



GRACE,
TENACITY AND
ELOQUENCE

THE STRUGGLE
FOR WOMEN'S RIGHTS
IN AFRICA

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THE STRUGGLE FOR WOMEN'S RIGHTS IN AFRICA

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Solidarity for African Women's Rights

First published 2007 by Fahamu – Networks for Social Justice
Oxford and Nairobi
www.fahamu.org
www.pambazuka.org
and Solidarity for African Women's Rights
Nairobi
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British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

ISBN: 978-0-9545637-2-1

Cover illustration and design by Judith Charlton, Fahamu

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ACKNOWLEDGEMENTS

Solidarity for African Women's Rights (SOAWR) is supported by the African Women's Development Fund, Ford Foundation, Mama Cash, New Field Foundation Fund of the Tides Foundation, NOVIB, Oxfam GB, the Sigrid Rausing Trust and the Urgent Action Fund.

The articles published here first appeared in Pambazuka News. Pambazuka News is supported by grants from Christian Aid, Ford Foundation, HIVOS, New Field Foundation Fund of the Tides Foundation, the Sigrid Rausing Trust and TrustAfrica, as well as by individual donations.

This publication was supported by a grant from the Sigrid Rausing Trust.

We wish to express our thanks to these supporters.

Cover photographs



Fahamu workshop on leadership
for grassroots women's
organisations



Professor Balgis Badri of the
Ahfad University for Women,
Sudan



Woman hanging out washing,
Durban South Photography
Project/Lorna McDonald



Women in River Niger area,
Huib Blom



Dr Tabita Botrus, Sudanese
Federal Minister for Health,
speaking at the Ahfad
University for Women, Sudan



Faiza Jama Mohamed, Africa
Regional Director of Equality
Now, speaking at the Ahfad
University for Women, Sudan



An Anti-Eviction Campaign
demonstration, South Africa,
Centre for Civil Society /
Linn Hjort



Treatment Action Campaign,
South Africa,
Centre for Civil Society



Woman with baby,
Durban South Photography
Project/Jenny Gordon



Protest march, South Africa,
Centre for Civil Society



A woman prepares food at
Owiny Ki-Bul village, southern
Sudan,
IRIN/Manoocher Deghati



INTRODUCTION

**PATRICK BURNETT, SHEREEN KARMAI
AND FIROZE MANJI**

The traditional perception of African women is that they toil day and night amidst grinding poverty while facing harsh cultural, traditional and social prejudices. The situation for women in Africa is indeed shocking. To quote a few statistics: of the 1.9 million victims of conflict in sub-Saharan Africa in the 1990s, 63 per cent were women and children. At least 250,000 African women a year die as a result of pregnancy and childbirth – the highest in the world. African women aged 15–24 are three times more likely to be infected with HIV/Aids than men. Female genital mutilation (FGM) is practised more in Africa than in any part of the world and more than 90 million African women and girls are survivors of some form of the practice.

These figures paint a dreadful picture, but they are only one part of the story. For, as the writings in this book show, across the continent, women are fighting for their rights and they are fighting with grace, tenacity and eloquence.

After nearly a decade of discussion, African leaders agreed in July 2003 on a Protocol on the Rights of Women in Africa, a comprehensive legal framework to enable women to exercise their rights. Fifteen countries had to ratify it before it could come into force but almost a year later only one had done so – until a group of African women started a campaign to make the protocol a reality. That campaign was run by Solidarity with African Women's Rights (SOAWR), which has since evolved into a 23-strong coalition of civil society organisations and is the joint publisher of this book.

This book gathers together articles about that campaign which have appeared in the prize-winning weekly electronic newsletter, Pambazuka News, published by Fahamu. Sharing their ideas and experiences, the authors describe how they won the cross-continental campaign for a proto-

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col to protect the rights of African women and what still needs to be done to ensure that women enjoy these rights in every country.

Pambazuka News has become the leading forum for human rights defenders and others working on social justice in Africa. Appearing every week, it provides a platform for women to write about the issues of the day, so in this rich and varied collection you will also find articles which consider women's rights to land and the impact of current US policies on women's health. Muslim women activists and lawyers from Africa give their views on the rights of women in Islam. South Africa women describe with candour their feelings and thoughts about the trial for rape of their country's vice-president, Jacob Zuma.

This compilation has been put together to provide students, activists and others with an easy to read introduction to the struggle for women's rights in Africa. The story of that struggle is, of course, not complete. And for those who want to keep abreast of its progress, we recommend that you subscribe to Pambazuka News at www.pambazuka.org.

Chapter 1

CAMPAIGNING FOR WOMEN'S RIGHTS

Ratify, ratify, ratify. That's the rallying cry behind the articles in the first chapter of this book. The articles represent the voices of women involved in the Solidarity for African Women's Rights (SOAWR) campaign, a coalition of women's rights organisations driving for the ratification of the Protocol on the Rights of Women in Africa. Caroline Ageng'o begins the collection by charting progress in the struggle for women's rights from the 1917 food riots in Leningrad through to the hopes for gender equality on the African continent. In Uganda, writes Jacqueline Asiimwe, strides have been made in the political participation of women. However, there is still much to be done, with the potential ratification of the protocol being a significant step in the right direction. Gladys Mutukwa points out that states have already made commitments to women's rights through various international agreements, and urges African states to continue this trend by ratifying the protocol. Further articles stress the urgency for African states to ratify the protocol.



INTERNATIONAL WOMEN'S DAY – CAN WE DARE CELEBRATE?

CAROLINE AGENG'O

Writing at the time of International Women's Day in 2005, Caroline Ageng'o charts progress in the struggle for women's rights from the 1917 food riots in Leningrad through to the hopes for gender equality on the African continent. She concludes by adding her voice to calls by Nobel Prize winner Wangari Muta Maathai for debt cancellation.

The pioneers of International Women's Day (IWD) in the late 19th century and early 20th century were ordinary women seeking rights that are today viewed as commonplace. In March 1917, previously downtrodden women, gathering strength and passion, swept through what is now Leningrad over several days of food riots, political strikes and demonstrations in a labour dispute that marked the most memorable International Women's Day.

International Women's Day has today assumed a new global dimension for women in developed and developing countries alike. However, few of the pioneers would celebrate the slow progress made in the protection and promotion of the rights of women since 1917. Better working conditions, the right to vote and hold public office, the right to non-discrimination and the fight against poverty remain of concern to women today – as they were then.

The growing international women's movement, which has been strengthened by four global United Nations women's conferences, has helped make the commemoration a rallying point for coordinated efforts to demand women's rights and participation in the political and economic process. Increasingly, International Women's Day has become a time to reflect on progress made, to call for change and to celebrate acts of courage and determination by ordinary women who have played an extraordinary role in the history of women's rights.

It is interesting to note that International Women's Day in 2005 fell at a

time when the world gathered in New York at the 49th Session of the United Nations Commission on the Status of Women (CSW) to review the progress made 10 years after the Fourth World Conference on Women held in Beijing, China in 1995. This review, also known as the Beijing+10, presented an excellent basis for reflecting on the position of women even as we celebrated this noble day.

At the end of the Beijing Conference, as had happened at the preceding conferences in Mexico City in 1975, Copenhagen in 1980 and Nairobi in 1985, the governments present produced a policy document known as the Beijing Declaration and Platform for Action (BPfA), which was a statement about the problems and issues that had been raised at the conference.

The platform identified 12 critical areas of concern that needed to be addressed to enable women to fully enjoy their rights. The governments committed themselves to addressing these concerns with a view to empow-

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ering women and achieving equality, development and peace. The 12 areas are women and poverty, women in education and training, women and health, women and violence, women and armed conflict, women and the economy, women in power and decision making, institutional mechanisms for the advancement of women, the human rights of women, women and the media, women and the environment and the girl child.

An audit of how governments have performed in removing the inadequacies raised in the BPfA reveals that very little, if anything, has been done, largely because of a lack of political will compounded by patriarchal overtones that make policy or legislative reform extremely difficult even in

the rare cases where the political will exists. This is rather unfortunate given that the principles of equality and non-discrimination are enshrined in a majority of the world's constitutions.

The situation in Africa is further compounded by retrogressive cultural practices and traditions, and poverty and armed conflicts. The first two influence, amongst other things, the legislative processes and serve to accentuate the discrimination that is visited upon women. Examples of harmful traditional practices include virginity testing, widow inheritance, sexual slavery and female genital mutilation. Patriarchy has been so well perfected that even where discriminatory laws and policies are removed, women are unable to immediately enjoy the benefits because the pressures of society demand that women remain in an inferior position to men. Take the case of free primary education, for instance. Several countries have made it possible for children to access free education at primary or elementary level without discrimination on the basis of sex. Yet many girls drop out after the first few

We celebrate African women who toil day and night amidst grinding poverty on the continent and face up to harsh cultural, traditional and social prejudices yet still manage to achieve much.

years mainly because of the burden of domestic chores, such as fetching water and firewood, in addition to their other work. Therefore, unless the government addresses the basic issues of poverty, such as the provision of shelter, potable water and security, from a gender perspective the results of the costly legislative reform processes will not be felt for a long time.

The recently published stories of sexual abuse of women and children in the Democratic Republic of the Congo by UN peacekeepers speaks volumes not only about the vulnerability of women in conflict situations but in society in general. Those to whom they looked for protection instead turned on them for the simple reason that they were women. The plight of women in the DRC rekindles memories of the hundreds of women in Liberia, Sierra

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Leone and Rwanda who suffered unspeakable sexual atrocities in conflicts that they neither understood the origins of nor played a part in.

Is there then any hope at all for African women? The various continental processes currently underway under the auspices of the African Union offer some respite for women. The African Charter on Human and People's Rights provides for non-discrimination in Article 2 and equality in Article 3. In Article 18 the charter calls on all states to ensure the elimination of discrimination against women and to ensure the protection of the rights of women and children in accordance with international standards.

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa was adopted to supplement the charter with regard to the rights of women. The protocol remains by a long way one of the best initiatives undertaken by African leaders to bring an end to discriminatory and harmful practices against women. It addresses issues of non-discrimination as they relate to civil and political rights and economic, social and cultural rights as well as the right to development and peace.

This progressive protocol is yet to come into force. Ten countries have ratified it to date: the Comoros, Libya, Rwanda, Namibia, Lesotho, South Africa, Senegal, Nigeria, Mali and Djibouti. Thirty-six other countries have signed, of which three are engaged in finalising the ratification procedures at a national level. As we celebrate International Women's Day we continue to urge member states of the African Union to urgently ratify this protocol to enable women to enjoy their rights. We also urge governments to repeal laws that discriminate against women so that these conform to their constitutions.

And yes, we dare to celebrate the ordinary women who on the day, as their counterparts did in 1917 and before, stand against ordinary discrimina-

tory practices so as to make non-discrimination an ordinary way of life. In so doing they became extraordinary. We celebrate the African woman who, unlike the man, toils day and night amidst grinding poverty on the continent and faces up to harsh cultural, traditional and social prejudices yet still manages to achieve much.

In the past year the most extraordinary of these ordinary African women that we must name as we celebrate is Professor Wangari Muta Maathai, the first African woman to win the Nobel Peace Prize. At the ongoing Commission on the Status of Women Professor Maathai dedicated her Nobel Peace Prize to all women and called on developing countries to cancel debts owed by Third World countries, noting that servicing debts continued to impoverish already poor countries. She further noted that this amounted to punishing poor countries and women. Reflecting on the slow progress made since the agenda on issues affecting women was set 30 years ago, the Nobel laureate said that the burden of debt under which the continent was submerged made it impossible for governments to address pertinent issues of basic provision affecting women. We can only add our voice to her call.

Pambazuka News 197, 10 March 2005



ASPIRATION INTO ACTION: RATIFY THE PROTOCOL NOW!

JACQUELINE ASIIMWE

In Uganda in 1967 there were no women members of parliament and in 1980 only one out of the 143 members of parliament was a woman. In the 1989 National Resistance Council elections, the NRM government brought significant improvement to women's political participation and reserved 34 seats for women. Uganda, writes Jacqueline Asiimwe, is often given as an example of effective women's political participation, but there is a long way to go before the playing fields are truly level. Part of the solution is to turn the aspirations of the Millennium Development Goals into action by ratifying the Protocol on the Rights of Women in Africa.

Introduction

One of the Millennium Development Goals is the promotion of gender equality and empowerment of women. While limited in nature, the goal addresses gender disparity in education, the share of women in wage employment and the proportion of seats held by women in national parliament. The importance of this goal to human development cannot be over emphasised.

This article explores just one of the aspects of the promotion of gender equality and empowerment of women by sharing Uganda's experience in the area of women's political leadership.

The Uganda experience

Uganda is oft cited as a success story with women in leadership – specifically political leadership. Indeed the 1995 constitution has various articles that address women's (political) leadership. The national objectives and direc-

tive principles of state policy enshrined in the constitution, stipulates that the state will ensure gender balance and fair representation of marginalised groups on all constitutional and other bodies. Article 32 addresses the need for affirmative action; Article 33 spells out rights specific to women; Article 78 states that every district will have one woman representative to parliament and Article 180 (b) ensures that one third of members of each local council will be women.

One of the first demands that the women's movement made of the new NRM regime (the NRM came to power in 1986 and has ruled Uganda since then. It is also known as the Movement Government) was in the area of women's political rights. At independence in 1962 there was a 2:88 female to male ratio in parliament. But in 1967 no women served in parliament; in 1980 only one out of the 143 members of parliament was a woman. In the 1989 National Resistance Council elections, the NRM government brought significant improvement to women's political participation. Thirty-four seats were reserved for women; two women won their seats in open contests

*Uganda is oft cited as a success story
with women in political leadership*

against male candidates, three women were nominated by the president and two were historical members, appointed because of their participation in the guerrilla war led by the National Resistance Army. By 1996, 52 women held parliamentary seats, 39 of them reserved and constituting 19 per cent of the members of parliament. By 1995 also, women constituted 17 per cent of all ministers, 21 percent of all permanent secretaries, 35 per cent of all under secretaries, and 16 percent of all district administrators. Women were also represented on national commissions such as the Constitutional Commission, the Electoral Commission and the Human Rights Commission as well as on parastatal boards.

Through affirmative action, women made considerable headway in parliament. Women now make up 24 per cent of the parliamentarians in Uganda and despite the ongoing discussion of the merits or demerits of such a policy one of the positive results is that women have been given exposure,

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increased confidence.*

political experience and increased confidence. When asked about the changes to women's status after the 1986 NRM takeover, women overwhelmingly responded that the biggest changes related to women's participation in politics, standing for office, becoming public and government leaders, and being able to express themselves publicly to a greater degree than in the past.

Despite these gains though, it is still not very easy for women to make it into political offices and prestigious leadership. The major players in politics and decision making continue to be men despite women's presence and the issues on women's political agenda do not feature nor are they deemed a priority. The fact that men predominate in the public/political sphere in Uganda means that its organisation and structures are heavily influenced by male values, attitudes and priorities. Very often women are expected to conform to and not transform the structures and norms of the public sphere. Whether the culture and atmosphere of politics is actively antagonistic to women, or simply organised in a way that does not suit them, it can be difficult for women as relative newcomers to challenge. Those who attempt to transform the structures and norms face a quick and brutal backlash.

Further, despite the high numbers of women in politics and in the public sphere, women are still regarded as intruders in this (male) space and are largely unwelcome in the political domain; for the most part they are endured as a necessary evil rather than an equal partner on the pathway to development. As one person put it:

The biggest threat facing the stability of families today is the desire for women to join high-level politics. There are shortcomings to this, most important

being the lack of 'quality time' and parental love to children...Women should be limited to 10 per cent political representation and should be stopped from voting for presidents and MPs at least for some 200 years.¹

Another person put it this way: 'Sometimes when you give financial, economic and social power to women, in most cases it brings problems. Check which type of woman is given power'.²

The major scenario with regard to women and leadership has been bureaucratically putting women in places of leadership and authority without any attempts at simultaneously removing the practical and structural obstacles

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that stand in their way to effective involvement in this arena. In short it is not enough to increase women's participation in politics/leadership without democratising the public space where such politics operate.³ This issue is closely related to tokenism, which is the practice of appointing a few women to positions of power and responsibility, without giving them the requisite support, or eliminating the impediments they face. The following quote illustrates this point:

Women are not brought in as an equal partner but as a means of balancing the composition. This is reflected during parliamentary debates where in most circumstances the speaker or the chairperson is giving women a chance to speak. He will often say 'let me first gender balance'. When looked at analytically it seems like the speaker has been giving an opportunity to substantive speakers, and then giving women a chance for the sake of balance.

Bringing women into the policy and decision-making space does not necessarily mean or lead to power sharing or redress in imbalances at that level.

Many women have in fact shared the struggles in that space, struggles to assert the worth of a woman, struggles to be respected as competent legislators or decision makers, etc. Take for example the experience of Maria Mutagamba, who in 1996 was a member of the Democratic Party (DP). When she was still with the DP she was chairperson of the presidential elections campaign in 1996 and when she asked Dr Kawanga Ssemwogerere what he expected of her he said: 'All you have to do is present yourself at the conference centre, welcome me when I come in and introduce me to the gathering'.⁴ She also recounts the following about her high post in the DP:

Slowly I was coming face to face with the realities of politics. I had to get my campaign team to accept me first. They had not agreed on me becoming their chairperson. I think that Dr Ssemwogerere had sat somewhere and thought of a woman for several reasons. One he thought I had money, which would help his campaign. Secondly I think he wanted to appear gender sensitive and appointing a woman head of his team would portray a gender-balanced campaign and thirdly, as I came to realize later, he thought I was a quiet innocent person who could be pushed around easily ... At first men close to him did not accept me easily because they had lined up some other people to head the campaign and they did not want a woman to head...

While the public sphere is opening up to women the private sphere remains intact. By private sphere we mean the family. Difficulties arise because the entry of women into leadership positions is discussed in isolation of these structures. Consequently, while the power centres are shifting, the other institutions in society are not changing. This is particularly so in the case of family structures and household dynamics. People are often quick to remind women where they belong as the following quotation illustrates:

However high you have gone politically, socially or economically, your husband is your husband. Even if you become the President of Uganda and your husband is a primary school teacher, he is still entitled to his respect in that capacity. Drop the pride! It smacks of arrogance, conceit and egoism. Its capacity to destroy marriages is unquestionable.

Despite the challenges that women in politics face, it goes without saying that their presence has gone a long way in improving the lives of ordinary Ugandans. Their contribution is summed up as follows:

*The presence of such an unprecedented number of females in an institution that was traditionally dominated by men has ... introduced a gendered perspective to the law-making process ... Moreover, the increased visibility of women in positions of leadership is slowly changing the attitudes of Ugandans (both men and women) towards women's presence in the political arena. This new consciousness forms the crucial basis for a new kind of political self-organisation for women and for a more radical transformation of gender relations in Ugandan society.*⁵

Affirmative action in politics in Uganda has delivered numbers. Presence and action of women has expanded and relatively deepened public concerns. Both at national and local levels, the relative presence of women has put new questions on the political agenda. The experience of the constitution-making process in 1994 and the resultant 1995 constitution indicate that the numerical presence of women in the constituent assembly contributed a lot to the gendered contestations and outcomes. The outlook of decision-making bodies has changed, ideologically accommodating the construction of a leader as male and female.

Enter the protocol on women's rights

With regard to the issue of women's rights to participate in politics and decision making the protocol provides that:

1. *States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that:*
 - a. *women participate without any discrimination in all elections;*
 - b. *women are represented equally at all levels with men in all electoral processes;*
 - c. *women are equal partners with men at all levels of development and imple-*

mentation of State policies and development programs.

2. States Parties shall ensure increased and effective representation and participation of women at all levels of decision-making.

The Millennium Development Goals and the protocol tie in beautifully because both demand the equal participation of women in the political life of their countries, part of which includes levels and numbers of representation. No one country can stand tall and proud or even seek to make headway in politics if it continues to exclude or marginalise women. If women are the backbone of our economies, if they are central to agriculture and food security in our countries, if they are the pivot around which our populations grow and expand, then they must be included in the same measure in politics and decision making.

The Millennium Development Goals and the protocol on women's rights must not be seen as separate instruments, with governments being able to pick and choose which they will deliver on. They are two sides of the same coin. One cannot be properly implemented without the other and that is why the clarion call goes out to all African leaders – we need to ratify the protocol *now!* Turn the aspirations of the Millennium Development Goals into action by ratifying the protocol on the rights of women.

Pambazuka News 213, 30 June 2005

Notes

¹See Dr. J. C. Kyesiga, 'Leaders within limits: gender ideologies and identities in Uganda today', a research paper under the programme 'Consolidating peace and development in the Lake Victoria region and its environs: the national and local responses to transformation from turmoil to a more sustainable development process'.

² Ekimeza Muhamwe, 23 February 2002.

³ S. Tamale (2001) 'Gender and affirmative action in post-1995 Uganda: a new dispensation, or business as usual?' in J. Oloka Oyango (ed) (2001) *Constitutionalism in Africa: creating opportunities, facing challenges*, 22.

⁴ W. Byanyima and R. Mugisha (eds) (2003) *The Rising Tide: Ugandan Women's Struggle for a Public Voice 1940–2002*, 186.

⁵ S. Tamale (2001), 220.



HOME-GROWN RIGHTS INSTRUMENTS: SUPPORTING THE PROTOCOL ON THE RIGHTS OF WOMEN IN AFRICA

GLADYS MUTUKWA

Gladys Mutukwa explains the international and regional mechanisms available for the protection of women's rights. States cannot show a commitment at one level and act differently at another, she argues. Failure to ratify a critical home-grown instrument like the Protocol on the Rights of Women in Africa calls into question any purported commitments to the rights of women, she concludes.

Introduction

The need for the effective promotion and protection of the rights of women is no longer an issue as it is now widely recognised that without the equal and effective participation of half of the world's population, the problems of growing poverty, hunger, HIV/Aids and other development issues will continue to confound us. The Millennium Declaration and the Millennium Development Goals recognise that gender inequalities based on the subordination of women are intricately connected to the development challenges facing the world today.

It is always important to realise that the promotion and protection of the human rights of women is a development goal in its own right, as well as being one of the prerequisites for poverty reduction and sustainable development. The Beijing Platform for Action and the various international, regional and sub regional instruments on the human rights of women provide the framework and the tools for this.

As a result of this realisation, several international, regional and sub-regional instruments have been signed over the years about the need to

promote and protect the human rights of women. We see this right from the time of the United Nations Charter in 1946, which reaffirmed the equal rights of women and men. We see this principle of equality further elaborated and expanded on in the Universal Declaration on Human Rights adopted in 1948. A number of conventions and covenants followed in subsequent years, such as the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights, which require the countries that sign them to ensure the equal enjoyment by both women and men of their rights.

In furtherance of this quest for protecting the human rights of women, the world community went on to adopt the Convention on the Elimination of All Forms of Discrimination Against Women, which we all know as CEDAW, and later the Declaration on Violence Against Women. Efforts like these at an international level continue.

At the regional level too, the African continent has not been idle. A number of instruments have been adopted with reference to or provisions on the rights of women. Notable among these is the 1981 African Charter on Human and Peoples' Rights (ACHPR), which essentially gave an African character to the principles on human rights, including equality and non-discrimination.

All these efforts and instruments will be of little help to women unless they are complimented by national constitutions and laws that adequately provide for the rights and equal status of women.

Issues of refugees, children's rights, mercenaries, peace and security, corruption, etc have been addressed in various instruments. Recently, the protocol to the ACHPR on the rights of women in Africa was added to the list.

The Southern African Development Community (SADC) as a sub-regional institution has also developed and adopted a number of instruments including the famous Declaration on Gender and Development adopted in 1997 by the SADC heads of state and government. In 1998 an Addendum on the Eradication of Violence Against Women and Children was also adopted.

All these efforts and instruments would be of little help to women unless they are complimented by national constitutions and laws that adequately provide for the rights and equal status of women.

The Protocol on the Rights of Women in Africa

This protocol was adopted by the African Union heads of state and government in Maputo, Mozambique in July 2003. It is a legal framework for African women to use in the exercise of their rights as well as for states to use in promoting and protecting the rights of women. It was signed by 30 member states, five of them from Southern Africa. It was agreed by the summit that the protocol would be ratified and come into force in time for the next summit in 2004. That summit has come and gone and unless we double our efforts, and move from the current ten ratifications so far, the goal post may be shifted again and again.

This will be a great letdown for the efforts to better promote and protect the human rights of the women of Africa who make up more than half its population and carry an unconscionable burden of poverty, disease and disempowerment.

This protocol can rightly be called the Bill of Rights for African women. It may not be perfect but it has the special distinction of addressing specific problems and issues that have been major constraints for African women in the past. The protocol covers fundamental issues like the right to inheritance, widowhood, affirmative action to promote equal access and participation in politics and decision making, rights of particularly vulnerable groups

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of women i.e. elderly women, women with disabilities, women in conflict situations, pregnant women and nursing mothers, and protection against harmful traditional practices. It also boldly addresses current and emerging issues such HIV and Aids, refugee women, rights to food security and adequate housing.

The protocol, drawn up by Africans, addresses issues specific to Africa that were not covered by other instruments while also covering the other general human rights issues.

Sub-regional context

Of the 12 countries in the southern African sub-region, only three have ratified the protocol. Some of the countries did not even sign the protocol and others are not taking the follow-up steps seriously enough. Yet, this is a critical year for the sub-region as at its next summit there will be a report on how far states have gone in implementing the provisions of the SADC Gender and Development Declaration, especially with those provisions relating to having at least 30 per cent of decision-making positions occupied by women. We are also engaged in assessing whether the declaration has made a sustainable change to the lives of the millions of women in our sub-region.

If the campaign to have the protocol ratified by all countries is to succeed, it is important for all of us to fully appreciate the importance of this protocol and how it relates to other instruments that we are already engaged with like CEDAW, the SADC Gender Declaration and the Beijing Platform for Action. We also need to know why early ratification and domestication are critical to the rights, role and status of women in our countries.

The protocol gives a truly African aspect to the issue of human rights for women. It domesticates to the African continent the principles which all our governments and states have committed themselves to by ratifying CEDAW

and other such instruments. The protocol brings a very progressive aspect to these issues.

History of the instruments on women's rights

International level: UN Charter (1946); Universal Declaration on Human Rights (1948); various covenants on political, economic, social, cultural and others rights; Convention on the Elimination of Discrimination Against Women and optional protocol; Convention on the Rights of the Child.

Regional level: Instrument establishing the OAU (1963) African Charter on Human and Peoples' Rights (ACHPR, 1981); Convention on the Rights of the African Child (1990); Protocol to the ACHPR establishing the African Court on Human and Peoples' Rights (1998); Constitutive Act of the African Union (2000); Protocol to the ACHPR on the Rights of Women (2003).

Sub-regional level: Instrument establishing the Southern African Development Community; SADC Declaration on Gender and Development (1997); Addendum to the Declaration on the Eradication of Violence Against Women (1998). Other sub-regions are also in the process of developing instruments that allow the internationally agreed principles to address real sub-regional issues and priorities.

National level: Constitutions, laws, traditions and customs.

Domestication

All the instruments require our states to incorporate into their national constitutions and other legislative instruments the fundamental principles of equality of the sexes and non-discrimination and to ensure effective implementation of these principles.

The international, regional and sub-regional instruments are complimentary and they reinforce each other. They are not contradictory. Neither are they in competition with each other. On the contrary, together they offer women a more comprehensive empowerment framework. But they all call for action at the national level. This calls for ratification, domestication, implementation and monitoring and evaluation.

Parliamentarians can contribute in a very tangible way to the sustainable protection of the rights of the millions of women in all the SADC countries by;

- Demanding the urgent ratification of the protocol where this has not been done
- Moving a motion for the domestication of its provisions, according to the relevant legal system
- Ensuring that adequate and sustainable budgetary allocations are made for its implementation
- Asking for updates on the progress made
- Ensuring that as many people as possible in their constituencies know about the protocol and its implications for the daily lives of women so that they can demand its implementation.

It is important to realise that states cannot show a commitment at one level and act differently at another. Failure to ratify such a critical home-grown instrument calls into question any purported commitments to the rights of women. Furthermore it goes against the Solemn Declaration on Gender Equality adopted by all our heads of state and government that also calls for the quick ratification of the African women's protocol.

Pambazuka News 213, 30 June 2005



MILLENNIUM DEVELOPMENT GOALS AND THE PROTOCOL ON THE RIGHTS OF WOMEN IN AFRICA

SOUAD ABDENNEBI-ABDERRAHIM

In order to make full use of the ten years until the 2015 deadline for the Millennium Development Goals, Souad Abdennebi-Abderrahim argues that it is a matter of great urgency for African states to ratify the Protocol on the Rights of Women in Africa and join those who have already done so. Ratifying the protocol would lead to states preparing an adequate strategy for the implementation of its provisions.

Context

The necessity of fighting global poverty, hunger, unemployment, disease, gender inequalities and the destruction of the environment has become the rallying motif of all development actors, nationally, regionally and internationally. At the dawn of the 21st century, for the first time in history, this consensus of opinion was translated into the adoption of a declaration, identifying priorities intending to resolve the evils that inflict millions of people. Based on this common declaration made by 191 heads of state and governments, eight objectives were highlighted; notably to reduce extreme poverty and hunger, guarantee universal primary education, promote gender equality and the self-determination of women, reduce infant mortality, combat HIV/Aids, malaria and other diseases, safeguard a sustainable environment and implement a global partnership for development.

The target date for the realisation of these development objectives was fixed as 2015, with the period from the year 1990 set as a framework of reference. The results from the review of the progress achieved so far vary

from one region to another, from one country to another, and even within countries themselves. The report presented by the Economic Commission for Africa (ECA) at the 38th sitting of African ministers of finance in May 2005, entitled 'Realising the Millennium Development Goals in Africa', illustrates that despite certain advancements, Africa has had the worst results. The continent has demonstrated the slowest progress and at the same time shown trends of decline in certain key areas.

In Sub-Saharan Africa, the number of people living in a situation of extreme poverty (on less than one dollar a day) has increased from 217 million in 1990 to 290 million in 2000. The majority of these people are women and girls. It is estimated that adult life expectancy has fallen, from over 50 years to 46 years...

Elsewhere, the report adds that:

Gender inequality remains a concern, whilst the education of women, for example, plays an important role in meeting all the objectives. It should be noted that a large number of countries have not adopted a rights based approach to development that would accord particular attention to equality and non-discrimination.

The ECA report has identified that gender inequality is hindering development. It is true that since the 4th world conference on women, there has been some progress in women's education and health and, in certain countries, in institutional and legislative domains. However Africa is still a very long way from reaching the designated objectives, as set out in the final document issuing from the 7th African conference on women, 'Results and Perspectives'.

The situation of African women ten years after Beijing

Evaluating the implementation of the Beijing Platform for Action over a decade, this document reveals that:

African women, particularly rural and handicapped women, continue to encounter problems of a serious nature. Their weak access to productive resources, such as land, water, energy, credit, means of communication, education and training, health and decent paid work have contributed to a situation whereby African women are still today, as ten years ago, living in poverty, indeed in extreme poverty. The cumulative effects of HIV/Aids, tuberculosis, malaria, food insecurity, weak economic productivity and low levels of education, as well as a new wave of sexual violence are some of the considerable problems that are rendering African women and girls more vulnerable. As a fact of their extreme poverty, women are the most exposed to HIV/Aids infection, besides which they bear the responsibility for taking care of infected and affected persons... Women and girls are once again victims of grave violations of their human rights...¹

Thus the situation of women is still not particularly bright at a global and, notably, at a regional level. However, we must recognise that there has been manifest advancement in one particular area: the cross-cutting nature of gender issues and their impact on development and the reduction of poverty have been recognised. Nowadays, there is consensus that women must be at the centre of development and that gender inequality decelerates economic growth and poverty reduction. It is conceded more and more that unless development politics take gender equality into consideration, then they will not be efficient. This realisation was consolidated at the time of the millennium summit through the adoption of the declaration previously cited, in which all member states of the United Nations committed to promoting gender equality and the self-determination of women as the best means to combat poverty, hunger and disease, and to stimulate development.

