and progressively translate international and regional human rights instruments into the domestic context.
- ❑ Adopt strategies that are not confrontationally anti-culture but instead educate for public awareness as lessons learnt confirm that such strategies would contribute positively to influencing attitudes more so in view of the significant importance attached to culture in African societies.
- ❑ Lobbying and advocacy for purposes of review of the Constitution and amendment and enactment of gender sensitive laws to address issues such as gender violence and domestic relations as a whole since one of the most serious sources of human rights violations particularly that of women is the family. This is attributed to gender relations, age and sex discrimination. This further calls for far-reaching reforms, targeting from the smallest unit of society (the family), to the biggest unit (the State).
- ❑ Consolidating the land rights of women in the law through among others co-ownership of land by spouses. This would foster development and uplift women's status, the struggle to eradicate poverty being an integral part of the struggle to end the subordinate status of women in society. Such measures would give women security of tenure and recognition of their invaluable input in the agricultural sector and economy of the country.
- ❑ Customary practices that violate women's human rights are the economic emancipation of women. As long as women are surrounded by negative customary practices, they can neither compete with men favourably nor on equal footing.
- ❑ Intensify efforts at alternative dispute resolution. Such practices as mediation and arbitration may make dispute resolution less expensive and lengthy.
- ❑ There is need for continuous information and advocacy by NGOs so as to devise more strategic focus which addresses both the practical and strategic gender needs of women. It is worth noting that for interventions to be successful, they must be holistic and strategic, addressing gender and other social variables in addition to legal concerns, be victim-centred and address punishment. NGOs, professional bodies and other stakeholders should position themselves to meet these challenges.
- ❑ Lessons learnt from the past further recognise networking as an effective means for actors committed to the same cause to attain the desired goal. This calls for the need to strengthen further links and collaboration

among actors who are committed to contributing to the process of gender equity and equality.

- On the international scene, although CEDAW has placed women's human rights and the question of gender- based discrimination on the agenda, a lot still needs to be done so as to realise the principles of equality and non-discrimination for which it was established. As such, the idea of an Optional Protocol to the African Charter On Human and People's Rights by gender activists around the continent that specifically deals with the situation of women and that would allow for individual complaints to be tabled is welcome. Presently, the Charter provides for a broad spectrum of rights and responsibilities while the African Commission on Human and Peoples' Rights has the mandate to compile reports on rights violations for attention of heads of states. The latter has been known not to respond urgently or at all even where urgent measures must be taken to promote human life. Thus, such a measure must be fully exploited in all practical terms so as not to remain on paper like most instruments, but critical attention must also be paid to the domestic content of each African country.
- Since women face the brunt of oppression in many respects, more women should be encouraged and given the opportunity to take up more active roles in the governance of society and in the protection of themselves from abuse and discrimination.
- Lastly, there is need for intensive lobbying and advocacy such that the State complies with its constitutional duties which among others is to take affirmative action to address the existing imbalances against women so as to enhance their welfare and advancement as upholding discrimination against women simply on account of their sex has several implications for their enjoyment of human rights (civil, political, social and cultural). This should also cover women in conflict situations such as the internally displaced and refugees who are often victims of abuse (torture, rape, etc).

In conclusion, one can confidently say that we are on the right track. However, there is still need for concerted efforts by all stakeholders involved towards improvement and ensuring that the international and national framework is not mockery and lip service to the women who continue to live helplessly but that the process of women's emancipation and advancement is brought to fruition. Otherwise, the existing weaknesses in institutional and legal mechanisms would continue dealing a blow to realisation of human and legal rights. The struggle continues.

Thank you very much.

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- 5 Article 21(2) Constitution
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- 15 Article 33 (1) Constitution
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3. 'Law And Access To Justice by Professor Frederick W. Jjuuko, presented at the Regional Conference on Law, Equity And Justice.
4. 'Gender And Conflict In Contemporary Africa' by J. Oloka-Onyango, presented at the African Women Lawyers Association (AWLA) Conference on Engendering The Peace Process In Africa, February 2000.
5. 'Gender And Customary Practices And Their Effects On Human Rights' by Theodora Bitature, presented at the International Bar Association Conference by Uganda Law

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The Ethiopian Experience

*Zenebework Tadesse,
Forum for Social Studies, Ethiopia*



Society, July 1995.