The MDGs and the imperative for gender equality

Amongst the eight identified objectives, the question of gender equality is made explicit only in the third objective, but this does not make it any less relevant for the realisation of all the MDGs. Gender equality is considered an essential condition for sustainable development and economic growth. Besides being an objective in its own right, it is equally necessary to achiev-

ing the other goals. In effect, given the fact that the MDGs are interdependent, progress made in one area impacts on progress in all others. The successes, for example, of increasing school enrolment have positive repercussions for gender equality, and the benefits obtaining to equality will enable easier realisation of the other objectives. In other words, promoting the rights of women and reinforcing their empowerment are important means of achieving the sum of the Millennium Development Goals.

In fact, the MDGs cannot be met unless countries strive to achieve this equality. Consequentially, understanding the principle of gender equality in all policies and programmes that aim to achieve the millennium objectives is crucial. A human-rights approach should guide the formulation, implementation, monitoring and evaluation of the MDGs. Adopting a human rights

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approach for example permits the consideration of maternal mortality, as enunciated in objective 5, as a violation of a human right, and not only a health problem. Consistent with this approach, it becomes imperative to eliminate harmful and discriminatory practices that perpetuate the inequality of women, and to seek to promote social and cultural values and norms that favour equality and equity, as well as justice.

The MDGs in the African context

Following the example of all their peers at a global level, African heads of state have acknowledged the relationship between gender inequality and development. As signed up members of the Millennium Declaration, they confirmed their position by adopting the Solemn Declaration on Gender Equality at their annual summit in July 2004. Thus they are committed to adopting a series of measures aimed at eliminating all forms of discrimina-

tion against women. They have notably decided to 'guarantee the promotion and the protection of all human and women's rights, including the right to development, through awareness raising or applying necessary legislation if need be'. They are further obliged to ratify the additional protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa before the end of 2004. This regional instrument carries great importance for all Africans because it constitutes a theoretical framework to identify the obstacles to women's rights, evaluate needs and set goals and

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objectives. The concept of equality reflected in the protocol extends beyond formal equality, insisting on the creation of equality of access and opportunities: i.e. the realisation of equality de facto. Moreover, the requirements of the protocol direct states towards measures and actions that must be taken to protect the rights of women effectively.

Consequently therefore, if Africa wants to make best use of the next ten years to meet the Millennium Development Goals, and to be at the meeting of 2015, it is urgent that all African states join the ten countries – Comoros, Djibouti, Libya, Lesotho, Malawi, Namibia, Nigeria, Rwanda, South Africa and Senegal – which have already ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and prepare an adequate strategy to implement the measures it provides for.

Pambazuka News 213, 30 June 2005

Note

¹ 'Results and Perspectives' (2004) Beijing+10 in Africa, 7th African Regional Conference on Women, 12–14 October <http://www.uneca.org/beijingplus10/docsfr/Resultats_et_Perspectives.htm>.



STRATEGIES FOR CIVIL SOCIETY ORGANISATIONS IN MOVING FROM RATIFICATION TO IMPLEMENTATION IN WEST AFRICA

AMINATA DIEYE

Most West African countries have signed and ratified international and regional instruments on women's rights, notes Aminata Dieye. But despite the legal arsenal, statutory inadequacies and weaknesses mean the continued existence of discriminatory provisions. It has become crucial, she argues, that organisations are better mobilised and more vigilant so that change in African women's lives becomes a reality.

The adoption in July 2003 in Maputo of the protocol on women's rights has inspired hope among the thousands of African women who fought for more than a decade for social justice and gender equity in African societies. This hope was strengthened by the adoption of the Solemn Declaration on Gender Equality of 2004, reaffirming the commitment of heads of state to making the protocol come into force in 2005. At the time of writing, three more ratifications are needed before that can happen. Moreover, the commitment of African heads of state to launch campaigns 'aimed at ensuring

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the coming into force of the protocol before 2005' has not been followed through. In fact, the ratifications are taking place slowly.

What justifies this slowness? What has happened to the mobilisation of women? Is rallying at a continental level sufficient to implement the protocol? What national strategies are there for the implementation of the protocol once it comes into force?

The situation in francophone countries

It is now abundantly clear that since the Beijing women's conference of 1995, civil society organisations, more specifically women's movements, have worked together to make women's rights in Africa effective. In fact, African women have pushed African governments, in various ways and with the support of the UN's specialised institutions, to adopt new laws and to put in place measures aimed at promoting and protecting women's human rights.

Most West African countries have signed and ratified international and regional instruments on women's rights and reiterated the principle of equality in their constitutions. For instance, upon adopting its new constitution, Senegal highlighted the Convention on the Elimination of all Forms of Discrimination Against Women and the African Charter on Human Rights, which are the principal instruments for the protection of women's rights. The country also revisited the issue of rural women's rights, particularly those of access to land, which constitutes one of the biggest obstacles to the effectiveness of women's rights. In addition, reforms have been added to the penal code through the adoption of the 1999 law defining domestic violence, sexual harassment, female genital mutilations and paedophilia as criminal offences, as well as more precisely defining the criminal nature of rape and paedophilia.

Rwanda is a good example of a country undergoing reconstruction which has been able to set up a system of quotas for women's participation in decision-making structures.

The December 2004 ratification in Senegal of the African Charter's protocol on women's rights was a direct result of the protracted mobilisation of women in the wake of the 1995 Beijing conference. Preparations for Beijing gave Senegalese women the opportunity to come together for a common cause. The tangible outcome of this mobilisation was the participation of civil society organisations in drawing up the 1997 women's plan and in its evaluation in 2003.

Other West African countries have adopted measures to improve the protection of women in marriages or against offences to their persons. These include changes to personal and family laws (Benin, Burkina Faso, Togo), the law on rape (Burkina Faso), sexual harassment (Côte d'Ivoire) and female genital mutilations (Burkina Faso, Togo, Côte d'Ivoire).

However, despite this legal arsenal, there are still statutory inadequacies and weaknesses in these countries due to the continued existence of some discriminatory provisions. This is because African states have difficulty implementing the different texts and conventions they have signed and ratified.

Obstacles to the implementation of treaties and conventions

Implementation of treaties or conventions presupposes the incorporation of their various texts into national legislation, and the setting up of institutional frameworks, regulatory measures and an appropriate mechanism for the monitoring and evaluation of the performance indicators. The October 2005 meeting of African ministers is an opportunity to put in place implementation and evaluation procedures for the protocol. The involvement of organisations like WiLDAF, Solidarity of African Women (Femmes Africa Solidarité), Equality Now, Femnet, Accord and the African Leadership Forum, which have worked for the adoption of this declaration, is key to achieving this.

After the Beijing conference, there was an increased interest by civil society organisations in proposed measures to protect women's rights. Similarly, women's networks rallied across the continent to make the protocol become a reality. Women have been less vigilant, however, in monitoring the gains. For instance, women in Senegal have relaxed since the retreat of the female

social movement after the change of government in 2000 and yet the rise of religious fundamentalism threatens what has been gained.¹ When women's movements agitated for joint parenthood, religious groups made a stunning entry onto the scene by proposing sharia-based laws on personal status. That prompted the head of state to react by declaring that the laws governing the family will not be modified. By cutting the ground from under these Islamic groups, the Senegalese head of state effectively blocked proposed reforms to make the laws on the family conform to regional and international texts on the protection of women's rights.

These events show how difficult it is to implement ratified texts; they will also make it difficult to incorporate the protocol's measures into Senegalese

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national legislation. In addition there are social and cultural pressures that will have to be dealt with over the long term if African societies are to be mobilised.

Another important aspect of women's rights in our societies is that women's movements in West Africa are running out of steam. We note that there is no changing of the guard in women's movements because in a context of increasing poverty, young people (girls and boys) are more preoccupied with looking for jobs than committing themselves to rallying around a common ideal. The participation of young people in implementing the protocol is indispensable if we want continuity in advocacy.

Strategies for civil society organisations

The participation of African civil society organisations in the promotion and protection of women's human rights demonstrated people's commitment to taking control of their destiny. In fact, without this participation, the process

of equality in our societies would not make progress. This critical mass of women and men needs to be maintained so we do not lose steam.

Good practices exist in the various countries; we should document them and share the information through the networks. Work being done at a continental level must continue nationally. In some countries only members of networks are involved in the process of implementing the protocol and yet the greatest number of women is in rural settings. Rural women must feel that the protocol belongs to them if we want them to help persuade all sections of the African populace – local leaders, traditional chiefs, and political and religious leaders – to adhere to the protocol.

Countries that have experienced armed conflict and which are undergoing reconstruction must take notice of the protocol. Rwanda is a good example of a country undergoing reconstruction which has been able to set up a system of quotas for women's participation in decision-making structures.

It is now abundantly clear that women's organisations have already embarked on such work to ensure that women's rights are respected, but it has become crucial, in a context where poverty, wars and famine undermine hope, that organisations are better mobilised and more vigilant so that the change introduced in African women's lives becomes a reality. The protocol constitutes the most complete mechanism for making effective the promotion and protection of African women's human rights.

Pambazuka News 222, 22 September 2005

Note

¹ F. Sarr (2005) 'Les femmes ont baissé la garde', *Magazine Continental*, June, 39.



WHO WILL BELL THE CAT? RESTORING RIGHTS TO AFRICAN WOMEN

EVE ODETE

Macroeconomic reform, armed conflict and weak democratic political institutions are some of the limitations to enacting laws that protect women. A strong political will by African governments against these forces is crucial for the enforcement of laws that protect women, writes Eve Odeté.

On 6 September 2005, the Gambia ratified the Africa Union Protocol on the Rights of African Women, bringing to 13 the number of countries that have ratified this landmark legislation on the rights of women in Africa. With only two more country ratifications required to bring the protocol into force, the next crucial phase in the first step to the realisation of the rights of women in Africa is domestication of the law. The prerequisite for this is a political will for change within African states.

At the twilight of the coming into force of the protocol, African civil society organisations and women's movements join the African Union, together with progressive states, to welcome an African legal instrument that dangles to the over 400 million women in Africa the promise of social, cultural,

Africa is replete with civil society and women's movements working with governments to create new policies and legislation to protect the rights of women.

economic, and political emancipation. The protocol, like its forerunner the Africa Charter on Peoples' Rights, stands to swing African governments into action to address the rights of women in relation to food security, equal access to and full participation in power structures and decision making, equal access to education and training, reproductive rights and health, and the all important right to land, property and credit.

Africa is replete with civil society and women's movements working with governments to create new policies, national action plans and legislation to protect the rights of women. Efforts in Botswana, South Africa, Uganda, Ghana, Namibia, Mozambique, Zimbabwe and Kenya have seen governments work very closely with coalitions of civil society organisations

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in developing national action plans for women. These efforts have largely been the result of intense pressure and lobbying by civil society through mass education on women's rights, solidarity-building and asking governments for the space to change policies.

The success of these efforts varies across Africa, but characteristically, the extent to which these action plans (e.g. Beijing Plan of Action) and the domestic and international legislation (e.g. the Convention on the Elimination of all Forms of Violence Against Women) have been translated into real programmes with clear policy outcomes for African women is minimal. Budgets for women's programmes remain insignificant as the agencies that are created or expanded to implement gender programmes remain under-resourced. Specific policy pronouncements have been made in relation to women's right to property, participation in decision making, and safety nets for vulnerable groups against the impact of harsh macroeconomic policies. These have remained on government policy papers and on the lips of the agitating groups. They have lacked time-bound targets

and benchmarks for monitoring. The role of NGOs in the consultation and agenda setting has been nebulous as most structures for such engagement have remained unclear or un-funded when these have been clearly spelled out in legislation.

Limitations to enacting laws that seek to protect women range from the harsh realities of macroeconomic programmes, the devastation of armed conflict, the emergence of counter social forces opposed to women's rights,

In the absence of a counter civil force that keeps the agenda of women alive on the policy platform, governments are wont to sweep such legislation under the political carpet.

weaknesses of democratic political institutions, the weakness of civil society and the lack of political will. A strong political will by African governments against these forces is therefore an imperative for the enforcement of laws that protect women. In the absence of a counter civil force that keeps the agenda of women alive on the policy platform, governments are wont to sweep such legislation under the political carpet.

Way back in March 1995 in Lome, Togo, civil society and women's movements began to scale the typical socio-political and economic hurdles to see the protocol established. They continue to lobby African governments to finally bring it into force. Against the signatures and ratifications is a fragile political will by national governments that this third force, the civil society organisations and women's movements must keep afloat.

Pambazuka News 222, 22 September 2005

Chapter 2

MOVING THE PROTOCOL FROM PAPER TO REALITY

25 November 2005 will be remembered as an important date for African women as, having been ratified by 15 African countries, the Protocol on the Rights of Women in Africa came into force. While the first chapter of this collection showcased articles urging African leaders to take the protocol seriously, the articles in this chapter tackle the reality of implementing the protocol so that it can be a force for change. A.N. Kithaka kicks off this chapter rejoicing at the adoption of the protocol but urging other countries who have not ratified, including Kenya, to take the protocol seriously. With the requisite number of country ratifications, the campaigning focus of the SOAWR movement began to emphasise the challenges that the protocol would face when it came to country-level legislation, a subject tackled by Sarah Mukasa in her article. Irungu Houghton reviews the origins of the protocol, its ratification process and the path that lies ahead. In practical terms, even after its adoption, the protocol continued to throw up challenges, as evidenced by the contrasting approaches to the protocol shown by the Gambia and Niger during 2006, which Faith Cheruiyot explains. Roselynn Musa concludes the chapter with an explanation of the right to education embodied in the protocol.



SMILE, WOMAN OF AFRICA, SMILE!

A. N. KITHAKA

There are two important events for African women this week. 25 November 2005 marks the start of the 16 Days of Gender Activism Against Violence, an international campaign meant to raise awareness about gender violence, strengthen the work of local organisations and demonstrate the solidarity of women around the world. 25 November is also especially important for African women, as it is the day that the Protocol on the Rights of Women in Africa comes into force. Having been ratified by the requisite 15 African countries, this key and progressive treaty has the potential to liberate and empower all African women to know and utilise their rights. That is why A.N. Kithaka, in the article below, makes an eloquent plea for Kenya to ratify the protocol.

Women of Africa, we have cause to celebrate: the long awaited ratification of the Protocol on the Rights of the African Woman has just been announced. The protocol comes into force on 25 November 2005. Those states that have deposited their instruments of ratification will be at liberty to incorporate its provision into their domestic laws.

It has been a long journey, a journey and a battle well fought by national, regional and international lobby groups. Most of us were not aware of this but we are glad that their collective and consistent lobbying, cajoling and canvassing have finally born fruits. The African Union summit in Maputo, Mozambique adopted the protocol as a supplement to the African Charter on Human and Peoples' Rights. The only rider was that it had to be ratified by 15 out of a possible 53 member states. The 15th state to deposit its document of ratification did so on the 26 October, meaning that within 30 days of this date, the protocol will come into force. It has been correctly hailed as the

green card that will usher us to a new era. It not only guarantees us a wider spectrum of human rights specific to our needs as the much oppressed and repressed creatures of the old (and new!) millennium, but also allows us to seek redress in the yet to be constituted African Court of Human and Peoples' Rights. Unfortunately, Kenya is yet to ratify the protocol, perhaps due to the present national preoccupation with the referendum on the draft new constitution. Nevertheless, it will not be an uphill task to nudge the government in the right direction – it appears malleable.

The big question is: how soon will women in Kenya join the proud list of those countries that have chosen to give their women an early Christmas gift by ratifying the document? How long will women in Kenya have to camp on this renegade side of the Red Sea as they wait for the magic word

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'ratification' to part the raging waters and usher them to the other side where gender discrimination, repulsive FGM, forced marriages and widow inheritance, domestic and sexual violence, etc, are a thing of the past? Not long, I hope.

We must join hands to lobby for this ratification at all costs. Otherwise we might have to sit on this side for an eternity, as we watch our sisters from Cape Verde, Mali, Malawi, Lesotho, Comoros, Libya, Namibia, Rwanda, Nigeria, Djibouti, Mauritius, Senegal, South Africa, Benin, Togo and Gambia take the first steps into the soggy sea bed to personal freedoms.

After ratification and domestication we must move to the next important stage: that of educating the masses about its benefits, without forgetting to bring on-board our dear fathers, brothers, husbands and sons. Some of the opposition being waged against the draft constitution in Kenya is because it promises equal inheritance rights to women, especially married women.

One would think that the draft is introducing new concepts into our legal jurisprudence, yet the Succession Act has been around since 1981!

Most women have refused to enforce their rights even when assured that the law is on their side. Others do not want the incessant fights over meagre family resources with hostile male relatives; visits to infamous land offices make many cringe. They prefer to hide behind the mask of tradition as they renounce their shares in favour of their brothers.

Men fear losing control over their mothers, sisters, wives and daughters. They subscribe to the primitive belief that the only way to subjugate and subdue a woman is by denying her basic rights and freedoms and subjecting her to gender-specific violence such as rape. In our mother's days, denial of basic and secondary education was the weapon of choice, and being forced to resign from paying jobs in favour of 'staying-at-home-to-take-care-of-the-children' edicts. Even today's educated man wants to confine his woman to that perpetually smoky room called the kitchen (after work that is).

Dissenters are deserted, attacked, maimed and killed with impunity. Those lucky enough to escape and fend for themselves are treated coldly by a society that brands them as prostitutes, husband grabbers and social failures. Any property they acquire in their single state will be grabbed or inherited by their estranged husbands, brothers, uncles and fathers. Any

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children they leave behind, especially girls, are mistreated, forced to leave school and become house girls, or married off to total strangers who profess kinship to their parents. Sometimes they are shunted off to rural areas where they are forced to undergo abhorrent traditional rites. Would it not be better for governments to facilitate the fostering of such children so that they can

continue to live in the manner and style they were accustomed to when their mothers were alive?

That is why advocacy groups must do more than just lobby for the adoption of international legal instruments; they must help women from rural areas apply them to improve their lives and those of their children. Atieno

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from Ahero, Wanjiku from Waithaka, Kalekye from Katse and Naliaka from Narok must be helped both materially and educationally so that they are aware of their basic human and women's rights and how these can be enforced in national, regional and international courts of justice. Let us gang up and apply shock therapy to oust men from their entrenched prejudices; let us wean them from the present retrogressive and chauvinistic mindset that has been passed from generation to generation.

In his play *Measure for Measure*, Shakespeare introduces a character called Angelo. He is the law enforcer who brokers no-nonsense deals when it comes to matters of justice. He refuses to temper justice with mercy and holds that the law must be obeyed to the letter – at the beginning of the play anyway. What happens later is for the curious to find out. He is famously quoted as pontificating that 'we must not make a scarecrow of the law, setting it up to catch birds of prey till custom finding it harmless makes it their perch and not their terror'.

Our advocacy skills and efforts must translate to visible changes in the lives of our people; they must not remain mere 'open sesame' to donor funds. Let us canvass for the enactment of laws, but let us not leave them to be mere scarecrows that are set up to frighten birds of prey, and ... men!

Pambazuka News 231, 24 November 2005

Further information

Organisations supporting the campaign for the ratification of the protocol on the rights of women:

African Centre for Democracy And Human Rights Studies (ACDHRS) <<http://www.acdhrs.org/>>

Akina Mama wa Afrika <www.akinamama.org/>

Association des Juristes Maliennes <<http://www.justicemali.org/ajm.htm>>

Cellule de Coordination sur les Pratiques Traditionnelle Affectant la Sante des Femmes et des Enfants

Coalition on Violence Against Women <www.covaw.or.ke>

Equality Now-Africa Regional Office <<http://www.equalitynow.org/english/index.html>>

FAHAMU <<http://www.fahamu.org>>

FAMEDEV-Inter-African Network For Women Media, Gender and Development

FEMNET – African Women's Development and Communication Network <www.femnet.or.ke>

Foundation for Community Development, Inter-African Committee on Harmful Traditional Practices (IAC)

Oxfam GB <<http://www.oxfam.org.uk/>>

Sister Namibia

Union Nationale des Femmes de Djibouti

Voix de Femmes <<http://www.voixdefemmes.org/>>

University of Pretoria Center for Human Rights <<http://www.chr.up.ac.za/>>

Women's Rights Advancement and Protection Alternatives

Women in Law and Development in Africa (WiLDAF) <<http://www.wildaf.org/>>

Resources:

16 Days of Activism Against Gender Violence <<http://www.cwgl.rutgers.edu/16days/home.html>>

Peace Women <<http://peacewomen.org>>

Akina Mama wa Afrika <www.akinamama.org/>

Equality Now <<http://www.equalitynow.org/english/index.html>>

FEMNET <<http://femnet.or.ke>>

Feminist Africa <<http://www.feministafrica.org>>

MOVING THE PROTOCOL FROM PAPER TO REALITY

Blogs:

Diary of a Mad Kenyan Woman <<http://madkenyanwoman.blogspot.com/>>

Black Looks <http://okrasoup.typepad.com/black_looks>

Further reading:

Women Building Peace <<http://www.international-alert.org/publications/121.php>>

Trafficking in Women and Children in Africa <<http://www.unicef-icdc.org/publications/>>

African Experiences of Transnational Feminism <<http://www.feministafrica.org/2level.html>>



CHALLENGES OF DOMESTICATING THE WOMEN'S RIGHTS PROTOCOL

SARAH MUKASA

Once 15 African countries have ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, its provisions will have to be included in country-level legislation. This is the next challenge facing the Solidarity for African Women's Rights Campaign, says Sarah Mukasa in September 2005 as she assesses some of the potential stumbling blocks inherent in the domestication process. 'It is imperative that strategies adopted for this campaign take into account these factors and prepare for the resistances that will surely come,' she warns.

To date, 13 member states of the African Union have ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. This is in spite of the undertaking made by the heads of state in the African Union Solemn Declaration on Gender Equality in Africa in July 2004 to sign and ratify the protocol by the end of 2004. This is indicative of the measure of political will there is to address substantively the rights of women on the continent. The disconnection between pronouncements made at regional level and the action taken at national and local levels demonstrates that the road to domestication and implementation is riddled with challenges that will have to be overcome if the protocol is to be of benefit to the women it seeks to protect. Activists must be at the forefront of the efforts to domesticate this protocol. This brief article will attempt to contribute to this process by assessing a number of possible challenges that will come with the campaign for domestication. It will do this by presenting a synoptic view of the response to women's empowerment initiatives in the past, at government and community levels.

The main challenge is at the level of the patriarchal state. Engaging the

state in women's rights has been an extremely difficult struggle with varying degrees of success. Historically, the state has been at worst hostile and at best extremely slow to respond to advancing the rights of women. It has entrenched this practice with a regime of discriminatory laws and policies. Even in those countries that have managed to enshrine the principles of equality and non-discrimination in the supreme law, their constitutions, the process of domestication, that is of aligning and framing national laws to reflect these principles, has been wanting. For example, in Uganda, in spite of an extremely progressive constitution, efforts to effect a law that protects the rights of women in marriage, separation and divorce, has for over 40 years yielded no results. Similarly, given our governments' past record of on the whole failing to honour internationally agreed standards, there is little reason to believe that the protocol will be regarded any differently.

The protocol, which seeks to commit states to protect the rights of women in Africa on the political, social, cultural and economic fronts, is the only regionally generated standard to address the specificity of women's oppression. It is thus critical that African governments apply this standard. In addi-

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tion, given that it addresses many context specific violations, its application throughout the continent would go a long way to ensuring that women were able to exercise their rights. However, it is because the protocol seeks to redress the power equation in gender relations and to significantly alter the status quo that resistance to it on all levels is to be expected.

There is no doubt that advancements have been made on the continent for African women, the most significant of which has been increasing access for women and girls to the public sphere, especially local and national politics, education, the business sector and so on. Similarly there has been much initiative at policy level to take into account the interests of women and other marginalised

groups. However, this investment has not translated into a fundamental change for the better for the vast majority of African women. Moreover, these gains come against a backdrop of other developments that stand to put these gains and all future work to domesticate the protocol in jeopardy.

The institutional mechanisms for implementing the protocol are weak. Most governments have established machinery, either in the form of ministries or departments, to oversee government initiatives for the empowerment of women. However, at the recent review in Addis Ababa in October 2004 of the Beijing Declaration and Platform for Action, ten years after it was agreed, there was considerable concern raised about the performance of these bodies. In particular, it was noted that their capacity to spearhead the women's rights agenda is extremely limited due to severe (and in many cases disproportionate) cuts in budget allocation and human resources. Given that it is this machinery that will be largely responsible for monitoring the process of domestication and also implementation of the protocol, it is a major concern that it will not be in a position to do so effectively.

The process of change is slow, particularly at legislative and policy levels. Different countries have different legal regimes. As a general rule, those countries that have inherited the French legal system have some advantage. For under these systems, ratification of the protocol automatically qualifies it as national law. However those with the British system have to undergo a process in which national parliaments effect a law that meets the agreed standard. If the past example of the Convention on the Elimination of all Forms of Violence Against Women (CEDAW) is anything to go by, many of the countries that have ratified CEDAW have so far failed to incorporate these standards into national law. This is further complicated by the existence of dual legal systems in much of Africa. In most African countries, the existence of customary and religious law on the one hand and statutory law on the other often means that women's rights are compromised. When drawing up laws on matters relating to women's rights, customary and religious law is often given precedence. The protocol, which seeks to challenge discriminatory cultural practice, is therefore likely to meet with highly organised resistance and be undermined by the duality of these legal systems.

The failure to promote the culture of constitutionalism and respect for the rule of law has serious implications for the domestication of the protocol.

Recent developments in a number of countries such as Uganda, Ethiopia, Togo, Zimbabwe and Chad indicate a direct correlation between the failure of governments to respect the rule of law and to protect the human rights of citizens. As governments subvert constitutions and compromise the rule of law in order to entrench their power bases, cases of increased arbitrary detention, the curtailing of media freedoms and the harassment of political opponents also increase. The state apparatus is used to clamp down on rights and silence the voices of dissent. In these circumstances, the priority will not be to implement laws and regulations that promote rights, particularly those of women.

As with CEDAW, the protocol is likely to be undermined through the practice of ratifying it with reservations. Where a government enters reservations on a particular provision, it is in effect absolving itself of the responsibility to implement the provision. A number of the countries that have ratified the pro-

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tocol so far have done so with reservations. It is feared that in particular those articles dealing with reproductive and sexual rights will be compromised in this way.

The increase in insecurity and conflict in much of Africa and its effect on women and girls poses a real problem. Whilst the protocol seeks to protect women in conflict, citizens' ability to effect change of this kind is severely weakened in the context of conflict and insecurity. The collapse of law and order systems, the break down and dispersal of communities and support networks, and the struggle just to survive makes it virtually impossible to implement these or any other kinds of measures.

As a result of globalisation fuelled by market-led growth strategies, Africa is becoming increasingly economically marginalised. The inequitable competition for market share (since government subsidies in Northern

economies are still firmly intact) means that Africa will continue its downward slide in gaining access to Western markets. Together with the reduction of the role of the state in welfare provision, the plight of poor women in particular will continue to be a major challenge. With regards to the protocol, weak state structures, with reduced revenues, especially in the law and order sector (police and other law enforcement agencies), are less able to address these needs. Given that considerable financial investment is required for the effective application of the protocol, this development should be a cause for major concern.

The terrorist attacks of 11 September 2001 in New York marked a period of drastic change in global policy from safeguarding and promoting human

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rights to fighting terrorism. Global politics has become highly militarised, and the subtext to this shift is that respect for basic human rights principles can and will be compromised in the interest of fighting terrorism. This has had a knock-on effect, with a growing intolerance of progressive thinking, ideas and development programmes. Women's empowerment initiatives, particularly those aimed at strategic levels, such as the campaign for the domestication of the protocol, are especially endangered. Resources and support allocated to these kinds of programmes has been on the decline.

There is a lack of awareness, especially at local levels, of the protocol and what it seeks to address. This suggests a general apathy and ambivalence by much of society towards initiatives of this kind. Since one of the most effective ways to effect change is to have a critical mass of public support, this aspect of the campaign for the domestication of the protocol cannot be ignored. Since the protocol seeks to protect in particular those women espe-

cially vulnerable to violations, it is imperative that efforts to engage them in the process are strengthened.

The significant increase in religious fundamentalism and conservatism will seriously threaten the campaign for the domestication of the protocol. There is an increasing resistance to progressive measures to protect the rights of women. Those articles of the protocol which prohibit harmful traditional and cultural practices, which seek to promote sexual and reproductive rights and property ownership rights, are likely to be contentious. We must cast our nets wider so that we make strategic alliances with some of the more progressive but influential cultural and religious authorities, in order to circumnavigate this resistance.

These are the challenges that are likely to impact on the campaign for the domestication of the protocol. Our strategies must take these into account and prepare for the resistances that will surely come. We must enhance our networking, support and information sharing capacities so that collectively we can address the resistance. A multi-pronged approach is required in which community mobilisation strategies are strengthened using non-traditional methods such as the arts and popular culture. In addition, we must strategically incorporate documentation and research initiatives which highlight the economic and social dividends which will come from the domestication of the protocol.

The significant advantage that the protocol has is that is an instrument that was generated in Africa by Africans. It came out of the lived experiences of women in Africa. We should highlight that it was our governments who formulated this instrument, working hand in hand with civil society in order to improve the quality of life of half of the continent's people.

Pambazuka News 222, 22 September 2005



REVIEWING THE PROTOCOL ON THE RIGHTS OF WOMEN IN AFRICA

IRUNGU HOUGHTON

The speed with which the Protocol on the Rights of Women in Africa was ratified broke all records for the ratification of continental human rights instruments in Africa. Irungu Houghton reviews the origins of the protocol, its ratification process and the path that lies ahead.

Background to the protocol

A quick examination of the reality for women and girls' lives in 2006 establishes the strategic importance of the protocol for changing negative power relations, gender inequality and the disempowerment and impoverishment of women in Africa.

Over 60 per cent of the two million victims of conflict in the 1990s were women and children. 50 per cent of Africa's six million refugees and 17 million internally displaced peoples are women.

The protocol makes special provisions for female refugees and also calls for the promotion and maintenance of peace, as well as protection in times of armed conflict. This includes needs arising from shelter, supplies, healthcare and protection from violence.

70 per cent of the estimated 1.3 billion poor people in the world are women and girls. The protocol specifically recognises the rights of vulnerable groups of women, including widows, elderly women, disabled women and 'women in distress', which includes poor women, women from marginalised population groups.

Problems with safe abortion, pregnancy and childbirth cause the deaths of at least 250,000 women each year in Africa. As a proportion of the total population, this is the highest figure in the world for deaths from these causes.

The protocol states that women's sexual and reproductive health is to be both respected and promoted, which is predicated on women's right to control their fertility and by the obligation of states to provide adequate,

Though the African charter recognises the importance of women's rights, it was widely acknowledged to be inadequate in the areas in which women need protection and gender equality.

affordable and accessible health services. It also demands that governments establish and strengthen existing pre-natal, delivery and post-natal services for all African women. The protocol also calls for the authorisation of medical abortions in cases of sexual assault/rape, incest or unsafe pregnancies.

57 per cent of the 23 million adults with HIV/Aids in sub-Saharan Africa are women. Young women (between the ages of 15 and 24) are three times more likely to be infected.

The protocol enforces the right to self-protection and to be informed of one's health status and that of one's partner. It also provides for health services to cope with the effects of HIV /Aids.

There has been a slight positive increase in the percentage of women parliamentarians in single or lower houses from 7.2 per cent in 1990 to 14.2 per cent. Some African countries, such as Rwanda, have enforced a quota for the number of women in parliament.

The protocol endorses affirmative action to promote the equal participation of women, including equal representation of women in elected office, and calls for the equal representation of women in the judiciary and law enforcement agencies. Articulating a right to peace, the protocol recognises the right of women to participate in the promotion and maintenance of peace.

The protocol provides a critical framework for addressing other issues which are integral to realising African women's rights. For more about this see the article by Karoline Kemp in *Breathing Life into the African Union Protocol on Women's Rights in Africa*.¹

The African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights (ACHPR) came into force on 21 October 1986. It includes the right to self-determination and full sovereignty over natural resources, the right to peace and the right to a favourable environment for development. The charter established the African Commission on Human and Peoples' Rights, which is responsible for enforcing the rights enshrined in the charter.

Though the African charter recognises the importance of women's rights, it was widely acknowledged to be inadequate in the areas in which women need protection and gender equality. The charter recognises the importance of women's rights through four key articles, namely: Article 2, the non-discrimination clause, which provides that the rights and freedoms enshrined in the charter will be enjoyed by all irrespective of their sex; Article 3, which states that every individual will be equal before the law and be entitled to the equal protection of the law; Article 18(3), which is specifically about the protection of the family and promises to ensure the elimination of discrimination against women and protect their rights; and Article 60, which states that the African Commission on Human and Peoples' Rights will draw inspiration from international human rights instruments such as CEDAW.

The Protocol on the Rights of Women in Africa

The women's protocol is a protocol of the ACHPR and was adopted by the AU on 11 July 2003. This was a long-awaited event, as it had taken eight years for the draft text of this critical new human rights instrument for African women to be adopted. Article 26 of the protocol cites obligations of the states which are party to the protocol. They are expected to implement and monitor the rights provided in the protocol and, in particular, provide budgetary and other resources for the full and effective implementation of the rights recog-

nised in the protocol. They are also expected to report on progress in their periodic reports to the African Commission on Human and Peoples' Rights.

With only the Comoros having ratified the protocol one year after its adoption, there was a concern that its ratification and domestication would take the same time or even longer. (Similar instruments have taken a long time to be ratified and enter into force. The ACHPR was adopted in 1981, but only came into force in 1986 – five years later. The protocol establishing the African Court on Human and Peoples' Rights came into force in 2004, six years after its adoption in 1998. The African Charter on the Rights and Welfare of the Child, which was adopted in 1990, came into force nine years later.) Women's and human rights organisations took stock of the slow progress of ratification in April 2004 and reached out with the African Union Commission to encourage governments to bring the protocol into force swiftly and ensure its subsequent domestication.

Steps to ratification

'I write in response to your (SOAWR) letter in which you expressed concern that only 15 African countries had ratified the protocol ... Whilst I take note of your concern that although Botswana has not ratified the protocol, our country is totally committed to ensuring that women's rights are observed...' H.E. Festus G. Mogae, President of the Republic of Botswana, 20th December 2005

'I am ..pleased to note the excellent partnership between the AUC Directorate of Women, Gender and development and Solidarity on African Women's Rights. This Coalition has achieved impressive results in terms of a speedy ratification process. It is indeed a successful partnership with lessons for all at the AUC.' Advocate Bience Gawanas, Commissioner for Social Affairs, September 2005

Mechanisms for accessing justice under the protocol

From June 2004, the pace of ratification accelerated with amazing success. On 25 November 2005 the protocol come into force having received the required 15 ratifications. The speed of the ratification broke all records for

the ratification of continental human rights instruments in Africa.

Like the African Charter, the protocol does not contain clauses, which permit member states to opt out of or derogate from applying its provisions. It is binding on all states that have ratified it. Under the African Charter, member states are obliged to undertake to submit to the commission 'a report on legislative or other measures taken ... to giving effect to the rights and freedoms recognised and guaranteed by the present Charter' every two years. Following debate on a state's report, the commission prepares a set of final remarks which ordinarily includes information on the positive actions taken by a member state, core concerns and recommendations. They are then sent to the member state, which is then required to provide, within two years, information on the measures taken to implement the recommendations.

Although a growing number of states do make periodical reports and take it upon themselves to implement the recommendations they are given, their numbers are still low. This and the low levels of national and regional awareness of the protocol will severely undermine its potential. Unless these

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trends are reversed, women and men will be prevented from claiming the rights accorded in the protocol. It is critical that public information campaigns are undertaken periodically to increase public awareness and to close down the opportunities for human rights violations and impunity.

At a national level, there is a lack of connection between the ministries of justice (closely linked with the African Court on Human and Peoples' Rights), the ministries of foreign affairs (closely linked with the AU) and the ministries of gender/women. The first two ministries do not usually communicate effectively to the latter the commitments that have been made at the regional level. This has led to gaps in implementation and monitoring.

There are also multiple national legal systems in place in many African countries. It is the coexistence of statutory, religious and traditional systems

that has led to violations of women's rights in marriage, inheritance and divorce. Parliaments, judiciaries, government ministries (of gender, foreign affairs, justice, finance) and national human rights institutions should be encouraged to support litigation, implementation and reporting mechanisms for the protocol. These institutions could be more effective if they held regular meetings with civil society organisations to facilitate reporting on progress with implementing the protocol to the African Commission on Human and Peoples' Rights as well as making the newly established Court on Human Rights relevant and accessible for all African peoples.

From ratification to implementation: the next frontier

The different status of countries requires a dual track approach. Countries that have not yet ratified the protocol must be encouraged to do so with a sense of urgency.

It is also important that states ratify the protocol establishing the African Court on Human and Peoples' Rights. As of 14 December 2005, only 22 of the 53 AU member states have ratified this protocol. When ratifying, states should enter provisions for the public to access justice under the African Court on Human and Peoples' Rights. Currently, only Burkina Faso has made the declaration under Article 34(6) of the protocol, granting individuals and non-governmental organisations direct access to the court. Not to do so is to betray the vision of the African Union and the commitment of governments to the promotion and protection of human rights in Africa.

For countries that have ratified the protocol, it is important to recognise that it is here that its promise will be either fulfilled or betrayed. As Ugandan activist Sarah Mukasa has noted, there is often a 'disconnection between the pronouncements made at regional level and the action taken nationally and locally...domestication and implementation is riddled with challenges that will have to be overcome if the protocol is to benefit the women it seeks to protect'.² She goes on to identify three major obstacles in most countries, namely: weak public appreciation of the centrality of constitutionalism and the rule of law, inadequately resourced national gender machinery and lastly, the precedence of entering reservations on progressive clauses. It is critical therefore that states are encouraged to domesticate the protocol and expedite its implementation.

The review of Beijing+10 revealed the dangers of starving progressive visions and commitments. Adequate finances and other resources are an important tool for the realisation of women's rights, but it should be noted that there are a number of actions that can be taken that have little or no monetary implications. This includes the removal of all discriminatory laws. States could also identify easy 'quick wins' for initial budgetary allocations, which demonstrate real change in the administration of justice. States would go a long way in breathing life into the protocol by mainstreaming gender in all budgets and programmes.

Distinguishing a role for the African Union Women's Committee

With several continental mechanisms working on women's empowerment, rights and gender equality, what should be the role and aspiration of the committee? There are five priority areas that the committee should consider focusing their energies on. (This is a menu of options; its mandate, resources and time does not allow for the committee to take on all agendas, but three to four objectives with appropriate benchmarks would be sufficient.)

The committee could schedule high-profile missions to capitals to urge the ratification, domestication and implementation of the Solemn Declaration on Gender Equality in Africa (SDGEA) and the AU Protocol on the Rights of Women. Developing key links with pan-African women's networks and movements as well as associations of women judges, lawyers and the Pan African Parliament could strengthen the committee's voice.

While encouraging universal ratification, it would be important for the committee to monitor, influence and encourage 'clean' reservations to the protocol. South Africa and the Gambia both ratified the protocol with reservations. One of South Africa's reservations restricted access to the African Court by forcing citizens to apply for permission to a parliamentary committee. The Gambia's reservations were fairly far reaching. However, it has been inspiring to learn recently that these harmful reservations are on the verge of being formally lifted. It would be important for the committee members to make a personal commitment to ensuring 'clean' ratifications from all countries.

Thirdly, the committee could go on high-profile missions or take actions

in the form of writing open letters both in solidarity against specific violations against women and to celebrate breakthroughs and victories. This could be done either by advising the chairperson of the African Union Commission to speak out or by releasing open letters in the name of the committee members. This would highlight the committee's commitment to gender equality and roll back the culture of impunity.

While Darfur continues to be a scar on the conscience on Africa, the committee must break new frontiers in war-torn areas such as Northern Uganda. (Northern Uganda, at 19 years is Africa's longest war and has not had the same attention as Darfur, Sudan.) The full committee need not undertake the missions but a few members could be selected on the basis of their knowledge of the issue, its importance and their regional expertise.

Lastly, the committee could look outwards to the processes of UN reform and the monitoring of the Millennium Development Goals with a view to using the solemn declaration and the women's protocol as a lens for measuring progress and agreeing on benchmarks and targets. Not to do so, would

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be to run the danger of repeating the experience of the UN millennium summit last year where the deadline for the gender parity MDG passed without protest or censure from the 180 leaders present.

The committee could champion the process of implementation by directly persuading all African governments that gender mainstreaming should be vested and adequately resourced at the highest level of government. Without this, the protocol could die an early death, confined to legal statutes and far from the living experiences of women and men on this continent.

Pambazuka News 255, 18 May 2006

Notes

- ¹ R. Musa, F.J. Mohammed and F. Manji (eds) (2006) *Breathing Life into the African Union Protocol on the Rights of Women*. Nairobi and Addis Ababa: Solidarity for African Women's Rights and African Union Women, Gender and Development Directorate, 3–8.
- ² R. Musa et al (2006), 28.



WOMEN'S RIGHTS: A TALE OF TWO NATIONAL ASSEMBLIES IN AFRICA

FAITH CHERUIYOT

Ahead of the important July 2006 African Union (AU) summit in the Gambia, contrasting experiences from two largely Islamic West African countries reveal the cutting edge importance of the AU protocol on women's rights. In the Gambia, parliamentarians blaze the trail for women's rights and gender equality by reversing earlier reservations on the protocol, while in Niger their counterparts vote against its ratification. Faith Cheruiyot in Nairobi interviewed leaders of women's organisations in the two countries and wrote this article.

The recent decision of the Gambian National Assembly to lift four controversial reservations to the AU's Protocol on the Rights of Women in Africa on the eve of the forthcoming assembly of the AU was a remarkable victory for Gambian women's rights campaigners.

Two years after the protocol was adopted by the AU heads of states, the National Assembly of the Gambia debated and approved the protocol for ratification on 11 March 2005, with reservations on Articles 5, 6, 7 and 14.

Article 5 of the protocol relates to the elimination of harmful practices. Female genital mutilation (FGM) is widely practised and deeply entrenched in the Gambia. An estimated 50 per cent to 90 per cent of women there have undergone this practice. Many citizens think that this practice is consistent with the Islamic faith and preserves tradition and that it makes girls more marriageable. Many are also oblivious to the health and reproductive risks of FGM. Consequently, there is no local law prohibiting FGM and it is not considered a criminal act.

Articles 6 and 7 relate to marriage, separation and divorce. Due to the Gambia's significant Islamic population, the majority of marriages there are performed under Islamic law. According to a recent survey, 66 per cent of women respondents disclosed that they were married when they were under 17 years old. A further 27 per cent married while under 15 years old.¹ Arranged, forced marriages and child betrothal are common practice in the Gambia.

Sharia law has been applied in divorce and inheritance matters. Women have normally received a lower proportion of the marriage assets than men. Most divorce cases never reach the courts but in those few cases that do, women often only receive their removal expenses, maintenance allowances for three months and a token amount for the maintenance of their children – if the women are given custody of the children.

Polygamy is allowed under sharia law and is widespread. There is a tendency for women to lose out in modern polygamous relationships. In some cases proper financial support is not given to the woman and her children especially if she is not the favourite of the husband. In other circumstances, men cannot afford to provide adequate support because of their meagre earnings. Invariably, there is a direct link between polygamy and financial difficulties in marriage.²

The Married Women's Property Act gives married women the right to own property and an equal capacity to enter into contract, customs and traditions. While the act is an important safeguard for women, most proceeds still end up belonging to the husband even though the wife is always expected to contribute to the family's farming or business.

Article 14 of the protocol relates to women's reproductive rights. This is a critical issue for women. The high rate of maternal mortality to live births (10:1,000) is related to the lack of access to adequate health services including pre-natal care, safe contraception and safe abortion. Young women do not have access to family planning services and the level of unwanted teenage pregnancies is high.³

Abortion is a criminal offence, unless it is to save the life of the mother. Binte Sidbe, the director of the Association for the Promotion of Girls' and Women's Advancement (APGWAC) speaks about this problem: 'Recently baby dumping has become a very big problem in the Gambia. It is illegal here to commit an abortion even though the mother to be cannot take care

of the child. We had hoped that with the ratification of the protocol such activities would only be in the past.'

Following the 'dirty' ratification on 11 March 2005, many civil society groups in the Gambia, including the Africa Centre for Human Rights and Democracy Studies (ACDHR), the Child Protection Alliance (CPA), the Institute for Human Rights and Development (IHRD), UNICEF, lecturers from the University of Gambia, GAMCOTRAP, the Management Development Institute (MDI), and the Association for the Promotion of Girls and Women's Advancement (APGWAC) embarked on a long battle and dialogue with policy makers to remove the reservations.

Hannah Forster, ACHRS director reflected recently: ' We embarked on a long process that involved government officials. We set up a gender action team with many organisations to target the Justice and Women's Affairs Department of the African Commission in Banjul. We wrote many articles in

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the newspapers, did many TV interviews, planned and implemented protest marches directed at the National Assembly. We split the heavy tasks among our organisations. There were only a few of us but we worked very hard with the National Assembly members (NAMS). Their support was crucial to the passing of the bill. One of the major things we did was to distribute copies of the protocol to each NAM, after we discovered that the NAMS were really ignorant about most of the laws and different human rights instruments.'

Working with grassroots women was another important strategy. Once they understood the issues, these women used their collective voices to put pressure on their NAMs. 'The NAMs need votes from these women so pay special attention to their constituency members,' said Binta Sidibe.

The advocates faced many challenges including gross ignorance and resistance to change. The NAMs were hesitant to intellectually engage with the debate and develop their own understanding of issues that are of

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concern to women and young people.⁴ They thought that any instrument stressing the rights of women was a Western ideology being imposed on Africans. Islamic scholar groups and rural men were against the protocol because they saw the full ratification of the protocol as giving women more rights that were equivalent to men's. Hannah Forster further stated: 'We did a thankless job, a very difficult and calculated task, but in the end, the results were very satisfying.'

The women's organisations were convinced that reversing the reservations was very important as Gambian laws have huge gaps especially with regard to personal laws. The constitution of the Gambia does have provisions which include the right to equality and non-discrimination. However, the constitution specifically exempts from these provisions laws relating to marriage, divorce and inheritance.⁵

The reversal of the reservations and full ratification of the protocol by the Gambia on 25 April 2006 was a big breakthrough.⁶ Dr Isatou Touray, the secretary general of GAMCOTRAP, and others commended the National Assembly members for ratifying the protocol and expressed appreciation to the government for taking the bold step to fully ratify the women's bill.

With a major milestone having been reached in the full ratification of the protocol by the Gambia, the question turns to how to turn laws into reality on the ground. As it is, there is a wide gap between the Gambia's international obligations, its stated policies and reality. One of the main factors that impede the effective protection of human rights is the dominance of customary and religious laws and a range of traditional, cultural and religious beliefs that perpetuate discriminatory and harmful practices.⁷

To this end there is a need for increased education, both formal and informal, throughout the Gambia on the risks involved in FGM. The government ought to demonstrate its full commitment and collaborate with NGOs that are already working in these areas by giving them both technical and financial support. The Gambia must take all measures to put an end to the practice of FGM, discourage its proponents and enforce punishments for its perpetrators.

The protocol has now established that men and women are regarded as equal partners in marriage and there should be national laws that guarantee that 18 is the minimum age for marriage.

There is definitely hope that the trends and statistics will be reversed, but it is bound to take time. Attention must turn towards the measures and strategies that the government will put in place to domesticate all the provisions of the women's protocol. On domestication of the protocol Binta Sidibe said: 'The bulk of the work still remains with us, the NGOs. We need to continue

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lobbying our government to prioritise the domestication process. We are positive that once we intensify the pressure during the forthcoming presidential and National Assembly elections, we could make headway.'

While Gambian men and women can look forward to a time when the protocol will be a lived reality, the women of Niger might never come close to realising the benefits of the protocol. On 3 June 2006, the male dominated parliament of Niger voted down the ratification of the protocol. Government spokesman Mohamed Ben Ahmed told the state newspaper *The Sahel*: 'The rejection of the motion is a serious set back for Niger, but this is a proper application of domestic principles.'⁸

Many MPs said they were unwilling to pass the protocol because of their concerns about reproductive rights, the freedom for women to choose how

many children to have, the abortion debate and inheritance. Niger shares similar religious and cultural practices with the Gambia. It is a predominantly Muslim country where practices like FGM, forced early marriages and polygamy are common in many parts of the country. Many women aged 15–49 have undergone some form of FGM in Niger. This number varies significantly according to ethnic, religious, regional and educational backgrounds. This practice in Niger is an extreme example of discrimination based on sex. It is often used as a way of controlling women's sexuality and is closely associated with the girls' marriageability. Mothers choose to protect them from being ostracised, beaten shunned or disgraced.⁹

Niger is the first African country to refuse to ratify the protocol in its entirety. Yet, women's organisations are convinced they can turn this around. Madame Djataou Oussa, le presidente du conseil d'administration of the Co-ordinators of Women's NGO's of Niger (CONGAFEN) said: 'It's a step behind for us and we are demoralised about this. However, we are planning what to do next. Our aim is to work towards ensuring that this bill comes back to parliament for fresh debate in three months time.'

The struggle continues for the women of Niger. CONGAFEN and other organisations working at the forefront say that they will now accelerate their work with parliamentarians. Perhaps the advocates in Niger ought to borrow a leaf or two from their Gambian counterparts.

Pambazuka News 259, 15 June 2006

Notes

¹ Davies Iber, ISHR WAC 'Factors inhibiting women's rights in West Africa'.

² Equality Now (2002), submission to the UN Human Rights Committee, 75th session, July.

³ Gambia report to the Committee of the Convention of the Rights of the Child.

⁴ *The Point* (2005) 'For health of women, for health of the world, no more violence', 23 Nov.

⁵ Equality Now (2002).

⁶ Equality Now (2002).

⁷ Equality Now (2002).

⁸ *The Daily Nation* (2006) 8 June.

⁹ Niger FGM country profile: UNICEF Niger.



GREAT EXPECTATIONS FOR AFRICAN WOMEN'S EDUCATIONAL EMPOWERMENT THROUGH THE PROTOCOL

ROSELYNN MUSA

The right to education is an integral part of the new African protocol on the rights of women, argues Roselynn Musa. Gender inequalities in education translate into larger socio-economic disparities, and affect not only individuals, but the social and economic development of communities and nations. The protocol offers a powerful tool for remedying these disparities, and addresses not only the grassroots level of the classroom, but also the political processes that grant women access to decision making.

Everyone has a right to education states the Universal Declaration on Human Rights¹ but today more than half a century after this historic text was adopted, the right to education remains an empty promise for millions of people all over the world, especially women and girls. During the last decade there have been improvements in basic education for women in many countries. A number of countries recorded increased growth in the enrolment of both girls and boys. At the same time many African countries have made progress in reducing illiteracy levels, particularly among women and girls. However, despite these improvements only 58 per cent of children of school age are actually enrolled in school.²

With few exceptions educational statistics show large gender disparities. Female–male school enrolment, retention and completion favour boys in a majority of countries. Moreover, African women have the highest illiteracy rates in the world, which in some countries is rising. In addition gender disparities in schooling undermine national efforts for human capital development, thereby slowing down the pace of social and economic development.

The right to education is a human right with major implications for both individuals and social and economic development. Education of women in Africa is imperative given the inverse relationship between female education and other aspects of development.

The educational system in Africa generally reflects gender inequalities. Gender refers not just to women, but to both men and women and the interaction between them. It is important to understand the differences between men and women that are externally influenced, as well as the conditions imposed on them that are based on natural, biological differences. Gender analysis therefore has to look at both sexes in relation to each other, not in

Gender equality means that the different behaviour, aspirations and needs of women and men are considered, valued and favoured equally.

isolation. Furthermore, an understanding of gender does not imply that all women are alike. Race, ethnicity, class, nationality and age are all factors that may cause significant differences among women and also among men.

The purpose of looking at gender is not to divide men and women, causing conflict between them. Rather, it draws our attention to those issues that have brought about unequal relations and allows us to address them with measures that will help reduce rather than perpetuate inequality. Thus the concept of gender helps focus on growth in terms of the equitable distribution of benefits between women and men, the equality and power relations between them and, most of all, the partnership between them in all fields of development.

Gender equality is based on the premise that all human beings, women and men are free to develop their personal abilities and make choices without the limitations set by stereotypes, rigid gender roles and prejudices. Gender equality means that the different behaviour, aspirations and needs of women and men are considered, valued and favoured equally. It does not mean that women and men have become the same, but rather that their rights, responsibilities and opportunities will not depend on whether they were born male or female.

The Protocol on the Rights of Women in Africa will come into force in November 2005. Article 32 of the protocol covers a broad range of human rights issues and advances the human rights of African women through creative, substantive and detailed language. Article 12 addresses the right to education and training.

One of the challenges to women's educational empowerment in Africa is that decisions on what is to be learnt, at what level and by whom are male dominated, thus perpetuating gender-based stereotypes. This makes the curriculum inappropriate for the promotion and protection of women's human rights. While the level of women's participation is on the increase, certain socio-cultural constraints impede women's access to vocational, scientific and technical education.

The protocol obliges state parties to take positive actions to promote women's education at all levels and in all disciplines. One of the measures that could be useful in addressing gender imbalances in education and training is for countries to institute and strengthen affirmative action measures including scholarships at all levels for female students, distance and non-formal education and literacy programmes for women, innovative and aggressive strategies to redress the under-representation of women and girls in sciences, mathematics and technology-related disciplines and careers, including the promotion of science among children in general and young girls in particular. Women's access to professional training should be strengthened.

Women need a broad, humanist and scientific education for the same reasons men do, so they can understand and appreciate life, give intellectual and political leadership and make the greatest contribution of which they are capable. In addition to this, the main financial partners of Africa's educational systems should show their firm commitment to women in their intervention policies. We must find ways to preserve what remains of our customs while at the same time refusing to accept those aspects of tradition that treat women and children as less than human, for example the belief that investing in girls' education is a waste of time and money. This has had and will continue to have devastating consequences on women unless something urgent is done.

Because most programmes for women's economic development, educational and political equality bow to patriarchal culture and stereotypes

imposed by society they are replete with fundamental conceptual flaws.

Approaches that focus on the law while ignoring culture are not likely to turn things around. We should strive for a state where women and men are equal both in law and in fact. If we focus on just law and not culture then our problems will only be solved in fractions, even when we have 50 per cent female representation in positions of power, because these same women are the wives, sisters, daughters, etc, of the men out there who the patriarchal system has placed in positions superior to women. Gender equality cannot be achieved without the empowerment of women especially in the field of education.

Human rights education goes beyond cognitive learning and includes the social and emotional development of all those involved in the educational process. It should aim at developing a culture in which human rights are taught, practised and lived within the school community and spread through interaction with the wider community. Introducing human rights education therefore implies that the school becomes a model of human rights learning and practice. Teachers, as the main depositaries of the curriculum, play a key role in reaching this goal.

Some of the factors militating against women's educational empowerment include, but are not limited to: poverty; sexual abuse, harassment and rape, which prevent some parents from sending their female children to school; child prostitution; an inadequate infrastructure; a gender-unfriendly school environment and curricula; gender stereotypes and preference for sending boys to school rather than girls; the workload of girl children; early marriages and pregnancies; the high rate of drop out among girls, especially at secondary and tertiary institutions and the lack of gender parity; and lack of policy and monitoring mechanisms. The protocol addresses the issue of sexual harassment and the need to introduce human rights education in schools and making counselling available to students.

The attacks on female education are manifestations of the desire to mute the voice of women. The field of science and technology remains almost solely a man's domain and the very few women that have 'dared' to venture there. Those that have done well are seen as the exception rather than the rule. Gone are the days when women and girls are only trained in cooking, embroidery, home economics, etc.

An educational system that allows the terrible illiteracy in which so many of our sisters are kept is not just the consequence of poverty, overwork and discrimination within the family, but it is also a social mechanism designed to ensure female acquiescence and deny women a public voice, or even a private one for that matter. Education is a powerful tool for empowerment and non-conformity, but ironically, the economic and social development of countries around the world is hampered by shortages of skilled men and women and confounded by widespread ignorance and indifference. If the capacity of people to shape and improve their own lives is the measure of development then educational empowerment of women is a necessary condition of development as well as a human right.

Achieving gender equality requires specific measures that go beyond the equal treatment of women and men. Such measures must address the politics, laws, procedures, norms, beliefs, practices and attitudes that maintain

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gender equality. Women must have the capacity to make informed choices about their lives. Fathers, husbands and even brothers may also suppress the potential of their daughters, wives and sisters because they do not wish them to have an independent identity. It will also be necessary to involve gender-sensitive men in the campaign in order to make good headway.

Though there has been a great breakthrough in the matter of gender equality, a lot still needs to be done. Discrimination against women continues and practices subordinating women to men and girls to boys remain in force. The domestication of international, regional and national instruments on women and girls' rights and the enforcement of existing legislation is still poor. Women and girls' access to justice systems is limited by legal illiteracy, lack of resources and gender insensitivity and the bias of law enforcement agents. Violence against women and girls, including rape and domestic violence, is rampant, particularly in conflict zones. Some traditional and cul-

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tural practices continue to inhibit progress in promoting women and girls' human rights. In some countries, women are denied equal rights to inherit property, while in others laws from several sources continue to govern their lives and restrict their enjoyment of their rights.

The question to ask is, where are we going and how do we get there? It is an enormous task because when we zero in on women we are confronted by a plight so grim it can break our hearts. We should not be persuaded by the gullibility of wider society that thinks that if the government can just pass the right laws then women will become equal. It is not enough that the government passes a law that says all forms of discrimination against women should be eliminated.³ It is naïve to think that just the passing of laws will help women. It has to be backed by action.

Deep and sustainable transformation requires a strategic and political vision up to the highest level and that is why the protocol has resolved to achieve the necessary cultural and institutional transformation in the educational system. One initiative would be for states to introduce human rights education into their curricula, as provided for in the protocol. Another measure would be for countries to institute and strengthen affirmative action measures including scholarships at all levels for female students and distance and non-formal education and literacy programmes for women and girls, especially in the sciences and technically oriented disciplines.

Successful strategies for improving girl's access to and retention in education should be scaled up. The content and culture of schooling should not discriminate against women and girls. One way to bring this about is curriculum reform and gender training for teachers and those working in curriculum development. There should also be gender-focused programmes for girls and boys.

A web does not move if you pull only one strand; all you do is break it. There is a need to adopt a participatory and multi-disciplinary approach to policy development by involving NGOs, teachers associations and unions, professional and research bodies, and other stakeholders in the preparation of educational policy texts, promoting a human-rights based approach to school, governance, management, discipline procedures and other regulations and practices affecting the school culture and access to education.

Human rights education implies changes in the whole educational system. Policy statements and verbal commitments alone are not enough to ensure educational changes. Implementation of the policy should therefore not lie with the ministries of education alone, but should involve other stakeholders. There is a political will by government to get girls into schools and bursaries for girls, but more needs to be done in this direction.

In conclusion, some schools already have human-rights based clubs; this should be encouraged, while schools that do not have them should be encouraged to introduce them. In addition, increasing campaigns for girl's enrolment in science based subjects, reviewing the school curriculum and text books to portray gender sensitive issues and language, providing adult education to older women, increasing the budget for education by government – these are all actions that would take things in the right direction. Human rights education should start in childhood.

Pambazuka News 229, 10 November 2005

Notes

¹ General Assembly of the United Nations (1948), Universal Declaration of Human Rights.

² UNESCO (2000) World Conference on Education for All. Paris: UNESCO.

³ Protocol to the African Charter on Humans and Peoples' Rights on the Rights of Women in Africa, Article 12 (1A)

Chapter 3

WOMEN, HEALTH AND FOOD SECURITY

At the end of January 2005, African leaders met in Abuja under the auspices of the African Union to consider issues of food security and health. The articles in this chapter formed part of a Pambazuka News special issue released before the summit in order to lobby African leaders about ratifying the protocol. The protocol is a significant tool for guaranteeing the health and food security of women on the African continent. Saudatu Mahdi states that political will is all that is needed for women to access these rights; Anne Gathumbi argues for the right of women to choose; Equality Now details the complexity of women's access to land; Liz Frank talks about teaching women to stand up for their rights and Elize Delport warns of the threat posed by HIV/Aids to women's rights. Yifat Susskind concludes the chapter by explaining how the Bush administration's conservative outlook is damaging the fight against HIV/Aids in Africa.



PROMISING HEALTH AND FOOD SECURITY

SAUDATU MAHDI

Political will, political will and political will: this is the essential ingredient to make sure that women are able to access their rights to health and food security, states Saudatu Mahdi from the Women's Rights Advancement and Protection Alternative (WRAPA) in Nigeria.

As African women celebrate the rising number of ratifications towards the 15 required to bring into force the Protocol on the Rights of Women in Africa (Nigeria is the latest member state to ratify the protocol), it is relevant for us to start simplifying the obligations it imposes on member states and the potential benefits of its provisions for women. Links must also be drawn between the principles of the protocol and those in other national and inter-

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national instruments that many of the African Union (AU) member states are signatories to.

Once the protocol comes into force, its implementation by member states (subject to internal processes of domestication) places an obligation on governments to establish institutions and mechanisms that assure women of protection from practices and attitudes that permit violence and discrimination, including differential opportunities in education, political participation and access to justice.

The provisions of Article 14 (health and reproductive rights) and Article 15 (the right to food security) provide some benchmarks that we may aspire to, once the protocol is domesticated in Nigeria. The health and reproductive rights of women and their right to food security affect their fundamental right to life. The two together cover the length and quality of the lives of women in Nigeria. Statistics from the 2003 Demographic and Health Survey (NDHS) indicate a direct relationship between women's educational status, economic position, and access to a good diet to their fertility rates, their

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of determining the health of their partners.*

access to clean drinking water, and antenatal and postnatal care – thereby underscoring the high rates of maternal mortality registered by Nigeria in the last ten years.

The right of women to control their fertility and the number and spacing between their children is obscured by the dictates of a patriarchy where men take the decisions. In many instances a preference for male children pushes many women into multiple deliveries, mostly in close succession or in competition with other wives, in search of the preferred child. Even where women are able to negotiate some respite, they may lose out over the method of contraception they choose to use.

Women's right to health is further undermined by their poor nutrition. Social and gender taboos dictate foods that men and women can or cannot eat either all the time or at specific times such as when pregnant or breastfeeding. The penalties for 'violation' are disproportionately high. Women are often unable to afford the cost of high nutrient value foods and food supplements are largely only available in urban centres. Rural women may go through pregnancy without the basic iron supplement meant to prevent anaemia, which is a confirmed factor in foetal development disorders and is usually a reason for premature delivery or low birth weight. Anaemia is also an underlying cause of maternal and perinatal mortality.

At another level a lack of knowledge about prevalent diseases, how they are caught and what to do or where to go for help prevents women accessing protection against and treatment of sexually transmitted diseases (STDs) including HIV/Aids. Many women, apart from being ignorant about their own health status, have limited ways of determining the health of their partners. The results are devastating for families and communities in most of the member states of the AU. Aggressive initiatives have not yielded the desired results due to the absence of a strong political will or the denial of the existence or scale of some of the diseases. This is compounded by the weak bargaining position of women in power relations and the pervasive cultural endorsement of a man's freedom to have multiple sexual relationships (in and out of marriage), thereby escalating the 'redistribution' impact of STDs and leading to the high prevalence of the HIV/Aids epidemic ravaging communities and nations all over Africa.