MS. ZENEBEWORK TADESSE, FORUM FOR SOCIAL STUDIES, ETHIOPIA, presented a paper on “Women and Constitution – the Ethiopian Experience.” She began her presentation by reminding participants that the Ethiopian Association of Women Lawyers had been suspended. The suspension, it was felt, was based on the associations’ agitation activities including those on the constitution and its effect on women. According to Zenebework, Ethiopia’s long civil strife and rule of dictators has contributed to gross violations of human rights, including those of women. The military has implied constant rhetoric about women’s emancipation, which however has not been backed up with legal instruments.

The policies of the government have centred on land and land reform. This however has assumed that women are producers and participate in production, which is not true. Female-headed households have suffered, as women traditionally are not supposed to own land.

It is clear that one can have policies on paper but unless those policies are enforced and backed, they remain ineffective. For example, the 1994 constitution recognises equality of gender, advocates non-discrimination on grounds of gender and outlaws practices that harm women. However, these are negated by religious and customary laws and courts that are often used in personal disputes. To Zenebework, this reversed the more progressive civil code of 1960, which had repealed customary and religious laws. The practice on the ground is different. Muslim courts continue to exist and apply Sharia Law.

Zenebework contended that less than 0.5 per cent of Ethiopian women know about the constitution. The constitution on paper appears egalitarian and modern, but there is provision for civil society to debate issues or review laws like the Pension Act to allow widowers to claim their wives’ pension. Zenebework shared some ambiguities in the new laws in respect to the right of spouses to choose professions, custody of children under five years of age and an increase in violence of all sorts against women.

In the discussion that followed, participants noted that there was need to address strategies dealing with constitutions that have contradictions between spirit and clause. Constitutions should not assume the homogeneity of values, customs and traditions.

It was noted that the context of rights in Ethiopia was heavy and oppressive. The women of Ethiopia could not afford to keep quiet. The right for values

must be stated clearly so that there was no misinterpretation.

It was observed that the culture of rights discourse should be given more prominence in civic education so that the sharper edge of customary and religious laws was taken out. One way of doing this was to harness the commonality of women and to use different initiatives including involving

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The Way Forward



men who were sympathetic to women's causes.

Strategies for Action

Participants made the following recommendations on strategies for

<p>STRATEGIES FOR IMPLEMENTING WOMEN FRIENDLY CONSTITUTIONS AND CONSTITUTIONAL CLAUSES</p> <ul style="list-style-type: none"> ❑ Lobby for a section in the constitution that deals specifically with personal rights vis a vis country rights. ❑ Insist on gender sensitive language ❑ Create awareness and civic education ❑ Involve women at all levels from drafting to implementation ❑ Make provision of gender budgets ❑ Monitoring independent bodies whether statutory or NGOs. ❑ Mainstream issues of human rights in the education system including the formal system ❑ Build consensus among different groups. ❑ De-politicise the constitution making process ❑ Develop regional mechanisms including model constitutions. ❑ Involve all in society in constitution making process. ❑ Constitutions should be in simple language. ❑ Training in advocacy skills ❑ Post implementation strategies through ensuring that all documents are engendered and in training all enforcers. ❑ Use of affirmative action as a clause in the constitutions as well as implementation policies.
<p>STRATEGIES FOR RATIFYING, DOMESTICATING AND ENSURING COMPLIANCE WITH INTERNATIONAL INSTRUMENTS</p> <ul style="list-style-type: none"> ❑ Sensitise policy makers ❑ Create constitutional review commissions with powers to ratify, sign, adopt and domesticate international instruments. The instruments must be part of domestic law. ❑ Civil society must monitor instruments to see that they are implemented. ❑ Parallel report writing ❑ Form system of checks and balances consisting of all stakeholders. ❑ Pressure groups, lobbies and watchdogs must be established ❑ Involve media—including print, electronic, community and traditional—and sensitise them on all issues.

STRATEGIES FOR ADDRESSING THE DISCRIMINATION OF WOMEN

- ❑ Make women more aware of religious doctrines and enable them to interpret them.
- ❑ Utilize existing structures for mainstreaming gender issues.
- ❑ Make religious organisations, school curricula and family set ups sensitive to gender concerns.
- ❑ Put pressure for implementation and enshrining of a culture of rights targeting police and lawmakers.
- ❑ Codify good customary and religious laws for attachment to the body of one constitution
- ❑ Set aside resources for implementation and monitoring.

STRATEGIES FOR DEALING WITH CLAW BACK CLAUSES IN CONSTITUTIONS

- ❑ Harmonise constitutions so that values and principles do not change.
- ❑ Remove compromised texts and provisions.
- ❑ Ensure adequate representation of women in constitution making and reviewing in terms of numbers, quality and support.
- ❑ Ensure participation of women in the constitution making and reviewing process.
- ❑ Help build a strong empowered civil society.
- ❑ Engender and lobby religious institutions.

STRATEGIES FOR INFLUENCING REGIONAL AND INTERNATIONAL BODIES

- ❑ Educate women on specific regional and international bodies in regard to their structure, their charters and what they say about women.
- ❑ Demand that women are represented on both formal and informal structures.
- ❑ Identify organizations in each country that will feed into a regional network to influence regional and international bodies to press for women's concerns.

ACTION PLAN

Activity	Time frame	Action
Collective Action	Immediately	All
Capacity Building	Immediately	National level
Lobbying	Immediately	All
Web-site Creation	January 2002	HBF and partners
Conference Proceedings	October, 2001	HBF
Proposals for Concrete Action	November, 2001	All partners, NGOs
In-country Coalition Building	Ongoing	All
Gender Forums	2002	All partners, HBF

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There's No Going Back
(Closing Ceremony)



addressing various issues arising during the conference.

MS. ZENEBEWORK TADESSE NOTED THAT AFRICAN WOMEN HAVE MADE substantial progress in mobilisation, discussion and experience sharing over many issues. However, issues of gender have not been adequately addressed. This is exemplified by the backlash on African feminism, which is regarded as western and irrelevant.

It is saddening that mainstreaming women's issues is difficult, as there seems to be a silent embargo on the discipline in the academic world. However, the 1990s have been important in terms of the emergence of a culture of rights with programmes in that area.

According to Zenebework, it is imperative that the world recognizes that there are no issues that are not women's issues. War, politics and the economy have repercussions on women, which they have to deal with. It is important however, that women recognize that they cannot afford to replace men and should therefore exclude them.

In his closing remarks, Prof. Anyang Nyong'o noted that dialogue on the constitution is important and especially when one is discussing the contribution and role of women in constitution making.

Nyong'o noted that the principle of citizenship and rights of equality before the law does not seem to be applied to women, despite many countries being signatories and ratifying various conventions on human rights.

According to Nyong'o, there is a sense in which equality of women is replaced with a culture of bigotry when it comes to implementation of declarations and conventions. This is deliberately done and may be rooted in the socialisation mechanisms of many societies.

Thus, a discussion about laws and equality must be premised on the values and relationships that exist in society.

Human rights and equality guarantees remain vague concepts as they assume that law enforcement rather than the conditions in which laws are disregarded is the problem.

Nyong'o issued several challenges that must be addressed. These included liberation through revolution which would enable ordinary citizens enjoy rights, freedoms and dignity. Women must solve their problems through studying and understanding what ails them. Also change is a challenge requiring thought and commitment to national solidarity and equity amidst abject poverty and decay.

The final challenge ahead for women lies in the choice of action and activities that will lead them close to achieving their goals.

Aseghedech Ghirmazion noted that there was need for women to give the constitution eyes and ears. Here one would be making the constitution responsive to the needs of women and men as regards their specific rights, enjoyment of total freedoms and dignity of person. The question of

engendering the constitution and using gender specific language clearly cannot be over-emphasised.

Ghirmazion noted that there was zero tolerance for women's issues; the challenge for women therefore is to rise above such intolerance through forging alliances, building on capacity through basic and legal literacy and consolidating gains made so far.