Land ownership for the average subsistence female farmer is an important right that would give her an economic base and enhance her capacity for food production. The tens of miles women trek to get water (never mind its quality when they find it) and domestic fuel tests their physical and mental capacity and preoccupies them to the extent that they are absent from

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decision making and in most instances reduced to being 'beasts of burden'.

In Nigeria, Chapter II Sections 13 to 24 of the federal constitution provide for the fundamental objectives and directive principles of state policy. The provisions, which for now are not subject to a court of law, draw a lot from the United Nations Charter of Social and Economic Rights and provide a framework that has a significant impact on the quality of the fundamental human rights of citizens as guaranteed by Chapter IV of the same constitution. Specifically, Section 13 states clearly and unequivocally that:

It shall be the duty and responsibility of all organs of government, and of all authorities and persons exercising legislative, executive or judicial powers to conform to, observe and apply the provisions of this Chapter of the Constitution.

The implication of this provision is that the Nigerian state is obliged to take positive action to create socio-economic conditions that uplift the dignity of its citizens. It makes it real and accessible to all especially the weak and vulnerable. Therefore the provisions of the protocol in Articles 14 and 15 go a long way in firming up the obligations of the Nigerian government. Once the protocol is part of domestic law, women's rights in the key areas of health, reproductive rights and food security can be defended in the courts. Petitions, especially for redress against violations or non-implementation, can be initiated at national level and where desirable can go up to the African Court for Human and Peoples' Rights.

Furthermore, our collective campaign and advocacy should tie government delivery to measurable outcomes. The number and quality of basic healthcare structures, especially at rural levels, will be an indicator of success. The services provided must cover the spectrum of detection and medication for simple ailments, health intervention initiatives such as iron programmes, prenatal and postnatal services, training and retraining of rural and traditional birth attendants, family planning services, and information on sexuality as well as voluntary testing and counselling for STDs and HIV/Aids.

Other indicators include the provision of quality drinking water using simple and affordable technology and government's commitment to the development of alternative energy for domestic purposes. At the legislative level, laws aimed at prohibiting social and cultural constructs that deprive women of control over land must be enacted while extensive reorientation and advocacy is embarked upon to support implementation of the laws and a shift in the right direction. The most important indicator is a demonstrated political will to eradicate the barriers and impediments which prevent women contributing to the development of their communities and nations.



MAKING REPRODUCTIVE HEALTH RIGHTS A REALITY

ANNE GATHUMBI

The politics of control must not be allowed to gain prominence over the right of women to choose, argues Anne Gathumbi from the Coalition on Violence Against Women.

Violence against women has devastating health consequences on the victims and undermines women's control over their own reproductive health. In dealing with survivors of violence against women at the Coalition on Violence Against Women's (COVAW) counselling and legal aid clinic, what has emerged is that most women undergoing violence perpetrated by their intimate partners also have reproductive health risks and problems.

These can broadly be categorised into fatal outcomes and non-fatal outcomes suffered as a result of violence. The fatal outcomes could be death as a result of homicide, suicide by the victim, maternal mortality and HIV/ Aids.

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The non-fatal outcomes include poor physical health as a result of injuries, poor mental health such as depression, consequences for reproductive health like unwanted pregnancies, unsafe abortions and sexually transmitted infections, including HIV/ Aids.

The psychological consequences are even more long term and devastating. The 2001 World Health Report identified gender-based violence as one of the factors contributing to the disproportionate rates of depression

amongst women. It further points out that recurrent abuse can erode women's resilience and places them at risk of other psychological problems such as post traumatic stress disorder, suicide, and alcohol and substance abuse.

The right to access basic healthcare services and information is a basic human right enshrined in several international conventions and instru-

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ments like the Convention on the Elimination of all Forms of Violence Against Women (CEDAW), the Universal Declaration of Human Rights, and the International Conference for Population and Development (ICPD).

Despite this, research from several countries has shown that women in violent relationships often do not have adequate access to reproductive health services yet they are among the most vulnerable and seek health services more frequently than non-abused women.

Within the health sector systems, violence against women remains largely invisible and there are glaring gaps within the health sector as well at the community level for dealing with violence against women. Most health providers have consistently failed to recognise and consider violence against women as an important part of their work. Some health workers, being products of a culture that condones violence against women, view it as a normal way of life and do not feel obliged to pay attention to women who they see with the signs and symptoms of abuse. They do not feel that caring for women suffering violence is part of their professional profile. Their attitudes about violence are also largely shaped by prevailing cultural norms. Owing to this disinterest, women living in violent situations also rarely reveal their situations to healthcare providers.

One doctor interviewed in an intimate partner violence survey conducted by Family Health International captured the situation thus: 'Health

workers – doctors, nurses, clinicians, are men first before they are health workers. As a result they cannot escape from the machismo socialisation that all men receive from their environment’.

Many providers also blame the victim rather than the aggressors. Such attitudes pose a serious challenge to transforming the culture of silence and complicity about violence against women. The situation is further compounded by the lack of legislative and policy frameworks that require health programmes to integrate policies and national plans to address

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gender-based violence. The establishment of health sector policies which address violence is a key step towards institutionalising programmes for violence against women and raising awareness amongst health providers of their role in addressing violence. Policy frameworks within the health system are important as they create a mechanism for holding the health sector responsible for addressing violence against women. Governments are responsible for upholding women’s reproductive health and rights yet they consistently fail to live up to that duty. As a result, international normative frameworks have had to be used as a strategy to build pressure on governments to abide by universally acceptable standards of promoting women’s rights to reproductive health.

The protocol on women’s rights is one such instrument. Lauded as one of the most progressive instruments promoting the rights of women on the African continent, it provides a comprehensive and useful framework for safeguarding women’s sexual and reproductive health and rights while upholding the bodily integrity of women. Article 14 of the protocol obliges state parties to carry out several kinds of duties relating to sexual and reproductive health and the rights of women. Among the obligations it places on states are:

- The duty to protect the reproductive rights of women, which requires states to take all necessary measures to ensure that no acts of omission and commission result in any violation of women's reproductive rights.
- The duty to fulfil the reproductive rights of women, which calls upon states to take all appropriate measures including legislative, administrative, budgetary allocations and other measures that will ensure the realisation of women's reproductive rights.
- The duty to respect, which entails a government upholding a woman's right to choice, information, and control over her sexual autonomy and bodily integrity. It further prohibits states from interfering with the protection and promotion of reproductive health and rights.

It is interesting to note that Article 14 has proved the most contentious in a number of countries yet it is one of the most liberating in providing choice for women in matters of bodily integrity and autonomy. Women must not let the politics of control gain prominence over their rights to choice.

Once countries sign and ratify the protocol they become duty bound to uphold these rights. Given the glaring gaps that exist in legislative and policy frameworks in matters of reproductive health, it is necessary to continue building pressure for African governments that have not ratified the protocol to do so. Its passage will stimulate the enactment of national policies on violence, which will stimulate greater awareness that violence against women is a public health issue. It will also create the political space for dialogue between civil society and the state while at the same time committing governments to a discourse that encourages sanctions against violence.

In a continent characterised by oppressive gender relations the passage of the protocol will anchor issues of women's health within a human rights framework, thus creating duty bearers who can be held accountable for the realisation of rights. Women's rights activists must therefore not relent in their struggle to have governments move beyond lip service to securing serious commitments on issues of women's reproductive health and rights.

Pambazuka News 190, 20 January 2005



UNLOCKING WOMEN'S RIGHT TO LAND

EQUALITY NOW AFRICA REGIONAL OFFICE

Barriers facing women in their access to land are complex, but the Protocol on the Rights of Women in Africa does offer hope, says this article from women's rights organisation Equality Now.

Women's right to equal ownership of and access to property is of vital importance in securing women's equality. But as Mwalimu Julius Nyerere once said: 'Women of Africa toil all their lives on land that they do not own, to produce what they do not control and at the end of the marriage through divorce or death, they can be sent away empty handed.'

The Protocol on the Rights of Women in Africa offers potential solutions to these long-standing problems. At the time of writing, nine more countries must ratify the protocol in order to bring it into force. Enforcement of the protocol is vitally important to reforming and better protecting women's property rights.

If women had equal access to and control over land, it would not just benefit them individually, but their countries as a whole. As Winnie Byanyima MP from Uganda has said: 'When women own and control land, there will be more food in each household and more crops for export since most farm work is done by them.' This statement is reinforced by studies undertaken by the Ugandan authorities themselves, which have shown that denying women equal access to land robs the whole country of progress in development. The same is true of other countries.

The protocol applied

The protocol sets out a broad range of rights for African women, including the protection of their economic independence, the right to own and manage land, and the right to be equal partners in making decisions about property,

regardless of their marital status. These provisions would need to be domesticated into the national laws of each country that ratifies the protocol to ensure that they are translated into reality. These are some of the relevant provisions of the protocol:

Article 2 states that governments ‘shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures.’ Article 2 (1)(d) elaborates on this by creating a duty on states to ‘take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist’.

Article 6 (j) states, ‘during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.’

Article 7 states that governments should enact legislation to ensure that women and men enjoy the same rights in the case of separation, divorce

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or annulment of a marriage and, more particularly ‘in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.’ When domesticating these provisions, governments should reflect the true intent of the protocol, which might mean measuring a women’s contribution to the household in more than mere monetary terms in accordance also with Article 13 (h) of the protocol as highlighted below.

Women’s property rights are also protected through the protocol’s protections of economic development. Article 13 (e) obliges the state to ‘create conditions to promote and support the occupations and economic activities of women, in particular, within the informal sector’. Article 13 (h) strengthens this protection by creating an obligation to ‘take the necessary measures to recognise the economic value of the work of women in the home’.

Article 16 (right to adequate housing) provides that ‘to ensure this right,

States Parties shall grant to women, whatever their marital status, access to adequate housing'.

Article 18 creates a duty on states to 'ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels.'

Article 19 (c), in making guarantees for a sustainable environment, also provides for the promotion of 'women's access to and control over productive resources such as land and guarantee their right to property'.

Article 20 requires governments to 'take appropriate legal measures to ensure that widows enjoy all human rights.' Supporting this, Article 21 guarantees widows 'the right to an equitable share in the inheritance of the property of her husband', and 'the right to continue to live in the matrimonial house', even in instances of remarriage if it belongs to her or she has inherited it. Article 21 also accords to women and men 'the right to inherit, in equitable shares, their parents' properties'.

Just looking at these few provisions we can see how the protocol could be a powerful instrument for change. It attempts to tackle many of the crucial issues facing women in Africa, including the critical area of land ownership for all women as well as widows who have been additionally neglected.

The protocol makes it very clear that custom cannot be used as an excuse to deprive women of their rights and that women have 'the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies' (Article 17). This shows very clearly that governments cannot hide behind traditional practices, in whatever sphere, to continue to deny women equal rights with men. The protocol points the way to individual governments who do not have laws that adequately protect women's rights and shows them the principles they should be reproducing in their national laws. Governments will have an obligation to look at all sources of law in their countries to make sure the rights provided for by the protocol are respected and protected.

Conclusion

Discrimination of women in property and marriage law will not be easily remedied. The problem is complex: unfair treatment is rooted in national

laws and social attitudes, in customary law and in the law imposed by colonial forces. But there is much hope to be seen in the fact that the 53 countries of the African Union did adopt the protocol and that several countries have already ratified it or are on the way to ratifying it. We must encourage them to take progressive steps to ensure that the protocol is not only ratified but implemented for the benefit not just of African women, but for the continent as a whole.

Pambazuka News 190, 20 January 2005



TOWARDS HUMAN RIGHTS FOR ALL WOMEN IN NAMIBIA

LIZ FRANK

When the women's rights organisation Sister Namibia held workshops using the African Union Protocol on the Rights of Women, participants were amazed at the rights to which they were entitled. Liz Frank says the work will continue so that women can stand up for their rights.

Namibia recently became the fourth country on the continent to ratify the African Union (AU) protocol on women's rights. What meanings does this document, as well as the other international instruments signed by our government, have for girls and women in the diverse communities of Namibia?

During 2004, Sister Namibia held three-day workshops on women's human rights in Lüderitz, Karasburg, Nyangana, Katima Mulilo, Okakarara and Tsumkwe, using the AU protocol as a main tool. In all these locations, workshop participants were amazed to learn about the broad range of human

*the participants said that domestic violence
was an everyday occurrence in their lives,
but that they had not realised that this
was a violation of their rights*

rights they are entitled to as full citizens of this county and this continent, and reported grave violations of these rights in many areas of their lives.

Let us take a closer look at the situation of women in Tsumkwe in eastern Namibia, home of many San people, who are the impoverished and marginalised indigenous people of our country. Forty women attended the workshop, young and old. Nineteen of them had infants or small children

with them, and five more were pregnant. All the women said that it was the first time they ever attended such a workshop, and expressed the belief that rights were something only accorded to people living in towns.

Following a role play by the facilitators on the different forms of domestic violence, the participants said that such incidents were an everyday occurrence in their lives, but that they had not realised that this was a violation

*'We really do not know how to
protect ourselves from sexually transmitted
diseases such as HIV/Aids, and also
unwanted pregnancies.'*

of their rights. However, to apply for a protection order under the Domestic Violence Act of 2003, they would have to find transport to travel 275 km to the nearest magistrate's court at Grootfontein. And as magistrates have not yet received training on the act, it could happen that women applying for a protection order are simply sent home again.

The information on the new Maintenance Act was also new to the women in Tsumkwe, and they stated that because there are no social workers in Tsumkwe there was no one to assist them with accessing their social rights. Lack of access to education was also discussed as a major violation of the rights of San girls, many of whom marry and start having children soon after beginning their menstruation. 'We don't know about reproductive and sexual rights' said one of the participants. 'We as women don't talk about this to our husbands because it is very sensitive. Normally we give birth to babies every year. In our culture our little girls are getting into early marriages. Soon after a girl child is born, an old man visits the mother and says that this little girl will be his future wife. He will start supporting her until she reaches her first menstruation and then marry her.' Information and training on the Married Person's Equality Act of 1996 has thus not yet reached the girls and women of Tsumkwe.

Poverty was the other main reason given for the lack of access to education. Children living on farms and in villages in the surrounding areas need

transport to and from the secondary school in Tsumkwe and parents are not aware that school fees and uniforms can be waived. Schools and school hostels are also places of discrimination and abuse and are thus not safe places for the girls. Participants asked in particular for more information on their reproductive health and rights. 'We really do not know how to protect ourselves from sexually transmitted diseases such as HIV/Aids, and also unwanted pregnancies.'

Sister Namibia will intensify our work in this area in 2005, and plan how to reach out to more San women and girls, as well as women in other communities across the country. Our aim is to develop a sense of entitlement among women to all their rights that currently exist only on paper and develop lobbying and advocacy skills among girls and women so that they can begin to stand up for their rights.

Pambazuka News 190, 20 January 2005



HIV/AIDS – A CHALLENGE TO THE SUCCESSFUL IMPLEMENTATION OF THE PROTOCOL

ELIZE DELPORT

HIV/Aids poses an enormous challenge to gender equality in Africa, states Elize Delpot. She writes that the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa has the potential to ensure the development of a strategic human rights response specifically suited to those most affected by the pandemic – the women of sub-Saharan Africa.

Introduction

The HIV/Aids pandemic arguably poses the greatest threat to the promotion and attainment of gender equality in Africa. It has the power and potential to nullify each and every human right and to erode any development gains. Conversely, the Aids virus can only flourish when socio-economic rights like the right to adequate health care and proper nutrition are violated. It is only if the rights to equality and non-discrimination are violated, that the virus can take advantage of the social, political and economic vulnerability this creates to flourish unabated among women. Far from being merely a health issue, the pandemic is now recognised as a human rights and development crisis. Gender inequality is at the root of this crisis.

The statistics are alarming and clearly expose gender fault lines:

In sub-Saharan Africa, approximately 23 million adults aged 15–49 are living with HIV/Aids. Of these 57 per cent (13.1 million) are women. This region is burdened with the highest HIV prevalence rates and displays the most disproportionate impact of the pandemic on women and girls. In 1985, roughly half a million women and half a million men were living with HIV/

Aids in sub-Saharan Africa. However, the number of women living with HIV/Aids relative to men has increased every year. Particularly affected are young women aged 15–24, who are currently over three times more likely to be infected than young men.

The impact of HIV/Aids on women and girls

Gender roles and relations have a significant influence on the course and impact of the HIV/ Aids pandemic. It is acknowledged that HIV/Aids poses a greater threat to the lives and futures of women and girls. Gender inequality and power imbalances between women and men in every society, heightens the vulnerability of women to infection and leaves them with heavier burdens when HIV/Aids enters households and communities.

Research shows that being a female or male influences how a person experiences and responds to the HIV/Aids epidemic. Gender influences include:

- Individual risk and vulnerability to HIV infection
- The experience of living with HIV/Aids
- The impact of an individuals HIV-related illness and death within a family or community
- Responses to the pandemic at the individual, community and national level.

Understanding the influence of gender relations on the ability of individuals and communities to protect themselves from HIV and effectively cope with the impact of Aids is crucial for expanding the response to the epidemic.

The centrality of gender inequality to the pandemic

The United Nations General Assembly Special Session on HIV/Aids (UNGASS) convened in June 2001 marked a critical turn in the awareness of the international community around the centrality of gender inequality and discrimination to the pandemic. On this occasion, delegates from 180 countries acknowledged that gender equality and the empowerment of women are fundamental elements in reducing the vulnerability of women and girls to HIV/Aids.

In the declaration adopted at the UNGASS, states committed themselves to a wide range of actions to combat the HIV/Aids pandemic, many of which address its gender dimensions. States are called upon to review the social and economic impact of HIV/Aids at all levels of society, especially on women and the elderly, particularly in their role as caregivers, and in families affected by HIV/Aids and address their special needs. States committed themselves to intensify efforts to challenge gender stereotypes and

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attitudes, and gender inequality in relation to HIV/Aids, encouraging the active involvement of men and boys. Furthermore, the declaration calls for national strategies to promote women's full enjoyment of their human rights and for the elimination of discrimination against women. However, the question the declaration leaves open is what women's human rights actually are in the context of the pandemic.

In an innovative publication entitled *Turning the Tide – CEDAW and the gender dimensions of the HIV/Aids pandemic*, UNIFEM explains how, as a blueprint for women's human rights, CEDAW is a critical tool for assisting us to understand what gender equality and the elimination of discrimination will require. In many of the critical areas for addressing HIV/Aids from a gendered perspective – whether it is access to health services, care and care-giving, women's leadership and participation or the ability to negotiate safer sex – CEDAW provides the guiding human rights principles and directives for action which, if realised, can turn the tide of the HIV/Aids pandemic.

The AU protocol on women's rights has the potential to build on the framework that CEDAW provides and to ensure the development of a strategic human rights response specifically suited to those most affected by the pandemic – the women of sub-Saharan Africa.

The Protocol on the Rights of Women in Africa

Explicit reference to HIV/ Aids in the protocol is limited to Article 14, which deals with health and reproductive rights. This article provides that:

- 1. States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted.*

This includes:

- d) The right to self - protection and to be protected against sexually transmitted infections, including HIV/Aids;*
- e) The right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/Aids, in accordance with internationally recognized standards and best practices...*

The implementation of these provisions is likely to be fraught with practical and ethical difficulties. Given the vast body of research that points to the gender and human rights dimensions of the HIV/Aids pandemic, it is rather unfortunate and disappointing that the protocol seemingly reverts to the out-dated approach of classifying the pandemic merely as a health issue.

While issues of gender and HIV/Aids are not explicitly mainstreamed in the text of the protocol, all is not lost provided we make every effort to ensure that issues of gender and HIV/Aids form an integral part of our implementation strategies. Many articles in the protocol provide appropriate responses to, and protection against, the ravages of the pandemic.

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infected than young men.*

As a starting point, aspects of the pandemic for which the protocol has special relevance should be identified. The key responses that are required in terms of the protocol should then be set out. In addition, reference should be made to the guiding articles of CEDAW and relevant general recommendations formulated by the CEDAW committee.

This exercise should provide tools to support efforts to integrate a rights-based approach into programmes, policies and strategies to respond to the gender dimensions of the pandemic.

Building on the strategy suggested by UNIFEM in *Turning the Tide – CEDAW and the gender dimensions of the HIV/Aids pandemic*, the following may serve to illustrate this approach.

Gender inequality and safer sex

Power imbalances and inequalities between men and women render many women unable to negotiate safer sexual practices with their partners. Such imbalance and inequality may stem from family structures, economic relations, differences in education and experience, exposure to violence and cultural expectations. In unequal relationships, women demanding safer sex may risk impoverishment or assault. Social norms dictate that women should be passive and compliant in sexual relations. The right to decide how and when sex takes place is regarded as a male prerogative. There are numerous constraints on a woman's ability to engage only in sexual relations and practices that she chooses or desires. The autonomy needed by a woman in order to negotiate safer sex depends on the realisation of her right to equality in many different areas of life.

The provisions of the protocol, if effectively implemented and enforced, provide protection and guidance in the following ways.

Power imbalances within family relations often stem from forced marriages, male ownership and control over family resources and legal impediments to women obtaining divorce.

Article 6 of the protocol obliges states parties to ensure that women and men enjoy equal rights and are regarded as equal parties in marriage. In this regard, appropriate national legislation must be enacted to ensure, amongst other things, that:

- Marriage will not take place without the free and full consent of both parties
- The husband and wife must, by mutual consent, choose their matrimonial regime and place of residence
- During her marriage, a woman will have the right to acquire her own property and to administer and manage it freely.

Article 7 of the protocol obliges states parties to enact appropriate legislation to ensure that women and men enjoy the same rights in cases of separation, divorce or annulment of marriage. Such legislation must provide men and women with the same rights to seek separation, divorce or annulment of a marriage and with the right to an equitable sharing of the joint property deriving from the marriage.

Early marriage is regarded as a major factor in increasing women's vulnerability to HIV. Marriage to an older man creates significant imbalances between husband and wife in terms of experience, authority and economic

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autonomy. The situation is exacerbated when a girl leaves school in order to marry and/or falls pregnant at an early age. Early marriage poses a serious threat to the health, education and employment prospects of girls.

Article 6 of the protocol obliges states parties to enact and enforce legislation to set the minimum age of marriage for women at 18 years. The further requirement that no marriage takes place without the free and full consent of both parties has the potential to protect against forced marriages. The requirement that every marriage should be recorded in writing and registered in accordance with national laws in order to be recognised, may provide additional protection against early and forced marriage.

Early marriage may be seen as a harmful practice, that negatively affects

the human rights of women and which are contrary to international standards. In this case, Article 5 of the protocol obliges states parties to take all necessary legislative and other measures to eliminate such practices, including the creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes.

Early marriage often goes hand in hand with violence against women. Article 4 of the protocol obliges states parties to take appropriate and effective measures to enact and enforce laws to prohibit all forms of violence against women in public or private, including unwanted or forced sex. States parties are also obliged, through curricula and social communication, to eradicate elements in traditional and cultural beliefs, practices and stereotypes that legitimise and exacerbate the persistence and tolerance of violence against women.

Other initiatives and best practice

When exploring ways to include issues of HIV/Aids in a protocol implementation strategy, there are current initiatives and research that provide useful guidelines and recommendations. As time is not on our side, it makes sense to use existing information rather than to reinvent the wheel. Here are some examples of current initiatives and research.

The Task Force on Women, Girls and HIV/Aids in Southern Africa was convened by the United Nations secretary general in 2003. It identified key actions to reduce prevalence rates among girls and women, including:

- Protecting female school enrolment figures
- Protecting girls and women from the direct and long-term risk of HIV infection as a result of violence
- Protecting the rights of women and girls to own and inherit land
- Addressing gender norms, violence, stigma and discrimination as potential barriers to women's access to care and treatment
- Collapsing the bridge of infection between older men and younger women and girls.

The task force indicated that strategies were required to:

- Strengthen the legal and policy frameworks that support women's rights to economic independence
- Challenge the social norms and values that contribute to the lower social status of women and girls and condone violence against them
- Ensure access to health services and education
- Empower women and girls economically.

A recent report by UNAIDS/UNFPA/UNIFEM on 'Women and HIV/Aids: confronting the crisis' provides valuable direction in charting the way forward and prioritising areas of intervention. The report stresses that, in each area, women and girls, especially those living with HIV/Aids, must be involved in interventions. It has identified the following actions that must begin without delay:

- Support positive women and their organisations and networks
- Make Aids money work for women
- Ensure that adolescent girls and women have the knowledge and means to prevent HIV infection
- Ensure equal and universal access to treatment
- Promote girls' primary and secondary education and women's literacy
- Recognise and support home-based caregivers and Aids patients and orphans
- Promote zero tolerance of all forms of violence against women and girls
- Promote and protect the human rights of women and girls.

Conclusion

The time has come for those promoting and protecting the human rights of women in Africa to mainstream issues of HIV/Aids in all areas of activity. With the protocol, CEDAW and other initiatives providing strategic direction in this regard, this task will be made far easier.

Pambazuka News 222, 22 September 2005

Further reading

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UNDP (2001) *HIV/AIDS – Implications for poverty reduction*

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United Nations Secretary-General Task Team on Women, Girls and HIV/Aids in Southern Africa (2004) *Facing the Future Together*

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Many relevant documents may be found at www.unaids.org



AFRICAN WOMEN CONFRONT BUSH'S AIDS POLICY

YIFAT SUSSKIND

African women are the hardest hit by HIV/Aids in Africa and yet the approach to fighting the epidemic advocated by the Bush administration fails to take account of their specific needs and circumstances. Yifat Susskind examines the 'manmade' components of the crisis, including economic austerity measures, US pharmaceutical companies and onerous debt repayments.

Rebecca Lolosoli radiates a quiet authority beneath layers of elaborate bead-work that cover her forehead, neck, chest, and wrists. She smiles readily while addressing an audience of US college students, though to them, her topic is a metaphor for hopelessness. Rebecca is talking about Aids in Africa, specifically among women in her indigenous, Samburu village of Umoja,

*while Aids may have originated
in nature, the magnitude of its destruction
is a manmade catastrophe*

Kenya. 'For years, people were dying and we did not know why,' she recalls. 'Now we know that Aids can be avoided, but only by making great changes in our lives.'

Thanks largely to the work of African public-health and social-justice advocates like Rebecca, growing numbers of people around the world know that sub-Saharan Africa is the epicentre of the Aids pandemic: three-quarters of Aids deaths worldwide have been in Africa, and today the continent is home to nearly two-thirds of all of those who are HIV-positive (more

than 25 million people).¹ Fewer people know that most Africans living with HIV/Aids are women, and that young women are now being infected at a rate three to four times higher than young men.² For many, this information is absorbed through a mesh of stereotypes that make human misery seem like a natural condition of life in Africa.

But while Aids – like the litany of this year’s natural disasters – may have originated in nature, the magnitude of its destruction is a manmade catastrophe. Consider the following:

- Since the 1980s when Aids first emerged, the US has demanded ‘economic austerity measures’ in impoverished countries. In Africa, these policies cut national health budgets in half just when public health systems needed to be ramped up to combat Aids.³ Today, the pandemic is the single greatest obstacle to economic development in Africa.
- To bolster the already huge profits of US pharmaceutical companies, the Bush administration has blocked the sale of affordable generic drugs that have saved millions of lives in rich countries.
- Women are made particularly vulnerable to HIV infection because they are denied the rights to refuse sex or insist on condom use. As the majority of those living in poverty and the poorest of the poor, women are more likely to contract HIV and more likely to develop symptoms of Aids soon after they are infected.

Aids, unjust economic policies, and women’s inequality are mutually reinforcing crises; combating any one of these requires addressing them together. But too often, public health programmes, government policies, and even activists compartmentalise issues, missing critical points of inter-connection that are keys to effecting change.

One reason for this myopia is that a singular focus on Aids as a naturally occurring scourge allows policymakers to avoid tackling tough social issues like economic justice and gender equality. Take the relationship between Aids and women’s property rights in Kenya. Each year, hundreds of thousands of Kenyan women are widowed by Aids. Because Kenyan laws and customs bar women from owning and inheriting property, women and their children are often forcibly displaced from their homes when their husbands

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die. Displacement increases women's risk of contracting HIV by exposing them to poverty, homelessness, violence, and disease, sometimes compelling them to trade sex for food and shelter. Protecting women's property rights is an urgent component of HIV/Aids prevention strategies. But safeguarding these rights entails challenging law and tradition and spotlighting volatile issues related to land tenure and distribution of resources in an impoverished country.

In fact, any successful prevention strategy has to promote women's social and economic rights. Yet the dominant approach remains the Bush administration's ill-conceived 'ABC' strategy: 'Abstain, Be faithful, use Condoms.' Abstinence is not a choice for women who are raped or coerced into sex. Faithfulness is irrelevant for women whose husbands have multiple partners (for African women, marriage is actually a risk factor for contracting HIV).⁴ And condoms – presented by the Bush administration as a 'last resort' in the fight against Aids – depend on men's willingness to use them and both partner's willingness to forgo having children. Moreover, by placing the burden for prevention on individual behaviour, the ABC strategy allows policymakers to ignore the poverty and inequality that form the breeding ground for Aids.

As 2005 ended it was clear that the UN's '3 by 5' initiative to provide anti-retroviral drugs to three million people by the end of the year would fail by a two-thirds margin.⁵ In Africa, nine out of ten people with HIV/Aids are still denied these drugs, now almost universally available in wealthy countries.⁶ The reason? Lack of political will and high drug prices. Universal access to treatment is an achievable goal, but it requires the US and European Union (EU) to act.

Effective programmes that combine HIV / Aids treatment and prevention have been implemented in Uganda, Tanzania, Thailand and elsewhere. But rather than support the best of these efforts, the Bush administration has put Aids policy into the hands of Christian fundamentalists (who have pushed their ideological ABC approach to prevention)⁷ and drug-company lobbyists (who have prioritised industry profits over ensuring access to life-saving medicines). Today, the White House is issuing reminders of President Bush's 'compassionate' \$15 billion programme to fight Aids, particularly in Africa. But that promise was made over three years ago and most of the money has never materialised.⁸ In fact, Bush's initiative actually undermined effective international efforts to combat Aids through the UN Global Fund to Fight Aids, TB, and Malaria. Instead of paying its fair share to the fund (\$3.5 billion, or one-third of the total), the US has pledged just \$0.6 billion for 2006–07.⁹

This year's debt forgiveness offer by the G8 (the world's richest countries) is yet another empty promise to African Aids sufferers. It is widely assumed that money freed up by the deal will be used to fight Aids, but no mechanism exists to make this happen. In fact, the deal still leaves most African countries spending four times more on debt servicing than on health and education – the most critical sectors in the fight against Aids.¹⁰ Actually converting

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debt payments into Aids funding would yield \$15 billion a year – the precise amount that UNAIDS needs to fund its programmes.¹¹ We know that the World Bank and International Monetary Fund can afford to cancel 100 per cent of poor countries' debt without much impact on their operations.¹² But these institutions' largest shareholder, the US, is opposed to unconditional debt cancellation. It is not really about the money, which is negligible in rela-

tion to the US economy. Rather, the US leverages the debt to ensure African governments' compliance with policies that suit US interests.

Towards the end of 2005, the United Nations released its annual report on the global Aids crisis.¹³ It was mostly bad news, but it did credit aggressive prevention and treatment programmes with reducing the adult HIV infection rate in Kenya from 10 to 7 per cent between the late 1990s and 2003; and with lowering infection rates for pregnant women in Kenya from a staggering 28 per cent to 9 per cent during the same period.

Rebecca Lolosoli knows first-hand the importance of combining treatment and prevention in the fight against Aids. Two years ago, Rebecca began working with MADRE, an international women's human rights organisation, to bring HIV/Aids prevention educators to her community. 'In our trainings with MADRE, we've learned that we have a right to demand medicine for the women in our community. But our best hope is to avoid HIV in the first place. For that, we women must have the right to say no without being forced or beaten. And women need to be able to own and inherit land so that we can feed ourselves and our children. This is how we can stay healthy. Changing traditional ways is not easy,' Rebecca says with a broad smile. 'But it has many rewards.'