Ghirmazion was clear that women in Africa must move beyond the euphoria of flag independence. The vision to be realized demands that women work together for more awareness creation and sensitisation of policy makers. This is the time for more practical intervention in the implementation of constitutions and laws pertaining to women.

Proposed Action Plan by
HBF Partners



THIS ACTION PLAN WAS AS A RESULT OF A SESSION WITH POTENTIAL partners in the last part of the conference. Potential partners suggested actions that they could undertake as part of the way forward. The actions

Activity	Responsible
Incorporate suggestions and experiences shared at the conference.	Individual countries.
Form networks and loose coalitions including creation of focal points for regional activity.	HBF and Horn Relief to coordinate the effort.
Build capacity in various countries and at regional level after identifying the needs and approaches.	Different countries with assistance from HBF, FIDA-Uganda and FIDA-Kenya.
Build alliances and solidarity.	Immediately statements on the problems of women in Sudan and Ethiopia were drafted and signed by participants.
Share experiences continuously in all countries and specifically to be targeted at a web site initiated by HBF.	Individual countries.
Create web site.	HBF will be creating a web site in January 2002 with a provision that all partners make a point of contributing items and exchanging information.
Launch more Gender Forums. The forums have already been launched in Kenya and Ethiopia. Somalia is next. It will be a permanent feature, with HBF supporting	HBF will support the initial process.

<p>the initial process. The forums will synthesise issues and lobby governments on perceived issues in the region.</p>	
<p>Role modelling and forum for constitution drafting. This is scheduled for January-March 2002. The activities proposed include adoption of model constitutions and training in drafting.</p>	<p>HBF and FIDA Uganda to take the lead.</p>
<p>Organize a process for test cases where interpretation and commitment to the CEDAW will be analysed.</p>	<p>Horn Relief and HBF will take the lead.</p>
<p>Implementation of model constitutions by January 2002.</p>	<p>HBF will provide direct funding. Partners should observe the deadline for submission of proposals on this as November 2001.</p>
<p>Lobby at international level where donors in the international and regional arenas will be challenged to analyse their commitments to women's issues.</p>	<p>HBF initiative.</p>
<p>Link up of Southern Sudanese women with Kenyan women in a continuous process that will involve a shared capacity and sharing of issues.</p>	<p>HBF, partners and participants.</p>
<p>Conferences for follow up. This involves regional conferences where scholars can influence policy makers and create a critical mass. The conferences will help to identify experts in training and the establishment of expert trainers to assist fledging constitutions.</p>	<p>Partners and participants to write proposals.</p>

Resource Persons



Jane Kiragu, Executive Director, Federation of Women Lawyers, Kenya Chapter.

Judy Thongori, Deputy Executive Director and Head of Litigation, Federation of Women Lawyers, Kenya Chapter.

Lucy Mahlangu, Executive Director, Tshwaranang Legal Advocacy Centre, Johannesburg, South Africa.

Paul Mutangadura, Association of Women's Clubs, Zimbabwe.

Saud Ibrahim Abdi, Naagad Umbrella Organisation.

Suzanne Jambo, New Sudanese Indigeneous NGOs Network.

Samia Hashmi, Mutawinat Benevolent Company, Northern Sudan.

Jackie Orach, Federation of Women Lawyers, Uganda.

Zenebework Tadesse, Forum for Social Studies, Ethiopia.

Programme



(1—3 OCTOBER, 2001. PAN AFRIC HOTEL, NAIROBI)

Sunday, September 30, 2001

Arrival of Participants

Monday, October 1, 2001

8.30 am—9.30 am Registration of Participants

9.30 am—10.30 am Opening Session
 Welcome Remarks: Emma Kang'ethe, Gender Programme Officer, Heinrich Boell Foundation, Regional Office for East and Horn of Africa (HBF)

Opening Remarks: Aseghedech Ghirmazion, Regional Representative, Heinrich Boell Foundation, Regional Office for East and Horn of Africa (HBF)

Keynote Address: Jane Kiragu, Executive Director, Federation of Women Lawyers-Kenya Chapter

10.30 am— 11.00 am Tea Break

Discussant: Nyarazai Gumbonzvanda: Regional Director UNIFEM
 Moderator: Dr. Patricia Kameri-Mbote: Lecturer, Faculty of Law, University of Nairobi