Pambazuka News 237, 12 January 2006

This MADRE article was published by Foreign Policy in Focus

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Chapter 4

WOMEN AND CONFLICT

In times of war, women bear the toughest of burdens, as detailed in Christine Butegwa's article on sexual and gender-based violence in Darfur and the possible role of the International Criminal Court in alleviating this situation. On the subject of war and peace, it is painfully obvious in an article contributed by Strategic Initiatives for Women in the Horn of Africa (SIWA) Network that unless women are included at all levels of peacemaking, the effects of war will remain. This includes the media, writes Amie Joof-Cole. Lastly, in 2005, Ellen Johnson-Sirleaf was elected as president of Liberia, raising the role of women in politics and placing a spotlight on the marginalisation of women in all spheres of life, a subject tackled by Emira Woods and Lisa VeneKlasen in their article 'Women are Africa's political hope'.



THE INTERNATIONAL CRIMINAL COURT: A RAY OF HOPE FOR THE WOMEN OF DARFUR?

CHRISTINE BUTEGWA

If you are a woman in Darfur and you want to lay a charge of rape, the chances are that the charge will be changed to one of assault. Even if you want to persist in your charge of rape, you will need four male witnesses to support your claim. As a result, sexual and gender-based violence is one of the biggest violations of women's rights in Darfur, writes Christine Butegwa from Femnet. Hopes are high that the International Criminal Court will be able to change the situation.

On 30 November 2004, seven female internally-displaced people (IDPs), one of whom was pregnant, were attacked by an armed militia group allegedly in military uniform, near the Deraij camp, 4km east of Nyala in Darfur. The seven women and girls were fetching firewood outside the camp where they were reportedly attacked, beaten on their chests and heads with guns, and stripped. The armed militia later took three of them to an abandoned hut where they were raped. The other four women and girls managed to escape. All seven women and girls were seriously injured and later received medical treatment at the Amel Centre for the rehabilitation of torture victims. One of the survivors of the violence was transferred to the Nyala hospital where she miscarried.

This is just one of the cases that the World Organisation Against Torture (OMCT) has received from Sudan. Since the unfolding of the conflict in Darfur in February 2003, intolerable crimes against humanity have been committed in a massive and systematic manner. Over two million people have been forced to flee their homes and over 70,000 people have been killed as a direct result of violence. Women and children have been the main target of these atrocities, specifically sexual and gender-based violence. Women and

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girls are vulnerable to rape whenever they venture out of the IDP camps in search of water or firewood. Despite the fact that in many cases, the survivors of gender-based violence can identify their attackers, they are denied justice. Now, the recent decision by the United Nations Security Council to refer the situation in Darfur to the International Criminal Court (ICC) may offer the only hope for many women and girls in Darfur of seeing justice done.

Lack of access to justice – a denial of women's rights in Darfur

Sexual and gender based violence is one of the biggest violations of women's rights in Darfur. Women's rights continue to be violated by the gender-based discrimination in the national laws of Sudan. According to Jane Lindrio Alao, a psychologist with the Amel Centre for the Treatment and Rehabilitation of Victims of Torture, based in Darfur, the law does not recognise rape as a crime. Most people accused of rape are only charged with assault, a lesser charge that can lead to a one-year jail sentence. Under the law, rape can only be said to have occurred and admitted in court if there are four witnesses. 'All the witnesses have to witness the actual penetration. This means that if there were only two witnesses, the accused cannot be charged. How many women have the luxury of having witnesses to rape?' says Ms Alao.

These archaic and discriminatory laws have meant that perpetrators of violence can act with impunity. According to Ms Alao, the majority of the perpetrators are allegedly directly or indirectly affiliated with the government, such as members of the Popular Defence Forces and the Janjaweed

militia. The Sudanese national courts are also affiliated to the governing party and have therefore failed to provide justice to the people of Darfur. Women and other members of the community who dare to take rape cases to court are arrested and accused of waging war on the government.

The situation is compounded by the fact that the majority of civil society organisations (CSOs) in Sudan are pro-government and therefore do not acknowledge rape and other human rights violations occurring in Darfur. 'The Amel centre is the only NGO providing legal aid for victims to seek redress and justice for crimes committed. Most of the other local NGOs deal with sanitation and humanitarian efforts,' says Ms Alao.

The Darfur Consortium: African civil society advocacy on Darfur

Previously, most high profile responses to the situation in Darfur have come from NGOs and governments outside Africa. The African Union (AU) has now taken a more active role and brokered several ceasefire agreements and has troops on the ground in Darfur attempting to monitor these agreements. However, there was still a large gap in terms of African civil society finding an African solution to the Darfur crisis.

To fill this gap, the Darfur Consortium was created in September 2004 in Pretoria, South Africa on the same occasion that the African Commission on Human and Peoples' Rights held its session dedicated to examining the situation in Darfur. The Darfur Consortium is a network of Africa-based and Africa-focused CSOs that hopes to reflect the unique perspective of African civil society and provide a forum for unified action, particularly through sustained engagement with the institutions of the AU. The consortium brings together more than 200 African CSOs.

At a meeting in Kampala in February 2005, the Darfur Consortium embarked on a campaign to support the International Commission of Inquiry's recommendation that the situation in Darfur be referred to the International Criminal Court (ICC) for further investigation. The commission argued that the Sudanese justice system had shown itself unwilling or unable to prosecute offenders. The Darfur Consortium engaged in an intense

lobbying campaign with members of the United Nations Security Council on the commission's recommendation. On 31 March 2005, the Security Council approved UN Security Council Resolution 1593/2005, granting the ICC jurisdiction to investigate ongoing atrocities in Darfur. Although some members of the Security Council, such as Algeria, Nigeria and the United States, felt that an African tribunal would be the most appropriate mechanism, the Darfur Consortium argued that the ICC was both an African and an international mechanism. According to Dr Yitiha Simbeye, a member of the consortium and dean of the Faculty of Law in Makumira University, Tanzania, the consortium also supported the referral to the ICC because it is a permanent court so would save on the time and resources required to set up a new one. 'The ICC referral and present jurisdiction also signals to the Darfurians that the whole world is concerned with the situation in Darfur,' says Dr Yitiha.

The International Criminal Court: justice for women in Darfur

The ICC is the first permanent, independent court capable of investigating and bringing to justice individuals who commit the most serious violations of international humanitarian law, namely war crimes, crimes against humanity, and genocide. The court sits in The Hague, in the Netherlands and was established in accordance with the Rome Statute on 1 July 2002. The ICC website indicates that by May 2005, 99 countries had ratified the Rome Statute, of which 27 are African states.

Sudan is not a state party to the ICC treaty. However, the ICC has jurisdiction over non-state parties in instances where that country accepted the ICC's jurisdiction on an ad hoc basis or, as in the case of Sudan, the UN Security Council has referred the situation to the court.

Unlike the International Court of Justice (ICJ), the principal judicial organ of the United Nations that deals primarily with disputes between states, the ICC has jurisdiction over matters involving individual criminal responsibility. The Rome Statute also identifies crimes of sexual violence such as rape, sexual slavery, enforced prostitution and forced pregnancy as crimes against

humanity when they are committed as part of a widespread or systematic attack directed against a civilian population. The ICC has created a Victims and Witnesses Unit to provide protective measures, security arrangements, counselling and other assistance for witnesses and victims. The ICC therefore offers an alternative avenue for justice for the women and girls who comprise almost 90 per cent of the victims of the Darfur conflict.

Although the ICC does have its limitations, including the fact that it requires the cooperation of the national government, both the Darfurians and the Darfur Consortium have high hopes for its intervention. The Darfur Consortium's strategy will now move from lobbying for referral to the ICC to pushing for the Sudanese government to cooperate with the ICC, monitoring the government to prevent it from attempting to circumvent the ICC process and giving CSO support to the ICC prosecutor in the investigation process.

Although some CSOs and traditional leaders in countries such as Uganda

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have been against the Ugandan government being referred to the ICC over the Northern Uganda conflict, citing it as a possible deterrent to peace efforts in the area, the Darfur Consortium feels that the ICC is important for the peace process in Sudan. 'I believe the long-term disenfranchisement of victims can in itself negatively affect the peace process. Penal measures against perpetrators give victims confidence,' argues Dr Yitiha.

For the women's movement in Darfur, what they are looking for is fair trials and compensation of the victims of sexual violence. 'IDPs are keeping silent and protecting themselves, waiting for the day of the ICC,' says Ms Alao.

Pambazuka News 241, 9 February 2006



SUDAN'S PEACE AGREEMENT AND THE POSITION OF WOMEN

ROSELYNN MUSA

Although the agreement that ended 21 years of civil war in Sudan goes by the title of the Comprehensive Peace Agreement (CPA), Roselynn Musa points out that in order for something to be comprehensive it must be all inclusive. Yet the agreement is full of gaps on women's representation. Sustainable peace, she warns, will be achieved only if both women and men are considered.

Africa has witnessed and continues to witness armed conflicts, especially ethnic conflict. According to UN statistics more than 30 wars have occurred in Africa since 1970. While these wars have had a devastating impact on the African population, both soldiers and civilians, African women have been more affected than any other group. It is now common knowledge that women are usually the most affected in any war situation and the last to be consulted on subsequent peace negotiations. Apart from loosing their lives, women's rights are greatly abused during and after wars. It has been no different in Sudan where women were not consulted about nor included in the Comprehensive Peace Agreement (CPA), whose mention of women is minimal and vague.

Sudanese women have to be included because women's rights are human rights; women have borne the burden of war and paid their dues in the search for peace. Moreover peace, democracy and justice are fundamental concerns that need to be addressed by all Sudanese, not just some of them. Women and children suffer more deeply and intensely the physical and emotional pains of conflict than their male counterparts because women are both primary and secondary targets of conflict. Women often suffer in silence.

The truth is that despite existing commitments like UN Resolution 1325, Beijing+10, Nairobi+20, the Protocol to the African Charter on Human

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and Peoples' Rights on the Rights of Women in Africa, the IGAD Gender Policy, the Solemn Declaration on Gender Equality, national constitutions and so on, African women and girls continue to experience gross forms of abuse and remain at the margins of peace negotiations and post-conflict planning.

The peace protocols signed in January 2005 represent a qualitative transformation in Sudan's modern history. It is a political agreement that brought the war to a close and established a new political context that embraces many issues that were neglected or sidelined in previous peace agreements. The agreements include protocols on state and religion, self-determination, power sharing, security and a ceasefire agreement.

The CPA represents a political and social instrument that aims to reform the conditions in Sudan through shaping new understandings and establishing grounds for the flourishing of new social power. The word 'comprehensive' in its title suggests that it is all inclusive, yet the CPA is evidently full of gaps on women's representation and the position it takes on women is ambiguous.

South Sudan is a state emerging from a civil war that lasted over 21 years. The current healing and rehabilitation processes focus on soldiers and men to the exclusion of women and children. On the few occasions where women were involved they have done little more than act as gender advisers in peace operations. They need to be involved by participating at all times and in all circumstances.

The CPA states that:

- The state shall guarantee the equal rights of men and women to all civil, political, social, cultural and economic rights
- The state shall promote women's rights through affirmative action

- The state shall combat harmful customs and tradition which undermine the dignity and status of women
- The state shall provide maternity and childcare and medical care for pregnant women.

But a gender analysis of the CPA reveals the following:

- Gender and women are mentioned in the six protocols only a few times
- While gender policy and women's empowerment are mentioned in the competency of each level of government, there are no targets, indicators and timelines for their achievement
- The formula agreed for regional and political representation was not extended to women
- The ethnic and religious chauvinism that has excluded or marginalised the vast majority of its citizens was listed as some of the roots causes of the crisis, yet this interpretation took no account of the marginalisation of Sudanese women and how this could lead to conflict
- The Machakos protocol mentions a framework for governance through which power and wealth should be equitably shared and human rights guaranteed, but there is no mention of women in the criteria for sharing the nation's power and wealth
- The fact that women bore the brunt of war for 21 years was not considered as a criterion for the equitable sharing and allocation of wealth
- Women are subjected to cultural and traditional attitudes which mean they do not participate in decision making
- Many women are not aware of their rights
- Women's participation in government is in many cases tokenism on the part of governments that are headed by men.

Resolution 1325 recognises that if societies are governed in a way which marginalises the views and experiences of women and girls, this carries a cost. The role of women is crucial in preserving social order and acting as peace educators, both in their families and in their societies. They play an important role in fostering a culture of peace in strife-torn communities and societies.

If women are to play an equal part in maintaining peace, they must be

empowered politically and economically, and represented adequately at all levels of decision making both before conflict arises and during hostilities, as well as when the time comes for peace keeping, peace building, reconciliation and reconstruction. I have witnessed an occasion when a minister in the government of Sudan was challenged about why Sudanese women were sidelined in the peace discussions and agreements. He rationalised his government's position by citing an instance when women were asked to

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send their representatives to a forum and did not provide any. If that is what happened, it is not surprising because it is not enough to ask women to participate in peace discussions and negotiations. As a pre-requisite, Sudanese women need to develop their skills and experience in this field so that they can function effectively as peace negotiators. Sudanese women are not just agitating just for the numbers of their participants to be increased; they want to be in a position to make qualitative contributions that will make a difference. They should not just be there to make up the numbers. Obviously, that was the point they were trying to make when they refused to send women to the forum.

If the CPA is to adequately consider the unique contribution that women can make towards peace, I would recommend the following.

- Women should be encouraged to play active roles in dialogue and arbitration among warring sides. They generally have special gifts for maintaining peace and promoting harmony and are able to sacrifice personal ego for the greater good of the community. Their insights readily provide a way forward for communities that are not able to reconcile their personal and communal conflicts. Given this, at least 30 per cent of the participants in all peace initiatives should be women.
- It is not enough to pass laws on the minimum number of women that ought to be included in peace negotiations; it is also important to allow

them to choose who will best represent their interests and articulate their views. Women know one another well since they interact with each other more than they do with men, especially in the more reserved areas and cultures. Women who have been chosen by others will be more confident and more willing to make their views known. This will avoid the situation where issues that affect them in times of conflict are wholly ignored.

- The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) has been hailed as one of the most comprehensive instruments on the rights of women. However, it has not been ratified in many countries and even where this has been done, implementation is wanting. CEDAW needs to be ratified and implemented in all countries so that women's rights are respected and promoted even in times of conflict. This will provide a legal framework within which women's rights will thrive, and when these rights are violated, women will be able to assert them.
- It is also necessary to ensure that women are included at all levels of decision-making forums and in all issues that affect society. Women are usually excluded from these forums on the premise that decision making is a male preserve which means women are left out of the very processes that dictate their lives.
- Women's concerns should be incorporated in the peace negotiations. It is not enough that women be given the opportunity to speak at the peace-making forums; the concerns they raise should be taken into account whenever decisions are made. Measures should be put in place to ensure that women's concerns are not ignored once they have been brought to the attention of the peace negotiators.
- Complete political, social and economic equality of all sexes should be spelt out in all peace agreements to ensure that equality is maintained alongside peace. These initiatives should also be incorporated into the constitution to give them legal backing.
- Sudanese women should be more aggressive in demanding their rights because no one will drop it on their laps. They should rise up to the challenge of standing up for their rights without giving in to intimidation.

- Educated Sudanese women should work with and carry along women at the grassroots. This will enable them to speak with one voice. This will also dispel animosity or mistrust that may come about if one group feels sidelined or ignored by the other because both sets of women are working in parallel but separately. When both groups of women work together in harmony, they will complement each other and implement activities that serve both their interests and by extension, society at large.
- There is need to revisit the common agenda developed for Sudanese women to identify areas of priority for intervention. This is because society is dynamic and regular reviews would ensure that the agenda continues to meet women's needs and concerns.
- Civil society organisations, international organisations and political parties should coordinate their efforts and pool their resources towards achieving their common goals. This will create a situation where focused activities are implemented and greater resources are availed to implement them. This in turn will be of great benefit to Sudanese women.
- The manifestos of political parties should be engendered to encourage Sudanese women to join the political fray. Sudanese women will be more interested in politics if the environment is not hostile to their gender. It is also essential that political party members undergo capacity building sessions focussing on gender issues and concepts. This will enable them to dispel misconceptions they may have about women in politics.
- Working with the media can create significant opportunities for Sudanese women and girls, especially those living in the rural areas. Articles in newspapers and publications of general interest will sensitise the society on gender issues and those involved in gender advocacy initiatives need to work with the media.
- Gender stereotypes are often ingrained in members of the society at an early age and these stereotypical ideas later manifest themselves in discrimination against women. These notions lead women to believe that they are well suited for certain roles and shun others. Gender sensitisation and civic education should be included in educational curriculum to reverse this trend.

It goes without saying that Sudanese women have made some gains in recent times in the campaign for their rights. They should be proud of their accomplishments and celebrate the gains they have made, no matter how small, rather than downplay their successes.

Conclusion

Both war and peace are gendered experiences and women and men are bound to have different priorities and expectations in a peace process. Sustainable peace will therefore be achieved only if both women and men are considered. The building and construction of Southern Sudan in particular requires the participation, effort and contribution of everyone from all levels to focus collectively to build the war-torn country regardless of political, ethnic, gender, religious and other differences, where everyone will live with dignity, respect and equal opportunity. Women need to be encouraged to play active roles in dialogue and arbitration among the warring sides.

It is commendable that Sudanese women have now realised that they will not be helped unless they start by helping themselves. It is worth

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mentioning that towards this direction they have been holding consultative meetings, prominent among which was the donors' conference for Sudan, which took place in April 2005 in Oslo. In a statement at the end of the conference the women's group reiterated its principle of equal representation for women and men, pegging the minimum at 30 per cent. The group, in addition to other pressing demands, also asked for urgent programmes for addressing negative custom and religious practices which continue to foster women's marginalisation in all spheres of life.

Women's immense contribution towards development is unquestionable and their participation in peace building and peace keeping is therefore

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crucial for the prevention of conflict and the sustainability of peace initiatives. Women as well as men have much to offer in terms of skills on the negotiating table and a lot to gain when peace is achieved. Integrating a gender perspective into peace building and reconstruction is an essential step in the process of ensuring democratic decision making at all levels of society. Decision makers who invoke and manipulate gender to justify armed conflict and similarly exclude women from conflict resolution are gambling with the safety and security of women, men and children throughout Africa and this must be challenged with renewed energy.

Pambazuka News 249, 6 April 2006



PEACE A YEAR ON IN SOUTHERN SUDAN: WHAT HAS CHANGED FOR WOMEN?

SIHA NETWORK

The Comprehensive Peace Agreement (CPA) between the Southern People's Liberation Army (SPLA) and the government of Sudan was signed on 9 January 2005. This article, from the Strategic Initiatives for Women in the Horn of Africa (SIHA) Network, which comprises 28 member organisations and advocates for social change and gender equality for women, assesses the lot of women one year after the CPA. In the field of employment, education and political participation, there remains a long way to go before the effects of war are overcome.

The Comprehensive Peace Agreement put an end to over 20 years of civil conflict responsible for the death of 1.5 million and the displacement of 4 million in Southern Sudan. Through the CPA, the Sudan interim constitution came into being, giving hope to the throngs of Southerners living as internally displaced people (IDPs) in Khartoum as well as those who remained in the South or fled to neighbouring countries.

In addition to giving the South autonomy and the option to secede within six years, the interim constitution ensures the rights of non-Muslims to be exempt from sharia law. It also affirms gender equality, stating that 'The state shall emancipate women from injustice, promote gender equality and encourage the role of women in family and public life' (Sudan Interim Constitution [15(2)])

But, one year later, what has really changed on the ground for the women of Sudan? A series of interviews related to a variety of issues indicates that change is slow, and women's rights continue to be violated. Women continue to be wrongly imprisoned, sexually harassed and marginalised whilst those in charge do nothing to ensure their safety.

A provision relating to sharia law according to the CPA stated that 'parts of the constitution are to be re-written so that sharia does not apply to any non-Muslim throughout Sudan'. In theory, under the interim constitution, sharia no longer applies to non-Muslims. The reality, however, is different. The application of sharia law in the North remains indiscriminate, with ambiguity reigning over how laws have changed and who is exempt. Those mainly affected are women working in the informal sector. Lacking an infrastructure of support, they are continually marginalised and targeted by the authorities.

A former alcohol brewer (who wishes to remain anonymous) spoke out to SIHA about the corruption and impunity that she has experienced whilst trying to maintain a living. This woman, originally from the Nuba Mountains, had wished to attend university after completing the Sudanese school-leaving certificate, but due to the impoverished situation of her family she was forced to seek employment. For this reason, she began to brew and sell alcohol. She lived every day in fear of being arrested, and on a number of occasions was captured by the authorities.

After the signing of the CPA, she heard rumours that the living conditions of women in the informal sector would improve, but: 'The situation got worse and I decided to give up brewing. Our houses are still invaded in the hope of finding alcohol, and violence is more prevalent.' Fearing for her safety, this woman began to sell tea. However, as a tea lady she receives no

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added sanctuary or security. She has no licence and continues to live in fear. 'I just want to feed my family,' she says. The situation of this woman is common amongst IDPs living on the margins of society in Khartoum. Lacking viable options for making money, many women are forced into the informal sector, with numerous women brewing and selling alcohol.

One of the main issues stunting the ability of these women to enter

mainstream society is their lack of education. In the war-ravaged South, there are limited options for schooling. Those schools which do exist are not governmental institutions; rather they are run by volunteers and classified as community Schools. As IDPs return to their homelands, work is in place to build schools and train teachers. However, the situation for marginalised girls remains difficult; their education is neglected by both guardians and the state.

Maha Jarrah is a teacher at the Nubrass Centre, Omdurman, which offers evening classes from the basic level up to the school-leaving certificate. The students, aged 15–50, failed to receive an education whilst they were grow-

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ing up. 'It is very difficult for some families to send their children to school,' claims Maha. 'Even if you attend a government school, parents need to find money to give their children books, pay for examinations and sometimes contribute toward maintaining the school and classroom equipment.' These costs are a deterrent for families with limited means. Even though Maha claims that there are more girls entering school at the basic level, she says the reason for this is a higher birth rate amongst girls. In actual fact, when parents are unable to pay for their children's schooling, they are more willing to sacrifice their daughters' than their sons' education. This means that more girls are missing out on their basic education, and there is a higher dropout rate amongst girls.

Illiteracy is prevalent amongst youth, and it is promising to see so many young (and old) adults returning to gain an education at evening classes like those held at the Nubrass Centre. However, it is important that today's children of both sexes receive their education whilst growing up. The interim constitution says that: 'The state shall provide free primary education,' [44 (2)] but as a vast number of families are still unable to afford their children's

(and predominantly, their girls') education, we are forced to wonder how committed this government really is to supplying all of its children with an equal opportunity to receive a basic education.

Since the signing of the CPA one year ago, it has been the dream of many IDPs to return to the South. However, for the majority, it is proving difficult to make their dream a reality. While refugees are given support to return to the South from neighbouring countries, the story is different for IDPs in Khartoum. Opportunities exist for their return, and a number of people have grasped at chances of aid to return home; yet many families lack the knowledge and ability to seek out these opportunities.

Amal was born and brought up in a village community in the Nuba Mountains. But as the conflicts began to threaten her and her family, she sought refuge in Khartoum. Like the majority of people who fled the conflict, Amal lives on the outskirts of the city in squalid and over-crowded

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conditions. As a Christian IDP living in Khartoum, she feels marginalised and discredited. Living in a dwelling made of cardboard and plastic sheets, she remains nostalgic about her home in the Nuba Mountains and is eager to return. Amal's husband has already returned to the Nuba Mountains with one of his sons. However, Amal and her remaining six children were left behind in Khartoum with no financial means of returning. Although she has employment as a cleaner and also works as a tea lady, Amal cannot afford the money for transport and so the family unit has been broken up. Amal states that there is no infrastructure in place to help IDPs return to their homelands. Those who go do so through their own efforts. Both the government of Sudan and the SPLM signed the CPA which stated that they would 'Formulate a repatriation, resettlement, rehabilitation, reconstruction and development plan to address those areas affected by war' [1.5.4], but Amal remains unaware of any plan that can help her return to her home.

A victory awarded to women through the CPA is the increase of female political participation. Through stating that: 'The equal rights of men and women to the enjoyment of all civil and political rights set forth in the International Covenant on Civil and Political Rights ... shall be ensured' [CPA 1.6.2.16 (a)], the CPA is allowing women a window through which to voice their concerns. It is promising to note that the number of women politicians has increased within the Interim Government of Sudan. The number of female MPs has risen since the CPA to an all-time high of 25 per cent. But will their participation in parliament make a difference to the voice of Sudanese women? As the situation currently stands, this remains to be seen.

Pambazuka News 246, 16 March 2006



REGULATION OF INFORMATION DURING CONFLICT SITUATIONS: THE ROLE OF WOMEN

AMIE JOOF-COLE

If women are to participate fully in brokering peace, in decision making, and in post conflict reconstruction, it is imperative that they work with different kinds of media to raise awareness, to ensure participation of women of all ages, to influence policy decisions, and to ensure accountability on the part of governments, NGOs, and international organisations, writes Amie Joof-Cole.

West Africa has experienced and is still experiencing very high levels of conflict, especially intra-state conflict. The conflicts have had a devastating effect on the African people, setting back political, economic and social development and causing continuous instability for both the states concerned and the continent as a whole.

In the late 1980s conflict erupted in Liberia, which lasted for almost a decade and signalled the advent of Charles Taylor, who exported war to Sierra Leone. Sierra Leone witnessed one of the most gruesome civil crises ever

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seen in West African. Not only did it record the most horrific murder and mutilation of civilians by the rebel factions, it also displaced a significant number of the nation's population, most especially women and children,

some of whom are yet to return as they continue to receive rations as refugees in the neighbouring countries of Guinea Conakry and the Gambia. And Ivory Coast, a former bastion of democracy in Africa, is today the epicentre of crisis in the region.

Politically, West African is prone to crises, with almost all its countries, with the exception of Senegal and Cape Verde, having experienced military coups *d'etat*. One can say that taking West Africa as a whole, the military regimes that emerged ended up being even worse than the civilian governments that they overthrew. Consequently, the sub-region is confronted with economic crises, indebtedness, poverty, political instability, disease, and frequent human rights violations.

Women and children are often among those most acutely affected by conflict though they frequently have little or no role in creating the situations in which they find themselves. It is important to consider what impact conflict has on women's lives in practical terms.

Article 10 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa puts emphasis on the right to peace. It states:

1. *Women have the right to a peaceful existence and the right to participate in the promotion and maintenance of peace.*
2. *States Parties shall take all appropriate measures to ensure the increased participation of women:*
 - a) in programmes of education for peace and a culture of peace;*
 - b) in the structures and processes for conflict prevention, management and resolution at local, national, regional, continental and international levels;*
 - c) in the local, national, regional, continental and international decision making structures to ensure physical, psychological, social and legal protection of asylum seekers, refugees, returnees and displaced persons, in particular women;*
 - d) in all levels of the structures established for the management of camps and settlements for asylum seekers, refugees, returnees and displaced persons, in particular, women;*
 - e) in all aspects of planning, formulation and implementation of post-conflict reconstruction and rehabilitation.*
3. *States Parties shall take the necessary measures to reduce military expendi-*

ture significantly in favour of spending on social development in general, and the promotion of women in particular.

Women as involuntary and voluntary participants in hostilities

Few women who participate in conflicts do so by choice. In many cases, women are abducted by soldiers to be used as sex slaves, cooks and cleaners in the camps. During their abductions, women are frequently subjected to physical and sexual abuse, torture and even killings. Sometimes when opposing forces attack, these same women are abducted again.

It would be a mistake, however, to believe that women are always innocent bystanders to conflict. When it comes to infiltration and attacks, some groups prefer using women because they are less suspicious, they are not always subjected to body searches, and they can wear devices beneath their clothes and appear pregnant. Women may also take part in hostilities by providing men with the moral support needed to wage war. They can also be useful providers of information on the enemy's position or strategies.

Women as civilians

Most women experience the effects of armed conflicts as part of the civilian population. Women and girls (like men and boys) suffer the direct and indirect effects of fighting, enduring indiscriminate bombings and attacks as well as lack of food and other essentials needed for survival. Invariably, however, women bear greater responsibility for children, the elderly, and the wider community – especially when the men have left to fight or have been detained or killed. With men gone, and the traditional support mechanism for protection in the community broken, women are at increased risk.

Most women and children flee conflict in search of safety and end up being refugees. Those who refuse to flee often stay because they are either too sick to go or are widows; have to take care of the elderly, the sick, and the young; need to support family members; or want to assess the security situation in order to advise fleeing relations on whether to return. Ironically,

many of these women believe that their gender will protect them from hostilities. But contrary to their beliefs, women are frequently targeted precisely because they are women. Women also suffer when the fighting is close to where they live and work. This limits their movements as well as their access to work, food, water, and medical assistance. The situation is especially grave for those in need of maternal or child healthcare.

Women are also subjected to harassment, intimidation, and attacks, in their homes, in their villages, and at check points. Their personal security and freedom of movement is greatly hampered by a lack of identity documents, increasing their risk of abuse and sometimes even sexual violence.

Women as victims of sexual violence

In many conflicts, women and girls are systematically targeted for sexual violence, sometimes with the broader political objective of ethnic cleansing. It is now evident that rape is being used as a weapon of war. Reliable statistics concerning the number of victims of sexual violence are not easy to come by as they are often simply based on the number of people seeking medical help for pregnancy-related issues and for sexually transmitted infections such as HIV/Aids.

Conflicts force many women and girls to go into sex work in order to make a living and survive. They also create room for other forms of sexual exploitation such as trafficking. Those who survive sexual violence are frequently unwilling to speak out for fear of being ostracised and rejected by their families and communities. Many victims also believe that nobody can help them, because the harm has already been done.

Displaced women in times of conflict

Women and children make up the majority of the world's refugees and internally displaced people. Fleeing and living in displacement camps creates numerous problems for women and exposes them to enormous risks. Women who flee their homes generally take few possessions with them and many become separated from their families. They are then forced to rely on the people in the countries in which they are seeking refuge or on assistance

from international and non-governmental organisations. When they are forced to travel long distances to look for water, food, firewood, and medication, they are frequently exposed to attacks by soldiers, injury from mines, and sexual abuse.

Women in camps for displaced people frequently have to shoulder all the responsibilities for the entire family's survival. At the same time, the special needs of women are sometimes not taken into account by camp authorities and organisations. Women in situations of displacement lack the privacy needed to maintain their personal hygiene and dignity because they have to share facilities with other people, including men. For these reasons, women need to be actively involved in the planning, implementation, and evaluation of the humanitarian activities carried out and the assistance distributed.

Detained women during conflicts

Women are also detained as a result of conflict, often in conditions worse than their male counterparts. Women in detention are sometimes detained with their young children; sometimes, they have to leave those children behind to be taken care of by other people. This enforced separation can be very traumatic for women.

Women also have specific needs that are hard to meet in detention. For instance, women and girls of menstruating age often have problems in obtaining suitable sanitary protection, regular access to sanitary facilities, and appropriate clothing to deal with their menstruation in a manner that preserves their health and dignity. Furthermore, women are subjected to maltreatment, including sexual violence, torture and other forms of degrading inhuman treatment while in detention. This abuse puts them at risk of pregnancy and may cause health problems such as HIV/Aids. They therefore live in perpetual fear.

Women in peace building

There are many examples of women's groups coming together in support of peace. One example is Roots for Peace, an association formed by Angolan women in 1994 with the aim of bringing an end to the conflict and promot-

ing peace and security. Another example is the Liberian Women's Initiative, also established in 1994. They claimed that the disarmament process in their country needed to be speeded up and called on the UN not to ignore their recommendation to provide incentives to the fighters to disarm.

In 1999, the First Pan African Women's Conference for Peace and Non-Violence was held in Zanzibar. In 2000, women peace activists from Liberia and Sierra Leone met in Abuja at the invitation of the Economic

*Women have realised that conflicts
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Community of West African States (ECOWAS) and together with their counterparts from Guinea, launched a regional women's peace movement, the Mano River Union Women Peace Network (MARWOPNET). There are many other examples of women organising themselves to promote peace in conflict-torn areas.