11.00 am—11.30 am Women and Constitution; Kenya experience
 Judy Thongori: Deputy Director and Head of Litigation, FIDA, Kenya

11.30 am—12.00 noon Plenary Session

12.00 noon—12.30 pm Women and Constitution: South Africa experience
 Lucy Mahlangu: Executive Director, Tshwaranang Legal Advocacy Centre, South Africa

12.30 pm—1.00 pm Plenary Session

1.00 pm—2.00 pm Lunch Break

Discussant: Nyaradzai Gumbonzavda: Regional Director, UNIFEM
 Moderator: Aster Birke: Pact, Ethiopia

PROGRAMME

- 2.00 pm—2.30 pm Women and Constitution: The Zimbabwe experience Paul Mutangandura: Programme Manager, Zimbabwe Association of Women's Club.
- 2.30 pm—3.00 pm Plenary Session
- 3.00 pm—4.00 pm Women and Constitution: The Somaliland experience: Suad Ibrahim: Naagad Umbrella Organisation, Somaliland
- 4.00 pm—4.30 pm Plenary Session
- 4.30 pm—5.00 pm Tea Break
- 5.00 pm—6.00 pm Work Groups

Tuesday, October 2nd, 2001

Discussant: Jessica Nkuuhe, ISIS-Uganda
Moderator: Atsango Chesoni: Lawyer/Private consultant

- 9.00 am—10.00 am Women and Constitution: The Southern Sudan experience Suzanne Jambo: New Sudanese Indigenous NGOs (NESI-NETWORK)
- Women and Constitution: The Northern Sudan experience Samia Al Hasmi: Mutawinat Benevolent Company, Northern Sudan
- 10.00 am—10.30 am Tea Break
- 10.30 am—11.10 am Plenary Session
- Facilitator: Lucy Mahlangu, Executive director Tshwaranang Legal Advocacy Centre, South Africa
- Moderator: Ruth Masika; Forum for Women In Democracy, Uganda
- 11.10 am—11.40 am Women and Constitution: Uganda experience
- Jackie Orach: Uganda Association of Lawyers—FIDA Uganda

11.40 am—12.10 pm	Plenary Session
12.10 pm— 12:40 pm	Women and Constitution: The Ethiopia experience Zenebework Tadesse: Forum for Social Studies, Ethiopia
12:40 pm—1.10 pm	Plenary Session
1.10 pm—2.10 pm	Lunch Break
2.10 pm—4.00 pm	Work Groups
4.00 pm—4.30 pm	Tea Break
4.30 pm—5.30 pm	Report of the Work Groups and Way Forward
5.30 pm—6.00 pm	Closing Remarks Ms. Zenebework Tadesse, Forum for Social Studies
- Ethiopia	Prof. Peter Anyang Nyong'o, Africa Academy of Sciences
7.00 pm	Dinner
Wednesday October 3rd, 2001	
9.00 am—1.00 pm	Meeting potential partners
1.00 pm—2.00 pm	Lunch
2.00 pm—5.00 pm	Tour of Nairobi
5.00 pm—6.00 pm	Visit to HBF Offices
6.00 pm	Farewell Dinner at Safari Park Hotel

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ALTHOUGH MOST AFRICAN COUNTRIES HAVE WRITTEN CONSTITUTIONS, WHICH guarantee all persons equal rights before the law and prohibit any discrimination on the grounds of sex, religion or nationality, the social life of women is largely shaped by customary laws and practices and most disputes are resolved outside the court system. Women often neither know of their rights and entitlements nor dare to claim them due to adverse effects such a move would bear on them in given social contexts. As such, customary practices that discriminate against women on inheritance, wills, divorce, property provision, child custody and maintenance are still embodied in the civil law.

This was the logic behind the Conference that brought together women to look at various constitutions with the aim of strategising on how to intervene in implementation processes in order to ensure that laws practiced guarantee equal rights to women. The Conference also enabled them to exchange experiences and share ideas on how to challenge the existing negative laws.

"Meddling is the only way to stay relevant"

Heinrich Boell

HEINRICH BOELL FOUNDATION
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