However, the consequences conflict has on women's lives needs more attention than it is currently receiving. Women have realised that conflicts in Africa tear apart families and destroy lives. We therefore need to establish approaches to peace and security that include women's ideas and interests.

Women, media and conflict

If more attention is to be given to how conflict affects women then women themselves must play a role in the identification, treatment, dissemination, and evaluation of the information that is produced. If women are to participate fully in brokering peace, in decision making, and in post conflict reconstruction, it is imperative that they work in partnership with all forms of media at their disposal to raise awareness, to ensure the participation of women of all ages, to influence policy decisions, and to ensure accountability on the part of governments, NGOs, and international organisations.

Women must put themselves into the picture both as producers of infor-

mation and as subjects of it. When we look at the media, we are referring to radio news, radio dramas, television programmes, print media, popular music, interactive video dialogues, posters, talk shows, call-in shows, community media projects, the internet and more. By doing this, women may ensure their voices are heard at the locally, nationally and internationally.

Currently, very few women journalists are active in peace and conflict reporting. This is partly due to the highly gendered bureaucratic structures of media institutions where the majority of women do not have decision-making powers. At other times, women journalists are not interested in such tasks, are afraid of the risks involved, or do not have access to the training

*With men gone, and the traditional
support mechanism for protection
in the community broken,
women are at increased risk.*

needed to take up the challenge. It is therefore necessary to address gender specific professional problems so that we may get women's perspectives on conflict. Of equal importance is the need to document efforts undertaken by women to create and promote peace and security in Africa. The media should publicise women's involvement in peace processes and actively lobby for the inclusion of women in peace negotiations at all levels. It is worth investigating how women define peace and reconciliation at both family and community levels, and the skills and knowledge they use to work towards these goals. The media should show such aspects of women, rather than portraying them as mere victims.

The media can also play an important role in the process of healing following conflict. During the period of reconciliation and rehabilitation, the media can help empower women's groups that had previously been voiceless. Television, radio and print materials can provide specific social support to women's groups. The media can thereby help in rebuilding civil society. Women outside of the media also have a role to play. The women's movement must establish its presence in organising anti-conflict campaigns so

that women become more visible as peace initiators. Others must work to ensure people are not denied information because of poverty, lack of access, repressive media laws that inhibit free expression, or illiteracy.

Conclusion

It is crucial to document through research the role of the media in generating conflict and its potential to manage conflict. Documentation should also include finding out the use of language, culture, sources of information, adherence to professional norms and ethics. The media should be systematically engaged as an agency for peace promotion and conflict resolution. We should develop media resource packages on reporting on peace and security and endeavour to democratise the media so that it becomes easily accessible to and useable by different social actors.

The perpetrators of violence against women, especially rape and unwanted pregnancies, which constitute a crime against humanity, should be brought to justice. Women in post conflict situations should be encouraged and protected to give evidence against the perpetrators of rape and other forms of violence against women.

In order to make these changes, women's organisations, human rights groups, media outlets, community groups, and other social actors should collaborate to maximise human, material, and financial resources to avoid unnecessary duplication and conflict among themselves. If we do this well, we may all come to understand better how women are affected by conflict, and how they can participate in preventing and managing conflict as well as promoting peace and stability.

Pambazuka News 222, 22 September 2005



WOMEN ARE AFRICA'S POLITICAL HOPE

EMIRA WOODS AND LISA VENEKLASEN

In March 2006, newly elected Liberian President Ellen Johnson-Sirleaf became only the fourth African head of state and the eighth woman to address the United States Congress. Sirleaf asked members of Congress to think about what the returns on their investment would be when young men could trade their guns for jobs, when people could feed themselves again and when young women could become scientists and doctors. Emira Woods and Lisa VeneKlasen assess the contribution of women to politics in Africa.

Liberian President Ellen Johnson-Sirleaf addressed a joint session of the US Congress recently. This historic honour, bestowed sparingly on international dignitaries, is a fitting tribute for Africa's first democratically elected female president. But Ellen Johnson-Sirleaf is not an anomaly. The African political

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Few in the US congress would have guessed that the country that leads the world in political gender balance is Rwanda, where women make up half of the members of parliament, a development that started in the mid-1990s. South Africa and Mozambique, also high on the list, are both countries with

women composing more than 30 per cent of their parliaments. This stands in stark contrast to the United States, where women make up only 15 per cent of Congress.

African countries also have higher percentages of women in cabinet-level positions. In South Africa, 13 out of 28 are women, and in Rwanda there are nine women to 22 men. In the United States, there are only three women in President George W. Bush's 20-person cabinet.

One big factor in the rise of women's political power in Africa is affirmative action. Governments have set concrete targets for women's participa-

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tion in political bodies. The newly formed Pan African Parliament has also implemented affirmative-action measures to ensure a minimum of 30 per cent representation by women, all of whom have been elected to office in their countries.

But African women's rising power is measured not just in numbers. In Liberia, the same women who bore the brunt of the country's more than two decades of war are the ones leading the struggle for peace and carving out a new economic and political path.

It was Liberian women who have crossed class, ethnic and political lines to organise and sustain marches for peace and change over the past two years. Market sellers, students, farmers, professionals – women from all walks of life – marched daily in drenching rain and searing sun, often with their children on their backs, to demand the exit of their former leader, war criminal Charles Taylor, indicted by a special court in Sierra Leone, and to insist on an end to civil strife. Their efforts ushered in a period of peace that has now lasted more than two and a half years and opened the door to democracy.

After the election in November 2005, when supporters of presidential candidate George Weah disputed the results and marched in the streets

– again raising the spectre of instability – it was women and leading religious leaders who engaged them in a dialogue and insisted on reconciliation and peace.

Of course, the real test for Africa's emerging female leaders is yet to come. Will they be able to translate leadership positions into a fresh agenda for peace, sustainable development and democracy in the region?

In the case of Liberia, the challenges are daunting. A fresh agenda would mean mending the social fabric torn apart by 25 years of crisis and chaos in which 250,000 people were killed. A Harvard-educated economist,

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Johnson-Sirleaf, who was sworn into office in January, should manage well a truth-and-reconciliation process that brings healing to a wounded society and holds key people responsible. A fresh agenda would also transform an economy that has relied on illicit activity for 14 years – trade in diamonds used to finance wars; stolen timber; 'raped rubber'; and the flow of illegal arms – into an economy that brings productive activity for the now 85 per cent unemployed.

The critical role of women in that society must be recognised by giving them equal inheritance and land rights to allow them to fully and wisely use resources for their families and communities.

The US Congress and the Bush administration should help give Liberia a chance at a fresh start by agreeing to cancel the country's external debts, accumulated under past dictatorships. Those debts, the equivalent of about 680 per cent of the country's gross domestic product, undermine the capacity of the new government to tackle the problems of rising HIV/Aids infection rates and a lack of functioning schools, electricity and other infrastructure. Thirty percent of that debt is owed to the United States, which should not only forgive its share but also encourage other nations to forgive theirs.

The US government should also use its leverage to ensure that US corporations operating in the country act responsibly, paying proper fees, taxes and wages, respecting labour rights and protecting the environment. For example, Bridgestone/Firestone Inc is now taking advantage of deals made with a former caretaker Liberian government as well as the desperation of many poor Liberians to profit from operations that employ child labour, destroy the environment and violate other international standards.

There is much at stake for Liberia and the rest of Africa. But it is also a time to celebrate and support the region's newly emerging female leaders with a fresh agenda.

Pambazuka News 248, 20 March 2006

Chapter 5

WOMEN AND ISLAM

To mark International Women's Day in 2006, Pambazuka News published a series of articles on the subject of Islam and women's rights, an area that does not receive much attention despite large parts of Africa practising Islam. The articles tackled issues related to women's reproductive and sexual rights within Muslim Nigeria; the compatibility between Islamic law and the Protocol on the Rights of Women in Africa; women's rights and the interpretation of Islamic scriptures by some scholars; and why Niger's parliament voted against the women's protocol. What emerges is a comprehensive understanding of Islam as it relates to women's rights.



WOMEN'S REPRODUCTIVE AND SEXUAL RIGHTS AND THE OFFENCE OF ZINA IN MUSLIM LAWS IN NIGERIA

AYESHA M IMAM

In this compelling article by Ayesha Imam, women's reproductive and sexual rights within Muslim Nigeria are considered. With the recent 'sharianisation' of parts of the country, new offences have been created, mostly surrounding sexuality, which has had a negative effect on women's rights. Imam argues that while sharia (Muslim laws) are neither uniform nor God given, the opposition between conservative and liberal jurisprudence has prevented progressive scholars and activists from establishing Muslim laws that ensure and protect the rights of women. She highlights what can be done to oppose these forces, and argues that one of the most important aspects of this task involves a 'demystification' of sharia for the Muslim communities of Nigeria (and elsewhere).

Amina Lawal was convicted of adultery in March 2002 and sentenced to stoning to death. In the wake of a new sharia (Muslim law) penal code in Katsina State, religious right vigilantes instigated a case against her for having a child after divorce without remarrying. The alleged father swore that he had not had sexual relations with her and was released. These events occurred during a heated controversy in Nigeria about the nature and desirability of sharia (Muslim laws), rights in Muslim laws, constitutional rights, international human rights and their relationship(s) to each other. Ms Lawal's case was immediately adopted by a coalition of Nigerian non-governmental organisations (NGOs) that provided her with lawyers, safe houses, medical care, and emotional support over the 18-month ordeal. She also became the object of world attention, media and protest campaigns,

many of which excoriated ‘Islamic law’ as brutal and called on Nigeria’s president to pardon her and repeal the sharia acts. In September 2003, Amina Lawal won her appeal in the state sharia Court of Appeal and was acquitted (Lawal Kurami v. the State).

This case is perhaps one of the best known concerning the introduction of sharia penal codes in several Nigerian states in 2000. *Zina*, or unlawful sexual intercourse, includes adultery, punished by stoning to death, and fornication, penalised by whipping. In some of the states, men may be imprisoned in addition. These cases have been integral to the opening up of issues relevant to ensuring and developing women’s reproductive and sexual rights, and to understanding them in ways that recognise and respect both local cultures and contexts, as well as international rights agreements.

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The tensions between conservative religious politics and crude antiterrorism policies which are often blatantly Islamophobic must be considered in this discussion, which also involves local cultures containing a complicated mixture of ideologies and social practices, structured by power relations.

International human rights treaties and agreements, like local cultures, must thus require a ‘claim and critique’ strategy – being aware of both local cultures and international human rights discourse, while at the same time not privileging either as superior, and thus being able to critique both. This is important so that human rights principles actually guarantee people their rights in their day-to-day lives. This requires that they are claimed and respected by local cultures, and are not merely written texts, so that they are seen as social and historical products, affected by the power politics and of the cultural traditions of the dominant groups in their own contexts.

Understanding that human rights constructions are themselves subject to power structures makes it possible to recognise the Western European influ-

ences on the construction of rights today. But it is also possible to accept the universality of the notion of rights, which are not static and are constantly reconstructed by those whose lives are impacted by them.

Approaches to human rights must also be constantly reconstructed. It is important that local cultural-religious norms and traditions, as well as formal national and international rights regimes must be simultaneously drawn from and negotiated with. Women's rights groups have been integral to this process. Even though many of these groups are often regarded as in opposition to family, religious or ethnic community, they are in fact challenging not the communities themselves, but the current definitions of culture and norms of that community, and the powers of the cultural gate-keepers to maintain those definitions. It is with this background in mind that this article looks at the politics and activities surrounding *zina* cases under the sharia penal codes in Nigeria.

Nigeria has seen a growth in religious essentialism and conservatism. However, the introduction of sharia in Nigeria has had more to do with emotional political appeal, especially due to economic and educational issues, rather than religious sentiment.

Reactions to sharianisation were many. Christian and non-Muslims feared the imposition of Muslim religious laws on them. Human rights and other NGO activists (including Muslims) were concerned about the religious rights of non-Muslims and the violation of constitutional provisions of secularity. Both Muslim and non-Muslim women's rights activists were concerned that sharia would be used as a rationale to discriminate against women and restrict their rights.

Muslim communities' reactions to sharianisation were also varied – Ibrahim el-Zakzaky of the Muslim Brothers, who had previously called for the Islamisation of Nigeria, opposed sharianisation on the grounds that passing and implementing harsh punishments without first ensuring just socio-economic relations was not Islamic. Others were afraid of political abuse by those with power; as Muslims they did not want to oppose sharia, but they did not feel they had the skills to criticise potential corruption without the ability to read Arabic or years of study of Islamic jurisprudence. Thus, there was an 'uneasy public silence'. However, upon the passing of the laws there was much celebration, as many associated sharia with moral-

ity. Morality was seen not only as sexuality, but also in terms of safety and anti-corruption, which the poor suffer from most.

The sharia penal codes have created some new offences in Nigerian law, mostly around sexuality. They also recognise stoning, retributive punishments and blood fines. In theory, these laws apply to Muslims only, but it remains an open question whether Muslims have the right to choose to be governed by general Nigerian law, without having to renounce their religious identity.

Also still unresolved and ambiguous are the contradictions and gaps between the new sharia penal codes and the criminal procedure codes that determine procedures and evidence: What counts as evidence? What are the procedures? How are offences actually defined? Further, whether the sharia acts themselves or the nature of the punishments are subject to international human rights law has been debated. Nigeria is in fact a state party to several international human rights covenants. However, although such agreements

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or different communities.*

may give rise to obligations under international law, unless they have been specifically incorporated into domestic law, they give no basis for claims in national courts. The interplay between domestic Nigerian multiple and parallel legal systems of secular, Muslim and customary laws is also problematic as they give differential rights on different issues, and jurisdiction can be contentious. Whose version of sharia is to be upheld is another area that requires further definition.

Sharia is neither directly God given, nor uniform through Muslim history or different communities. In principle, Muslim laws are to be developed by reliance on the Qu'ran. The second source is the *sunnah* – traditions of the Prophet. Next is *ijma*, consensus about what that law is, by *qiyyas* (analogy) and *ijtihad* (interpretive reasoning). At each stage there are disagreements that have led to diversities – thus, Muslim laws are and always have been subject to discussion or controversy.

Further, there are four main schools of Islamic jurisprudence among Sunni Muslims (who constitute about 80 per cent of all Muslims). There are many similarities, as well as wide divergences. However, the scholars behind these schools did not see themselves as setting down a God-given legal code to be obeyed by all Muslims for all time. On the contrary, they were quite categorical that Muslims were not obliged to follow them if they did not believe that their reasoning from the Qu'ran and the *sunnah* were right. They had no

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intention of making their views final and binding on all Muslims. The stereotype of a single, uniform or divinely revealed Islamic law is false. However, this myth has been useful for Muslim conservatives and this can indeed be seen in Nigeria regarding reproductive and sexual rights.

In terms of *zina*, there are three main possibilities: *zina* can be seen as a sin that Allah will punish directly, except where there are voluntary or repeated confessions; the law can be seen as a deterrent but which requires high standards of proof and evidence which result in few prosecutions and rare convictions; and the politically motivated aggressive enforcing of morality through restrictive legislation and enthusiastic prosecutions. This latter case is what has been happening in Nigeria. In terms of reproductive rights for women, sharia is equally diverse. Most Muslim jurists agree that fertility management is permissible, and that pleasure in sexual intercourse is a right for both men and women. Most also agree that Islam does not sanction female genital mutilation. Despite this, the religious right in Nigeria have described fertility management as promoting immorality and *zina*, and have thus attempted to prevent it.

This opposition between conservative and liberal constructions of Muslim

laws, and the myth of a single uniform (conservative) sharia, has enabled the Muslim religious rightwing to prevent progressive Muslim scholars and rights activists from establishing the legitimacy of their positions in *fiqh* (jurisprudence), sharia, or non-religious laws. Ironically, many progressives and leftists in the West do the same, dismissing critical voices from within the Muslim world as 'Westernised' and inauthentic. It is important to recognise dissenters as equally authentic members of the community.

Many groups are actively organising in Nigeria to establish protection for women's rights under this new sharianisation. The primary strategy of these organisations is defending those convicted by focusing on appeals in the sharia courts, thus buying much needed time as well as getting closer to the higher courts, which have been historically more fair to women. Appealing, with the use of arguments in *fiqh*, deficiencies in the acts and the bias against women in their implementation could be recognised. Alternative Muslim juristic views can also be cited. Gaining an acquittal also serves to indicate that no conviction should have been made, and is thus a vindication of the person wrongly convicted. Pursuing appeals also serves to demonstrate that people have the right to appeal and challenge injustice, including those perpetuated in the name of religion. The success of those appeals shows that it does make a difference – far fewer women and men have been charged with *zina* or sentenced to stoning since Amina's case, and the two that were, have successfully appealed and were discharged within three months.

These same women's and rights groups have also sought to demystify sharia to the general public, through seminars, workshops, training, public discussion, lectures, articles, pamphlets, books and radio and television talk shows. This includes groups like the Constitutional Rights Project, BAOBAB for Women's Human Rights, the Women's Action Collective with Women's Action Research and Documentation, and the Nigerian office of the International Human Rights Law Group.

Demystifying sharianisation in Nigeria also involves critiques of the current class- and gender-bias in content and implementation. The poor have been the most subjected to harsh punishments. There have been fewer convictions of men than of women for adultery or fornication. Moreover, men convicted of violent sexual offences, like rape and sexual assault, have received less severe punishments (usually fines, imprisonment, or accept-

ance of pleas of illness and insanity), despite the stronger punishments available in the sharia penal codes that are routinely meted out for consensual sex outside marriage. Women have clearly been discriminated against. Judges have ignored or dismissed women's allegations of rape and coercion in *zina* cases. Before Amina Lawal's acquittal, convictions of adultery or fornication brought against women used different and discriminatory standards of evidence than those used for men – that of pregnancy outside marriage.

The task at hand is therefore much larger than simply working to make sharia work for women – it includes re-education and awareness raising to change old attitudes, while at the same time valuing local traditions and culture.

International media coverage of these cases, and of the Amina Lawal case in particular, has been staggering, relatively speaking. News reporting and petitions that have appealed to human rights have had conflicting results. While a growing awareness of rights abuses has been gained, a certain amount of hypocritical action is identified: the response of many Nigerians has frequently been to ask why people in the West are apparently so concerned about the life of one Muslim woman in Nigeria, when they have been killing large numbers of Muslim men, women, and children and are responsible for the horrors of war and its aftermath in Iraq.

While international solidarity is important to local rights struggles, and campaigns and petitions have the potential to be successful, it must be done in a way that does not portray stereotypes, nor hinder the actual protection and defence of women's and human rights. Further, the international media and protests have largely ignored the existence of dissent among Muslims, and have downplayed the existence of protests and campaigns enacted within Nigeria. The tendency to treat the Muslim world as uniform only helps to legitimise the religious right's monopolistic claim to speak for all Muslims and to de-legitimise the assertions of progressive scholars and rights activists. Downplaying local organising has the clear implication that it is the pressure and power of external foreign interests that is important and not the strengthening of local cultures of rights.

In order to move forward, using local structures and mechanisms (judicial appeals, informal dispute resolution, mock tribunals organised by local NGOs, networks of sympathisers and campaigns) to resist retrogressive laws or interpretations of laws and the forces behind them is the priority.

Doing so strengthens local counter-discourses and often carries greater legitimacy than outside pressure. Further, using local structures and discourses can really address the local political power struggles that are behind the political use of religions and ethnicities.

Reforming laws is of utmost importance, and will require expanding public education on Muslim laws, juristic opinions and debate on the contents of laws. This task also necessitates building solidarity among a variety of stakeholders to develop shared understanding and common strategies and platforms for women's and human rights. Local groups must find ways to interact with and influence mass international media, to make it more accurate and nuanced. These groups must also negotiate with and influence the policies of international agencies to create informed and respectful solidarity. Campaigning for governments and media to support international policies that sustain economic justice and rights would give hope worldwide so that poverty and uncertainty do not continue to be conditions in which religious right sentiments and actors find support for discourses and laws that violate rights.

Pambazuka News 245, 9 March 2006

This up-dated paper contains both summary and extracts from a longer paper, which is an edited version of a paper published in *Where Human Rights Begin—Health, Sexuality, and Women in the New Millennium*, edited by Wendy Chavkin and Ellen Chesler, Rutgers University Press, November 2005.



THE PROTOCOL ON THE RIGHTS OF WOMEN IN AFRICA AND ITS COMPATIBILITY WITH ISLAMIC LEGAL PRINCIPLES

MARYAM UWAIS

In this article, Maryam Uwais, barrister and human rights advocate, argues that Islam and women's rights are compatible. Using a framework of Islamic law, as well as the newly ratified Protocol on the Rights of Women in Africa and the Cairo Declaration on Human Rights in Islam, Uwais takes an in-depth look at a number of factors affecting African Muslim women. With her background in law, Uwais has provided an extremely important tool for women's rights advocates in Muslim Africa, linking issues facing women to concrete support for their rights within both the Qu'ran and Islamic law.

Introduction

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa was adopted in July 2003. It was considered by women all over the world, as a decisive step towards securing a legal framework for the protection and advancement of women's rights in Africa. Its swift ratification enabled it to come into force in November 2005 and underscored the concern member states have about the injustices suffered daily by African women. These injustices take the form of physical and mental violence, abuses of social, economic and cultural rights, exploitation of vulnerabilities, and the discrimination and disadvantages that arise as a consequence.

This paper attempts to draw comparisons between the contents of the

protocol and the rights of women within the Islamic legal framework, with a view to highlighting areas of common concern, and especially those Islamic concepts and legal principles that lend credence to the provisions adopted by the African Union, for the protection of Muslim African women, in particular.

One of the major concerns is the harsh, dogmatic and rigid interpretations of the Qur'an and the Hadith, adopted and conveyed by many scholars and in territories where the sharia prevails (sharia jurisdictions). These interpretations provide cover for many injustices, which cannot be justified under a religion that professes universal and substantive justice for all, and especially the vulnerable within the society. Close study demonstrates, however, that many of these interpretations and beliefs arise from ignorance of the true precepts of the faith, deriving from patriarchal cultures and traditions, rather than benevolent interpretations of the primary sources of the sharia, in line with the spirit of the Qur'an and the traditions of Prophet Muhammad.

This article will thus consider several of the issues important to Muslim women in Africa, including access to justice, polygamy, economic rights and the right to political participation. An attempt will be made to connect these issues to the Muslim context, international rights treaties and potential solutions to each topic.

Access to justice

Islam, being a faith that commands the doing of substantive justice to all, also stresses equality of all before the law, irrespective of social standing, gender, religious inclination and other similar considerations. One of the chief mandates for human rights within the Muslim context comes from the Cairo Declaration on Human Rights in Islam, pronounced by the Organisation of Islamic Conference (OIC). Thus, Article 19 of the OIC declaration provides that:

- (a) *All Individuals are equal before the law, without distinction between ruler and the ruled; and*
- (b) *The right to resort to justice is guaranteed to everyone.*

Moreover, Article 8 states:

Every human being has the right to enjoy his legal capacity in terms of both obligation and commitment, should this capacity be lost or impaired, he shall be represented by a guardian.

Much, however, needs to be done by member states to overcome barriers to securing the protections afforded to women under the law, as many of the structures and mechanisms are not in place, and the overwhelming circumstances of poverty and ignorance serve as formidable obstacles to the realisation of women's rights. While comprehensive codification is advocated in many areas (especially in the vast and interrelated field of family law) care should be taken to ensure that the laws under contemplation, though seemingly positive, do not have an adverse effect on women in practical terms. For instance, experience has shown that in some cases, efforts at enforcing strict regulation have merely had the effect of rendering such negative practices 'invisible'. Regulation should, therefore, not be so strict as to further aggravate the circumstances unfortunate women find themselves in, nor remove all avenues for the ability to exercise just and compassionate discretion.

In addition, law reform and regulation must be accompanied by wider efforts at social change, such as the empowerment of men and women with the essential knowledge of the rights available to women under the sharia, (including the necessary financial wherewithal), as many of the positive, beneficial decisions taken (even under the common law) can barely be enforced because too many violations go unnoticed and undocumented (and are thus considered the norm) and that the circumstances of poverty, ignorance and illiteracy are all pervasive, particularly in the rural areas.

Polygamy

Muslim scholars argue that polygamy is permitted as a remedy for certain social diseases, under certain strict conditions. Without delving into the arguments on the justification for polygamy in today's context (especially since the practice is deeply entrenched and accepted as the norm, even by women, in many African jurisdictions), it is enough to point out that the

ability to treat co-wives justly is a strict precondition to the practice, following the verses in the Qur'an:

marry women of your choice, two, three or four; but if you feel you may not be able to deal justly (with them), then only one ... That is nearer to prevent you from doing injustice.

you will never be able to do perfect justice between wives even if it is your ardent desire

Obviously, these verses do not convey an unrestrained licence to men, for the multiplication of wives and monogamy seems to be the preferred option. Unfortunately, polygamy has attained the status of an abiding culture in our own jurisdictions, without regard to the underlying necessity for fairness and justice between wives, which are the normative values intrinsically embedded in polygamy.

Since Muslims accept that the cohesion of the family unit is the objective of the sharia, surely where blatant abuse of a permission granted in good faith has become the norm (to the extent that disarray has become the consequence of a practice that typifies the letter, but not the essence of the sharia) the time has come for the courts, and the sharia jurisdictions to intervene

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before the law, irrespective of social standing,
gender, religious inclination*

for the purposes of protecting the vulnerable. The sharia jurisdictions are under a duty to protect all, including women, so it would be appropriate for a regulatory law to be passed that reinforces controls and checks the abuse of the Qur'anic verses.

So courts should be empowered to enquire into the circumstances of all men who wish to marry further wives, to find out if they have the capacity to discharge their basic obligations as they exist or are stipulated in the marriage contract, as is happening in several sharia jurisdictions across the

*courts should be empowered to enquire
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to marry further wives*

world. Justification and proof should be demanded from, and given by, men for contemplated more wives, about whether they can afford to maintain them, accommodate them with some measure of privacy (privacy being a major right under the sharia), whether the existing wife consents to such addition (in emulation of the conduct of the Prophet when Ali, his daughter's husband, sought advice about a subsequent marriage), otherwise the woman would be compensated on agreeable terms. The state must step in, as the authority responsible for protecting the weak.

Moreover, it is clear that Islam permitted polygamy as a social remedy under certain strict conditions (without which the plurality of wives is prohibited). Some Muslim countries have accordingly supported an outright prohibition, or introduced legislation that empowers the judiciary to refuse permission for the taking of a subsequent wife, because the man is found not to be in a position to sustain both wives, satisfactorily (in terms of maintenance, etc). While this approach has been criticised as restrictive (in that it takes away the man's discretion and certain perceived rights), it could serve as the procedural means of ensuring that the ability to do justice is not subjective, and authorises the intervention of an impartial third party, thereby ensuring justice in the true spirit of the Qur'an. This is especially because the condition that they ensure justice between co-wives is seldom given any consideration by men who practise polygamy.

Economic rights

In Islamic law, women are entitled to hold property of their own, in their name and within and after marriage. This includes the right to earn, acquire, access and dispose of their property. Although the law provides that women may not be forcefully dispossessed of these rights, they appear to exist more in theory. Muslim women in Africa remain largely economically dependent

on men, especially since the control of their property, if any, is invariably in the hands of male relations.

Access to credit, bank loans, mortgages and the like is still heavily skewed in favour of men and many socio-cultural and economic barriers militate against women enjoying financial independence. Indeed, although there are no categorical religious injunctions against women owning property, even the policies of AU member states fail to acknowledge the current statistics that disclose that women are increasingly becoming the breadwinners of their households. Age-long prejudices, attitudes and behaviour also need to alter, to effectively take into account the peculiar problems women face in trying to assert their rights.

The right to political participation

With respect to political leadership, sharia places utmost emphasis on good governance, founded on justice, equity and responsibility. The Qur'an states clearly that sovereignty of the heavens and the earth belong to God; it also provides that God has made human beings His agents and representatives, without distinction as to gender. Arising from these verses and the traditions of the Prophet, there is a consensus that every Muslim has the right and opportunity to participate directly or indirectly in the country's public affairs and electoral processes, and the prerequisites of leadership are regarded as the capacity to exercise righteousness and to uphold justice for all.

Nowhere in the Qur'an or the Hadith is there any prohibition of participation of a woman in her country's affairs. The Hadith that is often used as authority to deny such participation (where the Prophet was reported to have said that a nation that leaves its affairs in the hands of a woman would not prosper) is said to be of doubtful authenticity by several scholars. The historical context of that tradition is said to have been the event when the Prophet received news that Khusro's daughter, who was widely perceived as authoritarian, had succeeded the throne. The comment was considered to be in specific relation to her person. Indeed, in contrast to this position, verses 32-34 of the Chapter on Ants (Naml) in the Qur'an extol Bilqis, the Queen of Sheba, as a ruler enjoying great wealth, dignity and the full confidence of her subjects. If it were an aberration to have a female ruler, Sheba would not

have been worthy of such honour, as to be mentioned so commendably by God. Moreover, women as a group are known to have participated in the initial pledge of allegiance (*bay'a*) extended to the Prophet, by Muslims, which is a significant pointer to the fact that even in those days, women were considered an integral part of the Muslim community, participating in the political activities of their society. It is also reported that Aisha, the widow of the Prophet, led and commanded the Battle of the Camel, with many of the companions of the Prophet in her army, and none of them disclaimed her authority to lead.

Conclusion

Today's realities make it imperative that mechanisms and structures in-built in Islamic Law (such as doctrines for the development of the sharia) must be activated by our own scholars and jurists. This is for the benefit of the female gender, if only to enable constructive, contextual interpretations of the primary sources of the sharia, as was done many centuries ago by Islamic jurists and scholars of repute in their own times within the Islamic world. As has been shown, there is ample room within Islamic law for Muslim

*Nowhere in the Qur'an is there any
prohibition of participation of a woman
in her country's affairs.*

states to remedy the problems and seeming contradictions between the position of women in sharia and the provisions of the protocol on the rights of women, utilising an open mind that views the issues as complementary, rather than incongruous. Good faith, backed by political and humanitarian will, are capable of ensuring the flexibility required to resolve the apparent 'conflicts' between Islamic law and the contents of the African protocol, thereby creating the understanding that would lead to the harmonisation and realisation of common standards of universalism, irrespective of gender

and other similar considerations, in Africa and the world at large. A positive attitude for managing variations through the synergising of rights norms (as replete in the protocol) with Islamic legal principles is necessary and imperative, for formidable and comprehensive protections to be afforded women in developing countries, of which African Muslim women form a significant portion.

Pambazuka News 245, 9 March 2006

This article is extracted from a longer paper by Maryam Uwais.



WOMEN'S RIGHTS IN ISLAM

KHÉDIJA EL MADANI

It is not Islam that discriminates against women, argues Khédija El Madani, but rather the interpretation of Islamic scriptures by some scholars. 'It is therefore time to return to true Islam, to follow the precepts of the Qu'ran and to act according to the example of our Prophet, who has always respected women,' she says.

If there is one subject that provokes anger it is that of women's rights and Islam.

The majority of those from the West and other pro-Westerners present Islam as the enemy of women and as the religion which denies them their most basic rights. Muslims on the other hand, both radical and moderate, tend to support the view that Islam has uniquely granted rights to women.

Who is wrong? And who is right?

In fact, adherents of both arguments are both right and wrong. Because, on the one hand, whilst it can be proven that from the time of its revelation, Islam constituted a real revolution in women's rights by according a dimension of humanity to women that the habits and customs of pre-Islamic

Muslims, on the other hand, both radical and moderate, tend to support the view that Islam has uniquely granted rights to women.

Arabia had denied them – this culture recognised the father's right to determine the life and death of their daughters, and reduced the widow to an object of succession, to be inherited by the relatives of the dead husband. It is equally undeniable that over the course of time, the restrictive interpre-

tation of the place of women in Islam by certain ulemas (Islamic scholars) – sometimes even against the scriptures – has undone women's rights, one after another.

The theological background

The best proof of this state of affairs is the following thesis supported by a number of Muslim theologians: whereas according to the two monotheistic religions, Judaism and Christianity, it is Eve who is guilty of the Original Sin, and thus responsible for the expulsion of Adam from Paradise; not only does this feature not exist in the Muslim religion, but is also clearly contradicted by the Qu'ran.

Thus the verses of the sura,¹ 'The Elevated Places', affirm clearly and precisely, not lending themselves to any ambiguity, that Adam and Eve were tempted at the same time by Satan, and that they both succumbed to temptation, and disobeyed divine injunctions.

The Devil suggested to both of them... (verse 20)

And he swore to them... (verse 21)

Thus he deceived them into falling ... and their Lord called unto them: 'did I not forbid this tree to both of you? And did I not tell you that the devil is truly a declared enemy of you both?' (verse 22)

Both of you said... (verse 23)²

These examples illustrate perfectly how many Muslim exegetes have distanced themselves from the precepts of the Qu'ran, and to such an extent that they have ended up supporting the opposite of what is stated in the holy book.

Islam, women and the family

This contradiction between Islam, as set out in the scriptures, and their frequently reductionist exegesis, is most vividly translated to the family sphere and the status of women therein.

Thus it has come about that instead of being revered globally within

*the Qu'ran has bestowed upon women
economic rights equal to men by recognising
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without interference from their fathers,
brothers or husbands*

the framework of the precepts and principles established by the Qu'ran and the tradition of the Prophet Mohammed, the substance of women's rights in the domestic sphere is considered from a restrictive point of view. Women's rights have also in some senses been 'delocalised': isolated from the harmonious context of Islam's divine rules and injunctions, and handled independently. One result of this has been the complete distortion and deprivation of the rights that God has accorded to women.

Thus, little by little, in the name of Islam, women have been denied the enlightenment of knowledge, imprisoned within the walls of the home, subjected to the orders of their husbands, and bound to comply with all their whims; or else face renouncement. It is as if women only have duties towards men – whilst conversely, men only have rights. And yet the Qu'ran clearly states that a woman has rights as well as duties (sura: 'The Cow', verse 228). Elsewhere, the Qu'ran urges men to treat their wives well:

*Treat them with kindness (sura: 'The Women', verse 19)
Keep them in an appropriate manner, or separate from them appropriately
(sura: 'Divorce', verse 2).*

It forbids men from bearing prejudice towards women:

*Do not seek to harm them (sura: 'Divorce', verse 6)
Do not abuse them (sura: 'The Cow', verse 231)*

At the same time, the Qu'ran elevates marriage to the status of a solemn bond: 'The women have received from you a solid pact' (sura: 'The

Byzantines', verse 31). Of the same order, the Qu'ran presents the husband and wife as each being clothing for the other: 'The women are clothing for you and you are clothing for them' (sura: 'The Cow', verse 187). Finally, the Qu'ran places marriage under the seal of 'affection and divine mercy' (sura: 'The Byzantines', verse 21).

Men, women and equality in Islam

From another point of view, God has placed men and women on a footing of absolute equality, promising Paradise to them both in parallel, as recompense for their good deeds. Men and women are equally threatened with the hell of Gehenna³ as a punishment for bad actions, as several verses of the Qu'ran indicate:

Whoever behaves well, whether of the male or female sex, will enter into Paradise (sura: 'The Forgiver', verse 40)

He who accomplishes good deeds, whether he is of the male or female sex (sura: 'The Women', verse 124)

He punishes the hypocritical men and women, and men and women of bad faith (sura: 'The Victory', verse 6)

The way in which God treats his creation therefore has nothing to do with biological sex; rather, it is uniquely contingent on the actions of men and women, with respect for their social roles.

Moreover, let us not forget that the Qu'ran has bestowed upon women economic rights equal to men by recognising their freedom and ability to manage their property without interference from their fathers, brothers or husbands. In keeping with men, women have been granted political rights by virtue of their being permitted to make allegiances with the Prophet.

In another respect, it is fitting to remember that God created man and woman from the same, unique soul: 'O my people, fear God who has created you from the same soul' (sura: 'The Women', verse 1). Consequentially, when man debases woman and bears prejudice against her, he is by extension debasing himself and bearing prejudice against himself. This is why claims that Islam makes of woman an inferior being in relation to man

amount to blasphemy: women and men were created equally by God in order to venerate Him. The best amongst his creatures are those who demonstrate piety, irrespective of their sex: 'The best amongst you are the most pious' (sura: 'The Cleaving', verse 13).

Conclusion

To conclude, I would strongly affirm that the reasons Muslim women are deprived of some of their fundamental rights are in no way attributable to Islam. On the contrary, they are related to its inaccurate interpretation by certain Islamic scholars. In reality, the quasi-majority of the sexist traditions that are claimed to stem from the Muslim religion bear no relation to it; and, sometimes, even run absolutely contrary to Islam.

It is therefore time to return to true Islam, to follow the precepts of the Qu'ran and to act according to the example of our Prophet, who has always respected women.

Pambazuka 259, 15 June 2006

This article was translated from the original French by Stephanie Kitchen.

Notes

¹ Sura, transliterated from Arabic, refers to the books or chapters of the Qu'ran [translator's note].

² The original French translation was by Muhammed Hamidullah with the collaboration of Mr Leturmy – new edition, 1989, Amana Corporation.

³ In Islam, this is roughly understood as 'the place of torment for sinners' [translator's note].



NIGER: DEMOCRATIC PRINCIPLES AND THE REJECTION OF THE PROTOCOL

SIBONGILE NDASHE

In early June 2006, Niger's parliament voted against the African Union's Protocol on the Rights of Women in Africa by 42 votes to 31. Sibongile Ndashe urges the country to rethink its position.

African Union (AU) member states continue to deposit instruments of ratification of the Protocol on the Rights of Women in Africa, which we note with renewed belief in the AU's commitment to upholding gender equality. This is why Niger's stance should not pass without comment.

It is a serious setback for Niger, from which the country could have saved – and could still save – itself. It is a setback for the women who fought and lobbied to see the protocol come to fruition. It is a greater setback, in particular, for women in Niger. There were women present from Niger at a meeting in Pretoria in May, which was aimed at accelerating the speed of

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fundamentally opposed to
women's human rights.*

ratification and domestication of the protocol. The fact that on 18 January 2005, the Niger executive arm of government had approved the ratification of the protocol and that the only outstanding issue was the adoption of the motion by the legislature was seen as an exciting development.

It is still not clear what went wrong. Niger is not a country that is fundamentally opposed to women's human rights. Niger signalled its intentions to take women's human rights seriously when it acceded to the Convention

The protocol does not seek to dismantle patriarchal institutions; if anything it works around these institutions.

on the Elimination of Discrimination Against Women (CEDAW) on 8 October 1999. On 30 September 2004 Niger acceded to the CEDAW optional protocol. CEDAW has been referred to as the international bill of rights for women and the African women's protocol's unique selling point is that it is seen as a regional bill of rights that aims to ameliorate hardships specifically focusing on the context where African women's human rights violations are located.

Niger was party to the adoption of the AU Solemn Declaration on Gender Equality in July 2004. The solemn declaration has no legal force. It is a commitment by members of the AU to implement gender-specific measures related to: economic, social and legal measures on HIV/Aids; gender mainstreaming of peace processes; and systematic prohibition of the abuse of girl children as wives and sex slaves. It relates to systematic prohibition of trafficking in women and girls; promotion of the gender parity principle; guarantee of women's land, property and inheritance rights; education of girls and increasing the literacy of women, especially in rural areas; and enforcement of the Protocol on the Rights of Women in Africa.

It also sets out in great detail the measures that will be adopted in order to give effect to the commitments. States undertook to sign and ratify the African women's protocol by the end of 2004 and to support the launching of public campaigns aimed at ensuring its entry into force by 2005.

There is more that has to be said about the protocol that makes the Niger outcome even more baffling. CEDAW and the African protocol on women's rights are not mutually exclusive, if anything they serve to complement each other. The protocol is not a radical document. There are conflicting opinions on whether the protocol can even begin to call itself a feminist document. It seeks to negotiate space for women, asking that reasonable accommodation be made for women. It does not seek to dismantle patriarchal institutions; if anything it works around these institutions. Evidence of this compromise can be found in the provisions dealing with polygamy and inheritance

rights. It is a compromise document and this is why it is really not clear what Niger lawmakers could have found objectionable.

The proper application of democratic principles needs to be understood in its proper context. While it remains undisputed that Niger is a sovereign state and that the decisions made by its legislature have to be given full effect taking into account the powers given to the legislature in the constitution, an understanding of the strict notions of sovereignty is increasingly showing signs of shifting. State parties, by engaging with the international community, at the very least are asking to be tested against standards that they have agreed to in international forums. Citizens of those countries also have a legitimate expectation that the instruments that its government binds itself to will see fruition at a country level.

The mere fact that the lawmakers voted against the protocol should not be heralded as the proper application of democracy. It is not just what one votes against. If anything, the protocol would serve to support democracy. Overemphasising sovereignty and democratic principles for issues that pose no threat to a country's sovereignty or democratic principles seems like an easy way out of a difficult situation.

It is hoped that Niger will be open to experiences of how other states have engaged with the protocol. The Gambia serves as a good example in this regard. Initially the Gambia ratified the protocol with reservations but after careful consideration of the reasons behind the reservations by both Gambian civil society and the state the reservations were lifted.

Niger owes it to herself and its citizens to think again about why it did not pass the protocol. If after engagement with the document it is still convinced that what the protocol envisioned is not a society that Niger aspires towards

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then at the very least they could ratify the protocol with reservations. But it is unacceptable that the proper application of democratic principles and the rejection of the protocol could be found next to each other.

Pambazuka News 259, 15 June 2006

Chapter 6

WOMEN AND THE JACOB ZUMA TRIAL

Former South African deputy president Jacob Zuma's 2006 rape trial sparked interest from across Africa. Women's groups were outraged by his eventual acquittal, not so much over the not guilty verdict, but rather because of the attitudes and views on women which emerged during the trial and judgement. This chapter begins with a public statement issued by 54 African women at the time of the trial and is followed by articles that explain the implications of the trial for women's rights. The second article consists of a question and answer email exchange between Pambazuka News and Delphine Serumaga, executive director of People Opposing Women's Abuse (POWA). In the following four articles, four South African women respond to the not guilty verdict. Sibongile Ndashe, Vanessa Ludwig, Nikki Naylor and Lindiwe Nkutha all express anger and disappointment over what the trial meant for South African women and victims of gender-based violence



THE JACOB ZUMA RAPE CASE: A LETTER TO KHWEZI

FROM 54 AFRICAN WOMEN

Fifty-four women from 21 African countries, meeting in Johannesburg to discuss women's rights and HIV/Aids, issued a statement expressing concern about the Jacob Zuma rape trial. Zuma, the former deputy president of South Africa, had been charged with rape following allegations by a 31-year-old HIV-positive woman. The trial had been characterised by ugly scenes outside the court building, with Khwezi, as the complainant has been nicknamed by her supporters, being abused and insulted by supporters of Zuma.

We, 54 women from 21 African countries representing 41 national, regional and international women's organisations in Africa comprising HIV and Aids organisations, feminist associations and human rights institutions, meeting in Johannesburg, South Africa between 6 and 7 April 2006 to formulate advocacy positions on women's rights in the context of HIV and Aids

*Confronting powerful men
in powerful positions is
a difficult and courageous task.*

are outraged at the direction that the rape trial of the deputy president of the African National Congress, ANC, Jacob Zuma is taking. We find the conduct of the defence lawyers, the media, the courts and the police dishonourable.

1 We have been and continue to be affected by the twin epidemics of violence against women and HIV and Aids in various ways. Many of us are living

with HIV, provide care and support to members of our families and communities who are infected with HIV and living with Aids. We have either as young girls, or in our adult life, survived violent crimes committed against us by men in powerful positions within our families and in our communities. Some of us remember those women who have been senselessly murdered through acts of violence committed at home, at work and at school. We know that women are often raped by men who are known to them.

2 We take this opportunity to publicly state that we stand in solidarity with Khwezi. We applaud her brave stance in reporting her experience to the police and in standing before the courts to name her violation. Khwezi has shown respect for the mechanisms that exist in South Africa to report and resolve crimes. Confronting powerful men in powerful positions is a difficult and courageous task. We wish her, all of South Africa and the world to know that she has our love and our support.

3 We are outraged by the horrific and unethical victimisation Khwezi has received in and through the mainstream broadcast and print media. She has been vilified by a form of reporting that is biased and blatantly sexist. We are noting those sectors of the media that continue to serve as judge and jury through the lens of the mass media, conferring guilt on Khwezi through inappropriate coverage of her HIV status, her dress, and her sexual past based on violations committed during her childhood.

4 We are angered by the inaction of the police, who, rather than provide a safe environment for Khwezi, have left thousands of Zuma's supporters to burn underwear and images of Khwezi outside the courts in ghastly acts of hatred and intimidation. We believe that the commissioner of police has continued to permit what amounts to public violence to unfold in the vicinity of the courts. Where he could have ensured a peaceful atmosphere prevailed, he has let Khwezi suffer dramatically brutal acts of bullying in her journey to and from the courts.

5 We are offended by the manner in which Jacob Zuma has manipulated traditional Zulu practice and custom. We are also outraged by Zuma's

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a manipulative affront to a continent that
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Africans cannot respect human rights*

admitted attempts to abuse Zulu culture by seeking to buy off Khwezi and her mother with a few fattened cows. It makes women seem like bags of meat that can be humped and the issue settled by trading a few cattle as marriage negotiation. This tactic of invoking customary options is a manipulative affront to a continent that daily struggles with notions of barbarism and primitivism in a global world that is built on racist and unequal frames and that believes that Africans cannot respect human rights.

6 Given the irresponsible and inaccurate remarks made by Jacob Zuma with respect to risk of HIV transmission and the infamous shower, we call for the dismantling of the South African National Aids Council (SANAC) as it is evidently a vehicle of misinformation and miseducation that permits the abuse of political power rather than meeting its statutory mandate with respect to HIV prevention, treatment and care.

7 Opening up the sexual violations Khwezi experienced as a five-year-old or 13-year-old child to the scrutiny of the courts is improper. These are incidents that happened when she was a minor who needed protection. It is unfair to present them as part of the present case history.

8 South Africa prides itself as a democracy whose constitution promotes and protects women's human rights and freedoms from sexual violations. It prides itself on promoting and protecting the rights of women and people living with HIV and Aids. South Africa claims to have a sophisticated judiciary that is free of political and other powerful influence. We want these bold claims to hold true.

Given South Africa's pivotal role in regional and international politics, how the Zuma rape case is treated by the media, the courts, the police, the ruling African National Congress, the Office of the President, by Parliament, by the Human Rights Commission, by the Gender Equality Commission, by every single arm of government, will send strong signals about the Human Rights of Women in Africa in the 21st century, a century in which South Africa and the other 52 nations of the African continent have adopted the Protocol to the African Charter on the Rights of Women in Africa and the Solemn Declaration on Gender Equality in Africa under the auspices of the African Union, a century in which the SADC region also has the Gender and Development Declaration and the Addendum on Violence against Women, which has been signed by all its members including South Africa.

The women of the African continent deserve better than this. Women's rights are human rights and should not be violated under any circumstances, religious, political or cultural. Will South Africa walk its talk by upholding its constitution and its commitments at regional and international levels on women's rights?

Signed by: Ama Kpetigo, Women in Law & Development (WILDAF); Amie Bojang-Sissoho, GAMCOTRAP; Amie Joof-Cole, FAMEDEV; Beatrice Were, Uganda; Bernice Heloo, SWAA International; Bisi Adeleye-Fayemi, AWDF; Buyiswa Mhambi, Empinsweni Aids Centre; Caroline Sande, Kenya; Dawn Cavanagh, Gender AIDS Forum; Diakhoumba Gassama; Dorothy Namutamba, ICW; Ednah Bhala; Ellen Chitiyo, The Women's Trust; Ennie Chipembere, South Africa; Everjoice Win, South Africa; Faith Kasiva, COVAW – Kenya; Faiza Mohamed, Somalia; Flora Cole, WOLDDOF –GHANA; Funmi Doherty, SWAA – Nigeria; Gcebile Ndlovu, ICW; Harriet Akullu, Uganda; Helene Yinda, Switzerland; Isabella Matambanadzo, OSISA; Isatta Wuire, SWAA – Sierra Leone; Izeduwa Derex-Briggs, Nigeria; Jane Quaye, FIDA – Ghana; Joy Ngozi Ezeilo, Women's Aids Collective (WACOL); Ludfine Anyango, Kenya; Marion Stevens, South Africa; Mary Sandasi, WASN; Mary Wandia, Kenya; Matrine Chuulu, WLSA; Neelanjana Mukhia, South Africa; Sandasi Daughters, Zimbabwe; Olasunbo Odebode; Prudence Mabele, Positive Women's Network; Rouzeh Eghtessadi; Sarah Mukasa, Akina mama Wa Afrika; Shamillah Wilson, AWID; Sindi Blose,

THE STRUGGLE FOR WOMEN'S RIGHTS IN AFRICA

*Siphiwe Hlophe, SWAPOL; Sisonke Msimang, OSISA; Tabitha Mageto, Africa;
Taziona Sitamulaho, South Africa; Theo Sowa, Therese Niyondiko, Thoko Matshe,
Vera Doku, AWDF; Oti Anukpe Ovrawah, National Human Rights Commission
– Abuja*

Pambazuka News 250, 13 April 2006



SOUTH AFRICA: THE ZUMA TRIAL, GENDER AND THE JUDICIARY

INTERVIEW WITH DELPHINE SERUMAGA

Pambazuka News: What is your assessment of the verdict in the trial of Jacob Zuma?

Delphine Serumaga: We feel that the verdict reflects the problems and constraints generally experienced by survivors of sexual violence. There is only a 7 per cent rape conviction rate, and many of the reasons for this low rate were evident in this case. Some of the challenges include the legislative and policy framework, which still reflect institutionalised gender oppression. Also, the current definition of rape places a high burden of proof on the complainant/rape survivor. There is also still some application of cautionary rules in rape cases. The law becomes a tool for relentless

There is no doubt this judgment will reinforce women's fears and low confidence levels in the criminal justice system, particularly if a woman has been raped before.

cross-examination and secondary victimisation by defence attorneys. The judge in this case seemingly subscribed to the defence's case and reasoning and characterisation of the complainant as being mad and incapable of telling the difference between consensual sex and rape. Women are routinely characterised as being mentally unstable, loose or of questionable morality during the course of rape trials. This reflects the patriarchal context within

which courts operate. The stereotypes and misconceptions we heard inside the court were a reflection of the myths and misconceptions heard outside.

Pambazuka News: The judge said this would not have an impact on reporting of rape because the case was unique. What, in your opinion, does this judgment mean for women who have been raped and want to go through the legal system?

Delphine Serumaga: Prior to this judgment the conviction rate was low. Reasons for this include women's fears of experiencing secondary victimisation – particularly during cross-examination – low confidence in securing a conviction and the state's inability to protect women from violence and intimidation by the accused. There is no doubt this judgment will reinforce women's fears and low confidence levels in the criminal justice system, particularly if a woman has been raped before. This occurs even though statistics reflect that a) more women are raped by someone they know (acquaintance rape) than by someone they don't know (stranger rape) and b) multiple experiences of rape are extremely common.

Pambazuka News: The decision by the judge to allow questions about Kwezi's past sexual history resulted in some controversy, and in his verdict the judge spent some time justifying giving permission for this. In general, feminist groups oppose the admittance of past sexual history in rape cases. What implications does the way the judge dealt with this have for future cases, if any?

Delphine Serumaga: There is a chance that this will be referred to in future cases. The new Sexual Offences Bill does propose tighter requirements and a set of criteria to be met before this evidence can be deemed admissible. The bill, if passed as is, will still not be sufficient to protecting women against having their sexual history dragged into court. Once passed, gender activists will need to scrutinise the application of the new section of the law.

Pambazuka News: The judge reserved some tough words for the media and the role of other special interest pressure groups, especially questioning the role of various women's organisations in their application to be friends of

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the court. In particular, he said ‘pressure groups should not jump to conclusions before hearing all the evidence’. Is he correct? Why?

Delphine Serumaga: I think the judge on more than one occasion used his position on the bench to make moral and other pronouncements. He did speak at length about pressure groups, who he said were in breach of the sub-judice rule and who lodged the amicus brief. As gender violence organisations it is our key mandate to lobby for changes to unjust laws and practices, and to inform the public of the problems confronting survivors who engage the courts for justice. As made evident by the judgment, we were not jumping to conclusions. The very essence of the amicus brief was to provide expert evidence and to explain multiple experiences of rape (which he interpreted as being unlikely and therefore probably made up by the complainant).

Pambazuka News: What has the case shown about the rights of the rape survivor and her position in the legal system?

Delphine Serumaga: Overall rape laws and court processes surrounding rape cases continue to disadvantage rape survivors. Some of the aspects of this have been explained above, but additionally, the absence of legal representation for the complainant makes her vulnerable, as the prosecutor cannot be said to represent the complainant, but is there on the state’s behalf.

Pambazuka News: Quite aside from the verdict and whether one holds the opinion that it was a good or a bad one, the trial has shown that in an environment which has entrenched protection for women, some very ugly attitudes have nevertheless been expressed. How has the trial reflected prevailing views in South Africa about women’s sexual roles and rights?

*the judge on more than one occasion
used his position on the bench to make moral
and other pronouncements*

Delphine Serumaga: This case has revealed that commonly held myths and misconceptions about rape survivors are still held by many sections within society. This refers not only to beliefs about women and rape, but also about HIV and Aids. Myths and misconceptions about rape seek to maintain the current gender imbalance and reinforce male privilege and power. They further place responsibility for the violence on the survivor (i.e. victim-blaming), effectively releasing the perpetrator from responsibility for their actions.

Pambazuka News: In some senses, women's rights and concepts of culture appear to have been diametrically opposed. Why have the two been so at odds in this context and how can the tension be resolved?

Delphine Serumaga: Culture is dynamic and subject to the interpretations of those with power. In South Africa we are the sum of many cultures but subject to only one constitution. This constitution was developed by all the people and was not imported or imposed. Many of the cultural norms about women's dress and so on are in fact imported notions of gender. Progressive interpretations of culture need to be promoted but those that run counter to this must be discarded.

Pambazuka News 254, 11 May 2006

The trial judgment is available at

<http://www.constitutionalcourt.org.za/site/lawclerks/zumajudgment.pdf>



CAN I SPEAK, PLEASE?

SIBONGILE NDASHE

My attempt to construct a response to the epic that has become the Zuma trial was interrupted by a phone call. One that I found extremely irritating yet useful in its insistence that I contextualise one of the things I consider problematic in the discourse on gender-based violence. Part of my irritation stems from the fact that at the time of the call I was trying to write a difficult piece on the intersect between race, gender and class and why the division of the women's movement between madams and maids makes it difficult for black women to enter this discourse without first making apologies for the other sector they represent – their 'womanness' or their blackness.

The caller wanted to voice his disappointment with a comment I had made on a TV programme where I said 'that the Zuma judgment is a setback for women's rights'. He charged that such a statement meant that women's

*Why did my dissatisfaction with
the judgment have to necessarily draw
an adverse inference for potential rapists?*

rights would have been realised had Zuma been found guilty. And that it suggested that every person accused of rape had to be found guilty, regardless of the evidence before the court.

I could not help but notice how unfortunate this deduction was. It helped that the caller was a lawyer, and I was able to remind him of the distinction between a verdict and a judgment. My caller's disappointment stemmed also from my perceived failure to endorse or reject the verdict. Why was it my duty to refocus attention on the law, in the three minutes I had? Why did my dissatisfaction with the judgment have to necessarily draw an

adverse inference for potential rapists? This distraction is quintessential of the sidetracking that forces black women to engage in fringe issues, whilst attempts are made to silence our voices. I mentioned the treatment meted to K in support of my dissatisfaction. I told him that I did not understand why I needed a password to enter a discussion on gender-based violence, as protection from having to respond to things that I did not say, because not saying them meant I was saying something about Zuma.

The password is often a demand for qualifiers that have become a prerequisite for debate on gender-based violence. So one needs to say 'not all men are rapists, and that in the past some people have been falsely accused'.

There is a distinction that I feel needs to be drawn (one which we are all too eager to draw in other spheres of life), which is that the norm in rape cases is that most of the complaints are not false and the fact that some women lie is an exception.

Had I said that, I would have unlocked my audience. Fact – sexual violence disproportionately affects more women than men, but it does not follow that men do not count amongst survivors of sexual violence. Women lay rape charges, but it does not follow that all of these charges are true. There is a distinction that I feel needs to be drawn (one which we are all too eager to draw in other spheres of life), which is that the norm in rape cases is that most of the complaints are not false and the fact that some women lie is an exception. Therefore the eagerness to entrench an exception as a norm in rape cases – that women lie about rape – is at the heart of the demand for the concession that this judgment is indeed the correct one.

I have difficulties with Judge Van der Merwe's judgment, when he finds that an extract from a draft autobiography, regarding K's 'experience with a penis' when she was five, is relevant in determining her sexual history. In this instance there was no accused person, nor a charge of rape. This 'expe-

rience with a penis', which exists in the autobiography, is made relevant because in it she called it a rape. Acceptance of that evidence, that relates to what a person chooses to call an invasion of her person by a penis at that age, in a private document, not prepared for court, is what I call a setback for women's rights. Accepting evidence from a gang, who claim to have had consensual sex with a 13 year old, as relevant in determining whether she had a history of making false rape accusations, constitutes a setback for women's rights. Disputes about whether there was vaginal penetration or 'a series of thrusts between the thighs', an experience that a thirteen year old should rightfully call rape, constitutes a set back for women's rights.

So, although I think the acquittal is a correct verdict, in law at least, because the state failed to prove its case beyond reasonable doubt, my immediate reaction to the judgment is a NO! and not a statement that extols Van der Merwe's virtues and legal acumen in acquitting Zuma in a manner that is so inimical to K's dignity in any civilised society – let alone in a country that lists human dignity, the achievement of equality and the advancement of human rights and freedoms as its foundational values.

Pambazuka News 254, 11 May 2006



JUSTICE WITH DIGNITY

VANESSA LUDWIG

On Monday I came back from a very long and tiring journey, to be greeted by a vexing headline at Cape Town International: 'Zuma Rape Verdict Today', it read. I sighed, because a part of me already knew what the verdict was going to be. I was certain a not guilty verdict would be returned. Not because I had any evidence that Zuma did not do 'it', but because of the way the trial had unfolded, from the search for a 'qualified judge', to the unbridled scrutiny of Ms K's 'sexual history'. But for me the official verdict

*What can one expect of a system
constructed within a framework of
white supremacy and male dominance?*

was never going to be important. What was of importance to me throughout this trial was the workings of the South African justice system. The outcome of this case in my eyes, and many others, is clear – our justice system has been found guilty. It has been found guilty of being hostile to women, black women in particular; it is guilty of its refusal to protect us.

From the outset, this system did not protect K. Instead, from day one, it allowed speculation over who she is. It allowed disgusting demonstrations, reminiscent of the days of witch-burning in Europe and North America in days gone by, by Zuma supporters to continue outside the court. It allowed for the unabated and invasive interrogation of her 'sexual history,' as it slowly stripped her of her dignity. What is more, Judge Van Der Merwe's 174-page judgment did nothing to restore that dignity. In fact, it served only to further humiliate her.

But what can one expect from a system based on Roman-Dutch law, which

by its very nature is not sympathetic to black women? What can one expect of a system constructed within a framework of white supremacy and male dominance, one in which the black woman is at the bottom of the human hierarchy, a system that is blind to the inequalities in our society, one that claims to treat everyone as 'equal before the law', all the while denying us our realities and by extension our humanity, a system that reifies colonial constructions of black women as sexual objects, and overly sexualised beings, one that sprang from the same mindset that prompted Cuvier to dissect Sara Bartmann and place her brutalised genitals and brain on display? This, it must show, is a system whose effects are not going to be wiped out overnight, simply because we have signed a new constitution, or because we had Madiba, or because we live in a new South Africa.

All of this angers me, but not half as much as the pretence that the judiciary is independent and that the law is somehow above politics. It angers me

*Justice is not blind,
neither are those
who administer it.*

also that the judiciary has a propensity to turn a blind eye to the fact that both in making laws and in their administration, issues of culture, historical experience, political ideologies, values and group interests are very much in play, and that imbricated within these processes are power and authority.

Justice is also not blind, neither are those who administer it. They see, or more aptly do not see, things in particular ways, influenced by their socialisation, prescribed as it is by race, class, gender, sexuality and values. Van Der Merwe, a white male, sitting in judgment in a case, which essentially revolved around the credibility of a black woman, clearly showed in his six and a half hour judgment that he, like the rest of us, has gaps in his understanding.

[P]ressure on a court in a matter like the present is big enough ... It is not acceptable that a court be bombarded with political, personal or group agendas

and comments. As one contributor to a daily newspaper very correctly put the matter ... 'The trial is more about sexual politics and gender relations than it is about rape.' Wise words but what a pity it had to be said.

(p. 3)

What a pity indeed! It would seem that rape and gender relations, within a patriarchal society, following on the judge's reasoning, bear no relation to each other: one is about power relations within a system of male dominance, while the other is about what?

K's sexual orientation, her 'disappeared hymen ring', and mental health were at the centre of his treatise. Am I the only one finding this offensive? Am I the only who thinks that there is something seriously wrong with a judiciary that can have a white man so strip a black woman of her dignity, in a sanctified, socially sanctioned manner? Am I the only one who feels that we are in desperate need of a different justice system, one infused with dignity that comes with respecting people's humanity, especially that of black women, one that will ensure that both those who have been wronged or who felt that they have been wronged and those who have done wrong, or have been accused of having done wrong, can find peace and healing?

In the not guilty pronouncement, Zuma has had his dignity restored. K's *kanga* (a rectangular piece of cotton cloth) will be returned, but the question still remains, who will restore K's dignity to her?

Pambazuka News 254, 11 May 2006



THE SOCIO-POLITICAL EUNUCH CALLED AN IMPARTIAL JUDGE

NIKKI NAYLOR

I am angry. I am pissed off. I have been trying to write about this Zuma debacle for months, but have been plagued by unease and self-censorship, and I have remained silent, while seething inside. The polarisation into two camps of the country, into those who claim to be speaking on K's behalf, and those who have out and out turned their backs on her has me bothered. I am angry and irritated with K herself and those surrounding her. I am angry

*The law does not have one single meaning
and it is often in the habit of being contradictory,
depending on who is applying it and to whom
they are applying it.*

with the men and women hurling stones and burning effigies, but all of this is not new, because for ages I have been seething inside. Today, nudged by Judge Willem Van der Merwe, my anger can no longer be contained, it has become resolute, and I am spilling it on this page.

But I have to start by being nice, so here is my attempt at being just that. Van der Merwe's finding that the state failed to prove its case, and that the accused should be acquitted is correct. His decision on that score cannot be faulted, though many feminists may disagree. I believe that, legally, the state failed to discharge the onus of proof. However, whether the decision could have been different, save for the misogynist reasoning, is the question that should be asked, but that is another issue. I suspect the answer would still be a resounding no. We would still have ended up with the same decision – this acquittal.

I am not one who succumbs to misogynist notions about what women should wear, how they should talk, in order to avoid being raped. But I did have issues with the complainant and the state's paltry efforts in dealing with this case. Such lacklustre efforts intensify my anger. I am angry because

If you have a sexual history, if you have ever been abused, stop, go to counselling, heal yourself, and do not subject yourself to the court process.

for too long we have been subjected to misogynist reasoning, shrouded in the notion of the neutrality, objectivity and impartiality of judges, a notion which obscures the fact that judges make political decisions and these decisions are informed by their political and social contexts. We need to acknowledge this fact.

The law does not have one single meaning, and it often differs and is in the habit of being contradictory, depending on who is applying it and to whom they are applying it. Today the chilling effect of Van der Merwe's words has left me reeling. Most judges believe that they need to uphold the distinction between law and politics, identify objective criteria and thereby create a factual distance between their own personal views, opinions and political philosophy. Professor Griffith, in his work on the *Politics of the Judiciary*, points out that the notion of impartiality has been regarded as an absence of personal bias or prejudice and the exclusion of 'irrelevant' considerations such as a judge's political views. Accordingly, when a judge acts like a 'political, economic, and social eunuch' with no interest in the world outside the courtroom, he or she is deemed to have delivered a fair and impartial judgment. Thus, Van der Merwe's argument is that he has been fair and impartial by removing himself from the outside world. He makes the point strongly at the outset, as though this vindicates him, and that by behaving like a socio-political eunuch, he suddenly becomes impartial. But we know that this is not what has happened here.

We know that there are no determinate legal outcomes based on neutral,

general principles and often judges rely on subjective factors in order to find solutions. We also know that different judges selectively rely on different factors – in this case the use of underwear and *kangas* (a rectangular piece of cloth). This has been the case with Van der Merwe. When faced with the choice of either starting from a premise of a women's right to be free from violence, or from some apparently neutral legal basis, such as 'judicial discretion' or 'reasonableness' he chooses the latter, failing at every step of the way to acknowledge constitutional rights to dignity and freedom.

It is imperative that as women fighting the scourge of violence, we should be at the forefront of broadcasting the correct message. It is important that we interrogate our blind faith in justice and the law. It is also necessary that we start accepting that judges can never be neutral in relation to their society. Neutrality, as here espoused, is risky, since it blinds judges to their own involvement in recreating and perpetuating stereotypes. Judges, we must insist, should bring their own and women's experiences into their courtroom, in order to fill legal gaps. Concerning gender based violence we should be adamant that judges strive more for socially responsive attitudes

*I have been trying to write about this
Zuma debacle for months, but have been
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(in order to bring the law into line with women's needs), above their quest for neutrality. The lawyer in me needed to say that. Now, having said it, I need to add that I no longer have faith in the evolution of our criminal justice system.

In this light, how do we take what the court has said and move forward as a nation of women who are being raped, daily, in our homes, in the streets, in courts and in the media? Well, we cannot take it forward I am afraid. I feel the need to tell women to, 'Stop, don't come forward, please don't!' If you have a sexual history, if you have ever been abused, stop, go to counselling, heal yourself, and do not subject yourself to the court process. Do not subject yourself to being a victim.

I am certain the overwhelming silence that is left hanging in the aftermath of this Zuma debacle resonates within all of us. We have been silenced. How does one get beyond the allegation that walking around in a *kanga* with no underwear on and sending SMS messages ending in 'love, hugs and kisses' are an invitation to sex? How do we get beyond that? I do not know if I know how. How do I start taking responsibility for myself and stop being a victim? I am tired of being a victim. Do we need to be more radical and renounce all forms of flirtation? I am sexual? I love sex? I am one of those who flirt unashamedly with men, sometimes? Do I then loose my right to change my mind and say no? I have a sexual history? I have slept with men I hardly knew? I have picked men up in bars and taken them home? I have worn practically nothing on those occasions? I have sent provocative SMS's? What does that make me? Someone who will never be able to place myself in a witness box. Right now I do not feel the urge to speak out in a court of law. I cannot. Yet, do I want to add my voice in the name of the movement for other women to speak out? No. I need to be consistent, so I feel tempted to say – let the deathly silence hanging over us hang as ominously as it now does, while we regroup and rethink and formulate new strategies on speaking out. I feel we can no longer continue putting women through horrendous processes that re-victimise them. Let us be silent.

May this silence be akin to the quiet before the storm. And that when we break it, nothing but thunderbolts of new voices should leave our mouths.

Pambazuka News, 11 May 2006



DEAR DIARY

LINDIWE NKUTHA

Monday, 8 May 2006

Today is a sad day in my life. Not in mine alone, in a lot of other people's too, I'm sure, some for different reasons no doubt, but some, I suspect for the same reason as me. Today also marks the last day of our relationship. I am afraid I can't write in you anymore, without risking incriminating myself. Who knows in whose hands these pages might one day end up? And who knows what unreasonable deductions they may seek to make about me, after leafing through you. I am afraid I can no longer share my innermost thoughts with you. Nor my joys either, or my traumas, or my nightmares

*I am afraid I can't write in you
anymore, without risking
incriminating myself.*

borne of my past and present. I'm afraid I can no longer come to you at the end of a harrowing day, to tell you, in that honest and sincere way I seem able to tell only you. I'm afraid that if I should ever get raped, again, and cry wolf (because there really is one), they might make you admissible evidence, and that you might just contribute to my downfall. It's not because I don't love you anymore. Not that you have not provided an outlet for my frustrations and emotional turmoil. If there's anyone who knows all my highs and lows, it is you. It's just that this place that I love with all my heart has made it somewhat unsafe for us to carry on. But I thought it would be unfair if I left without telling you, in the best way I know how, the reasons why I have to pack away my commas and exclamation marks. I hope you understand.

Today I woke up in a place that said to me be free
so long as I kept my mouth shut and made no
demands that my freedom actually be taken seriously

I woke up in a place that said be what you want to be
so long as what I wanted to be did not include
me being a woman who wears a *kanga*,
has a history of mental illness
is prone to forgetting
or has in the past been raped

I woke up to a dream, and I realised that I am stronger than I was
yesterday
but this dream rapidly turned into a nightmare
right in front of my eyes as I began to see
that I had in fact been rendered much weaker than I was
just yesterday

I woke up in a place where it's the size of your heart that counts
not your fists
and realised that no matter how big my heart was,
these fists would continue to find a landing pad on my face
and that if I am to survive, I needed to pack a punch in mine.

Because yesterday I was digging for gold, and today I am wearing it
on my wrists, around my ankles, across my heart
it shackles my every step,
because now it is expected that I wear my chains with pride,
in line with the dictates of my culture
Yesterday I was burning with frustration; today I am growing big business
and this business of growing ever more sick and tired fuels my anxiety

I woke up and realised that I don't need a gun to make you listen
because the one that hangs from your crotch,

isbhamu somdoko, as you call it, is more potent
and if that does not make me listen, what else will?

And even if I have nothing, this place can give me everything
on condition that I give it in return every inch of my entire being,
until I am left in the end with much less than what I had when I started.

All I need do is believe
in nothing, because nothing much is worth believing in anymore
not the comfort in the knowledge that my elders will not hurt me
not the comfort in the fact that if they do the law will protect me
just the ugly reality, that depending on how it's spun
every sexual act I am forced to engage in,
no matter how many times I say no,
will be construed as having been consensual

Today I woke up in a place whose cheering can be heard on the other
side of the world
but whose screams land on deaf ears inside my home
a place where my brother is my brother no matter what
and my sister is someone who does not matter, no matter what

Today I woke up in a place that flows with courage
but drowns under showers of cowardice
that laughs,
at me often
that's cried
sometimes with me (well, only a handful)
that says it's okay
go ahead do to her what you please
we will find something in her history
to make her allegations sound like a fairy tale

Today I woke up in a place that sings with hope to the rest of the world
but mutters despair to itself

and I smiled because
well, because this morning left me a tad haggard,
and smile to stave off my tears is all I can do sometimes
when I'm feeling like this, besides I hear,
South Africans are creating a new dawn everyday
oh, how I wish this dawn would cast its rays my direction too.

Today I woke up in South Africa
and so help me I am never ever going back to sleep
lest those who relish in plotting against me should
devise more schemes while I slumber
lest I miss in my sleep a chance to be part of a legion
that will create for myself, my sisters, my aunts, my mothers,
my daughters
a solid string of incandescent dawns that are truly
alive with possibility
unlike the one I woke up to today
that seems to me to be languishing in a state of atrophy

So you see why this full stop I am about to write has to be my last, from now on I am holding inside me everything I otherwise would have shared with you, so long.

Pambazuka News 254, 11 May 2006

Chapter 7

COMMENTS AND ANALYSES

'Gendered violence is rampant in the SADC region and the conspiracy of silence around it in our homes, in our communities and indeed within the law has seen it multiply and become even more reckless as it is stealthily inflicted with impunity,' writes Janah Ncube in the introductory article to this chapter. Ncube looks at gender in the Southern African Development Community context, arguing that there is an urgent need for gender issues to be taken seriously in policies and processes. The rest of the articles in this chapter tackle a variety of issues related to women's rights. Monica Mbaru-Mwangi introduces us to a 10-year-old deaf girl who has been sexually abused by a neighbour, highlighting the difficulty faced by disabled women and the need for legislation that will protect them. In early 2005, the play *The Vagina Monologues* arrived in Uganda. The response of the Ugandan government was to ban it. Sarah Mukasa explains why and examines the issues raised. Also in 2005, the South African government introduced a new growth plan called the Accelerated and Shared Growth Initiative (Asgisa). But Mohau Pheko and Lebohang Pheko explain how it fails to take account of women. Germany 2006 was the location for the football World Cup. The organisation Solidarity with Women in Distress points out that the negative impacts of the showpiece stretches far beyond the field and includes the trafficking of girls and women. Lastly, Sokari Ekine examines the world of blogging and how it is being used to discriminate against women.



FAST TRACKING TO EQUALITY: THE SADC GENDER JOURNEY

JANAH NCUBE

Can protocols and legislation really be effective weapons against gender discrimination? Janah Ncube examines the Southern African Development Community (SADC) and contends that while a law may not change a moral belief, it can stop a husband from beating his wife to pulp, penalise unfair employment practices, and punish rape. 'Legislation has proved that with the state upholding it, social norms eventually conform to it if it is beneficial to all peoples.'

In the SADC region it is no longer business as usual for development and gender stakeholders. After representatives in SADC countries from government and civil society, regional NGOs, inter-governmental bodies and the SADC secretariat met in Botswana in December 2005, they concluded that if any integration in the SADC region is to be successful, sustainable and achievable, it has to be gender-based regional integration.

The executive secretary of SADC, Dr Tomaz Salamao, urged SADC governments to facilitate the implementation of the SADC gender programme so that the gender equality and equity objective could be attained. The driving force behind this consultative conference was the head of SADC's Gender Unit, Mrs Magdaline Mathiba-Madibela, who had the foresight to lobby for an action plan. In response, the 5-year SADC Gender Based Regional Integration Strategic Implementation Framework (2006–10) was developed by the 110 participants.

The SADC Gender and Development conference was held against the backdrop of a region that is facing increasing poverty with over 70 per cent of the region's population living below US\$2 per day and 40 per cent below US\$1,¹ severe drought, extremely high HIV/Aids prevalence (of the world population living with HIV, 60 per cent come from the SADC region and of

this number, 57 per cent are women), serious food insecurity, high unemployment and cross border economic migrants.

While the only country in the SADC region experiencing ‘active conflict’ is the Democratic Republic of Congo (DRC), Angola is still reeling from the immediate effects of conflict including the problem of landmines, which Zimbabwe and Mozambique are also still dealing with. The poor infrastructure within countries and across the region make it difficult to facilitate trade and other cross-border initiatives between member states.

All these limitations and challenges pose problems for women at a practical level, day-in, day-out. This is because of the gendered nature of the allocation of roles and responsibilities in our societies, both in the family and in the public sphere. When the state cannot provide for its citizens, women subsidise the state by providing their unrecognised and unrewarded skills

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and services. There were drastic cuts in social expenditure by governments in the late 1980s to 1990s due to structural adjustment programmes (SAPs). As a result many African countries saw the increased burden of care and basic food provision being shifted from the state to women.²

Women in the region have been facing increased challenges, marginalisation and appalling gender crimes – despite vigorous gender awareness campaigns, women’s empowerment policies, legislation and national programmes adopted both before and since Beijing. What is also unique about the SADC region is that in contrast with typical gender stereotypes women’s emancipatory efforts in this region are evident from their active participation with the men in liberation struggles.³

However women’s basic human rights, human dignity and human freedoms are still contested and have to be begged for diplomatically from our heads of states. As seen under slavery, colonialism and apartheid, the denial of any person’s rights is merely an excuse to exploit them. Until

January 2006, adult women in Swaziland were denied the dignity of being legal entities. Even today, adult women in Botswana who decide to marry cannot open a water utilities account without the consent of their husbands. The way women are still portrayed in our media as trivial, sexual, insignificant entities of course perpetuates their secondary status in our societies.

Gendered violence is rampant in the SADC region and the conspiracy of silence around it in our homes, in our communities and indeed within the law has seen it multiply and become even more reckless as it is stealth-

*unless we wake up to the reality that we
have exhausted our capacity to further
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this rut for generations to come*

ily inflicted with impunity. Examples of this abuse include sexual crimes against baby girls as young as 3 days old, the rape of primary school girls by male teachers and headmasters, gang rapes in daylight and cold and bloody murders sold to the world as 'passion killings'.

While SADC is generally perceived as a region 'enjoying' peace, there is no peace in ordinary women's everyday lives as husbands and lovers who claim to love them beat, kick and plunder their bodies. Of course this is called 'domestic violence' and has been found rather difficult to 'treat' in the justice system as it is a 'household' affair. Of course what is not admitted is that these assaults are a threat to a women's security and a denial of her dignity when someone can bruise and break her body parts with legal impunity.⁴

The gendered division of labour within the region has resulted in the trivialisation and marginalisation of women's work and their economic activities. What this means in practice is that they are denied ownership of property and access to resources such as land and capital. The criminalisation or non-regulation of the informal sector and the failure to cost women's work, despite its frequent long and manual nature, also penalise women.

This further buttresses not just the secondary status of women but is one of the key reasons that developing countries have remained stuck in the poverty rut.⁵ SADC's priority is to address the poverty in our region and unless we wake up to the reality that we have exhausted our capacity to further develop and grow the economies of our region by excluding and exploiting women, we will stay in this rut for generations to come. The equality and equity agenda is not just about improving the situation of women; it is about improving the situation of our families, which ripples into improving our communities, industries, countries and the region. It is about Africa utilising all of its human skills in appropriating its resources through the best efforts of its peoples. It is about attaining Africa's potential by Africans for Africans.

In 2003, SADC came up with the regional indicative strategic development plan (RISDP) to guide SADC policies, programmes and actions. The RISDP re-enforces the strategy of regional integration, which Oyejide⁶ argues is the most basic ingredient for attaining high and sustainable economic growth. The task of building a regional community in the light of inequalities amongst the member states, many of which stem from colonial and imperial legacies on race, gender and class, requires courageous and capable leadership, skills and resources.

However in the light of global trends and the influence of international financial institutions in the economies of developing countries such as the SADC members, integration also becomes about synergies, pooling resources together, widening export markets, and enhancing the capacity of the region while negotiating and engaging on international platforms and indeed negotiating for progression within the region itself.⁷

The RISDP also recognises that greater equality between women and men contributes to both development and economic growth. As a result gender mainstreaming has been adopted by SADC as a strategy for ensuring that all SADC policies, programmes and activities take into consideration the fact that women and men, boys and girls are affected differently by macro and micro initiatives and policies because of the gendered nature of our societies. The disparities that leave women worse off than men must be addressed to achieve the goal of gender equality and equity.

The SADC secretariat's Gender Unit (GU) has the task of ensuring that

gender is mainstreamed in SADC policies and programmes while member states have set up their own national gender machineries (NGM) to do the same in all government structures and initiatives and to advance the empowerment of women. As Win points out,⁸ the NGMs have failed to achieve the gender justice which they promised. As either departments in ministries or fully-fledged ministries lumped together with other issues such as community development, youth, children, etc, they have instead become token entities to 'shut women up'.

As the ministers of gender in Africa observed during the Beijing+10 process in October 2004,⁹ NGMs lack the capacity, authority and resources to implement the enormous task of engendering all of government. A capacity assessment of NGMs commissioned by the GU also highlighted that NGMs have no clear mandates, are peripheral entities in government and are poorly resourced.¹⁰ Despite this, NGMs still remain the most effective institutions to mainstream gender in governments if they address these limitations and adopt the gender management system¹¹ as a strategy. (The gender management system (GMS) is a network of structures, mechanisms and processes put in place within an existing organisation to guide, plan, monitor and evaluate the process of mainstreaming gender.)

Indeed, many peripheral analyses of the gender inequality/discrimination problem blame women for perpetuating this phenomenon. What they fail to acknowledge is the power of the socialisation process, which does not separate women from men in reinforcing the stereotypes in our societies of superior males and subordinate females.¹² However the greatest challenge with changing gender-based disempowerment is that it is about women who are engaged in personal/intimate relationships with men who evoke their discrimination.

The racial discrimination fight was easier because the 'other' was disengaged and not connected to the 'us'. However this struggle is about going against the wisdom of a father, the perceptions of a husband, the practices mother taught. So sometimes it seems to be an internal fight between being loyal to what one has always known and believed and what one sees to be the path to attaining one's potential, freedoms and security. The progress that we have attained through legislation and policy changes do indeed give hope to women that the equality goal can and will be attained. This is why

the Gender and Development Conference called for the SADC Declaration on Gender and Development (1997) and its addendum on the Elimination of Violence Against Women and Children (1998) to be upgraded to a protocol. A protocol is a legally binding instrument which member states will have to enforce. This protocol would incorporate all the targets of existing regional and international instruments while incorporating other issues which are having a significant impacting on the region such as HIV/Aids

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Yet progressive legislation has shown that
with the state upholding it,
social norms eventually conform.*

and the trafficking of women in the sex trade. Currently member states are in the process of consulting different stakeholders and mobilising support for the proposed protocol, which they hope to table at the next SADC head of states' summit in August 2006.

It is true that the discrimination, exclusion and exploitation of women are moral issues that have been justified on traditional and religious grounds. It is also true that in spite of numerous progressive laws, they have continued to prevail. This has lead to the myth that protocols and legislation cannot solve these problems. It is true that the law cannot change one's interpretation of the Bible or one's moral belief. However legislation has codified gender discrimination and to borrow from Martin Luther King Junior's rationale on legislation:¹³ legislation can regulate behaviour and keep a husband from beating his wife to pulp; legislation can penalise and consequently restrain an employer from paying women less than men for the same type of work; and legislation can show men that they cannot rape and get away with light penalties. Legislation has proved that with the state upholding it, social norms eventually conform to it if it is beneficial to all peoples.

The challenge for SADC is to move the SADC region from goodwill and commitments to implementation and tangible changes that women can

see in their daily lives. Member states can start by adopting, ratifying and domesticating the Protocol on the Rights of Women in Africa. The rhetoric has to be replaced by budget allocations of at least 10 per cent for women's empowerment and gender related programmes in each ministry's budgetary allocation. SADC needs to accelerate the pace at which women's leadership in political and other decision-making processes is increased. Current trends are too slow; we missed our target of 30 per cent by 2005 and have not felt shamed by it.

Governments must strengthen the capacity of NGMs by increasing their resources, clout, access and skilled senior personnel and by giving them clear mandates. Women's NGOs and NGMs must discard their mistrust and seek ways of collaborating and sharing information to achieve national targets. Civil society must continue to mobilise and educate the people of the region about the issues identified and prioritised for the next 5 years. The energies generated at the conference will be fanned as more stakeholders in the region run with the agenda. The SADC executive secretary recently pointed out that without peace, all of SADC's efforts to integrate the region are futile. Truth is, they are doomed unless meaningful gender conscious and pro-women paradigms are what inform the region's developmental and economic growth agenda.

Pambazuka News 241, 9 February 2006

Notes

¹ SADC (2003) *Regional Indicative Strategic Development Plan*. Botswana: Southern African Development Community.

² P. Maramba, B. Olagbegi and R.T. Webaneno (1995) 'Structural adjustment programs and the human rights of African Women'. Zimbabwe: WiLDAF.

³ H. Campbell (2003) *Reclaiming Zimbabwe: The Exhaustion of the Patriarchal Model of Liberation*. South Africa: David Philip Publishers.

⁴ UN (1948) Universal Declaration of Human Rights <www.un.org/overview/rights.html>.

⁵ UNIFEM (2005) *The Progress of the World's Women 2005: Women, Work and Poverty*. New York: UNIFEM.

⁶ T.A. Oyejide (2000) 'Policies for regional integration in Africa', *Economic Research Papers Series*, 62, African Development Bank.

⁷ See African Development Bank (2000) *African Development Report 2000: Regional Integration in Africa* <www.afdb.org>.

⁸ E. Win (2005) 'Reclaiming the women's rights agenda', *Open Space* (OSISA), 1(1).

⁹ UNECA (2004) 7th African Regional Conference on Women (Beijing +10) Decade Review of the Implementation of the Dakar and Beijing Platforms for Actions. Outcomes and Way forward, 12–14 October, Addis Ababa.

¹⁰ SADC Secretariat (2004) 'Needs assessment study for capacity building of national machineries for gender equality I SADC member states and the SADC Gender Unit', unpublished.

¹¹ Commonwealth Secretariat (1999) *Gender Management System Handbook*. London: Commonwealth Secretariat.

¹² A. Oakley (1985) *Sex, Gender and Society*. Hampshire, UK: Gower Publishing Company.

¹³ Martin Luther King Jnr (1963) Speech given at the Western Michigan University on 'Conscience of America: Social Justice', 18 December 1963 <www.wmich.edu/archives/mlk/transcription.html>.



WOMEN WITH DISABILITIES AND SEXUAL VIOLENCE IN KENYA

MONICA MBARU-MWANGI

Accessing rights for persons with disabilities in Kenya is a major challenge, and is even more difficult for women with disabilities, as awareness about their human rights is low, argues Monica Mbaru-Mwangi, a disability activist. This article links the personal story of a 10-year-old deaf girl, sexually abused by a neighbour, to concrete legislation and protocols that should, in theory, help her to attain justice.

Rose Mwikal is the mother of 10-year-old Mueni (not their real names), and has spent the past two years fighting for an elusive justice. On 4 April 2004, a well-known neighbour sexually abused Mueni while Rose was away attending to other family needs.

Since birth, Mueni has had a hearing impairment, a condition that has forced her out of school. Rose is a single parent who has tried in vain to have Mueni's father take parental responsibility and assist in the burden of dealing with her daughter's disability.

According to the Kenyan Children's Act, parental responsibility towards a child is determined by the marital status of the child's parents. Where the parents were married at the time of the child's birth, or have subsequently married, the mother and the father have joint parental responsibility. Neither the mother nor the father have a superior right or claim against the other in the exercise of this responsibility.¹

However, in cases where the parents were not married at the time of the child's birth and have subsequently not re-married, the mother has full responsibility whereas the father bears no responsibility at all.² The father can acquire parental responsibility but this is optional and more importantly, it is optional to the father; there is nothing the mother nor the child

can do to enforce the responsibility on him.³ The provision in the Children's Act on parental responsibility is discriminatory, as it disadvantages a child born out of wedlock.

Being alone and with no school nearby that will accept Mueni because of her disability, Rose normally leaves her at home. On the day of the incident, when Rose came back at around 2.00 pm, she found Mueni crying in bed and upon further investigation she noticed her soiled clothes. Upon enquiry, Mueni took her mother's hand and led her to her neighbour's house and in

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sign language indicated to the mother what the neighbour had done. Rose rushed to the nearest police station, but was not issued with the necessary police medical forms because there were none. She was further told, by the reporting officer, that 'such a case cannot be properly supported in court as the girl is deaf and disabled...she cannot be able to give evidence in court'.

With the help of the local priest, Rose eventually managed to take her daughter to a hospital where she got treatment. Eventually the matter was taken to court. The matter has been listed on several occasions for hearing, but each time has been adjourned, as no sign language interpreter has been available to assist in taking Mueni's evidence. Rose is unable to provide this service as she is a prosecution witness.

According to the Kenyan constitution:

in criminal cases ... every person shall be informed in a language that he understands and in detail, of the nature of offences ... shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial⁴

It is therefore a constitutional right to use the language that one under-

stands. As Mueni is a prosecution witness, she has the right to have her case facilitated by the state.

Kenya, which also adheres to the UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (Standard Rules),⁵ passed the People With Disabilities Act (disability act or the act) in 2003. This legislation gives rights, but does not establish the structure necessary for those rights

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but does not establish the structure
necessary for those rights to be realised.*

to be realised. Similar challenges are faced in the drafting of the proposed international human rights instrument on the rights of people with disabilities (PWDs), which is currently ongoing.⁶

The act mandates the Council for Persons with Disabilities⁷ to create the structure and mechanisms for accessing the rights enshrined therein. The council has been in operation for the past two years, but it is still in its formative stages. The act does not address the specific rights of women with disabilities nor does it deal with gender-based violence, which occurs at high levels against people with disabilities.

Accessing rights for people with disabilities in Kenya is a major challenge, and is even more difficult for women with disabilities, as awareness of their human rights is low. Violations occur on a daily basis, as there is no government policy on women's rights. Gender-based violence is very high and for women with disabilities, they suffer a double violation, as there are no structures in place to give them specific protection.

Women with disabilities have particular needs and they face many obstacles in their struggle for equality. Although both men and women with disabilities are subject to discrimination, women with disabilities are doubly disadvantaged by discrimination based on gender and their disability status.⁸ Therefore the case of Mueni is a reflection of how the Kenyan criminal justice system and society at large view the rights of women with disabilities, and is a demonstration of the failure to address serious viola-

tions of sexual violence.⁹ Like any citizen whose rights are enshrined in the constitution, Mueni should be given not only protection of the law, but access to a sign-language interpreter, doctor, police officer and a judiciary who are aware of her specific needs in helping her attain justice.

There is wide acceptance that the human rights of people with disabilities must be protected and promoted through general as well as specially

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designed laws, policies and programmes.¹⁰ National governments can make this possible through their legislation. In Kenya, international standards will inform national legislation.

Of significant importance is the Protocol on the Rights of Women in Africa. The protocol¹¹ came into force after being ratified by 15 African governments.¹² Two years earlier, in July of 2003, the African Union – the regional body that is charged with promoting unity and solidarity among its 53 member nations – adopted this landmark treaty to supplement the regional human rights charter, the African Charter on Human and Peoples' Rights (the African Charter). The protocol provides broad protection for women's human rights, including their sexual and reproductive rights.¹³

The Convention on the Elimination of Discrimination Against Women (CEDAW) does not contain any provisions that directly relate to discrimination or violence against women with disabilities. However, in its General Recommendation 18, the CEDAW committee recognises that women with disabilities experience particular forms of discrimination and asks state parties to provide information on them and take special measures to ensure disabled women's access to legal protection.¹⁴ The CEDAW committee acknowledges that the status of women with disabilities makes them vulnerable to violence, especially sexual violence.

Similarly, the Convention on the Rights of the Child (CRC)¹⁵ does not give specific protection to children with disabilities, but does prohibit

discrimination against children on the basis of disability and also recognises their special needs that require special, appropriate assistance and care.¹⁶ These provisions should benefit Mueni and all other children with disabilities. The CRC, though gender neutral, requires states to: 'protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation'.¹⁷

Kenya has ratified CEDAW, and as we wait for the ratification of the Protocol on the Rights of Women, Mueni can only rely on national legislation to give her protection against her abuser. The Persons with Disabilities Act does give access to these rights, but the mechanisms and structures have not yet been put in place to ensure that these guarantees are enforced. The Kenya National Commission for Human Rights (KNCHR),¹⁸ has begun to take an active interest in disability issues. This is important since the institution helps in providing a bridge between international human rights law and domestic debates. With the Council for Persons with Disabilities in place, it is hoped that the enforcement of rights for persons with disabilities, and especially women's rights, can be realised.

Pambazuka News 255, 18 May 2006

Notes

¹ Article 24 (1) Children's Act.

² Article 24 (3.a) Children's Act.

³ Article 24 (3.b) Children's Act.

⁴ Section 77 (2) (b) and (f) of the Constitution of Kenya (1992).

⁵ UNGA Res. 48/96, 20 December 1993. Available at <http://www.un.org/esa/socdev/enable/dissre00.htm> (accessed 5 April 2005). The predecessor of the Standard Rules on Equalisation of Opportunities for Persons With Disabilities (Standard Rules); World Programme of Action Concerning Disabled Persons, UNGA Res. 37/52, 3 December 1982 <<http://www.un.org/esa/socdev/enable/diswpa00.htm>> (accessed 5 April 2005).

⁶ UN Disability Rights Convention, which has held four sessions <<http://www.pwd.org.au/disabilityconvention/>> (accessed 5 April 2005).

⁷ Section 7 of the Persons with Disabilities Act, 2003.

⁸ Report of the director general, International Law Conference, Geneva, 1981 <<http://www.ilo.org/public/english/bureau/gender>> (accessed 6 April 2006).

⁹ There is no desegregated data on the incidences of sexual violence on women with

disabilities in the Kenya report to the CEDAW committee submitted in 2000.

¹⁰ Paragraph 118 United Nations ECOSOC, Report of the Special Rapporteur on Violence Against Women, E/CN.4/1995/42.

¹¹ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2nd Ordinary Session, Assembly of the Union, adopted 11 July 2003.

¹² As of 17 February 2006, Benin, Cape Verde, Comoros, Djibouti, Gambia, Lesotho, Libya, Malawi, Mali, Mauritania, Mozambique, Namibia, Nigeria, Rwanda, Senegal, South Africa and Togo have ratified the protocol.

¹³ The protocol is intended to supplement the African Charter, and therefore, will generally complement rather than conflict with the African Charter.

¹⁴ Committee on the Elimination of Discrimination Against Women, General Recommendation 18: Disabled Women (10th Session, 1991) UN Doc HRI/GEN/1/Rev.5 (2001).

¹⁵ CRC adopted Nov. 20, 1989, G.A. Res. 44/25, Annex, U.N. GAOR, 44th Session, Supp. No. 49, at 167, UN Doc. A/44/49 (1989) (entered into force 2 September 1990).

¹⁶ Articles 2 and 3 of the Convention on the Rights of the Child.

¹⁷ Article 19(1) of CRC. Article 34 of CRC further requires states to 'protect the child from all forms of sexual exploitation and sexual abuse'.

¹⁸ Section 16, KNCHR Act, 2002. Established in 2002 as a statutory body. Kenya Gazette Supplement No. 22 (Acts No. 1). Nairobi: Government Printers.



VAGINA MONOLOGUES: 'I AM GLAD THEY HAVE BANNED IT'

SARAH MUKASA

Sarah Mukasa looks at the Ugandan banning of the internationally acclaimed play *The Vagina Monologues*. 'The positive side to all this, is that this play and the issues it is trying to raise has reached a wider audience than would ever have been possible had the state not interfered in the way it did,' she writes.

'I am glad they have banned it.' So said a colleague who walked into my office the day after the news of the play's banning by the Media Council.

'Why?' I asked her very quietly.

'Because now we can clearly see what we are up against. How dare you women celebrate your womanhood, condemn sexual oppression, and the abuse of women's bodies. And you not only dare to do this, but in public also? What? You look at it from their point of view. Don't you know that your vaginas are dirty, obscene, distasteful, vulgar and evil? Don't you know that these "things", no matter how much they suffer, should be kept private? Haven't you yet understood that the only ones who can talk with authority on these matters are men who think that way about you and women who think that way about themselves? Really, you women, where do you get the nerve to talk about vaginas in public? Don't you know this is not how "respectable" women behave? You have embarrassed good women everywhere. Our cultures are sacrosanct. They should never be questioned or challenged. You who have done so are morally corrupted.'

We laugh.

So is it our cultures or our religions we are worried about?

Well, both. We should safeguard our African Christian, cultural values against the surge of Western immorality!

So when, for example, the Christian religion says we are all made in the

image of God (every single part of our bodies that is), does it mean that it is wrong for us to refer to the vagina as vulgar, dirty and distasteful, because we are denigrating the image of God?

Well, no, because culturally this is how we refer to these parts of the body.

Oh, so it is wrong for us to challenge these socially constructed practices, even though we may be dishonouring God in adhering to them?

Well, yes, in this case, yes ... we think.

Which case is that? The case in which the issue touches on the rights of women, of course. In those cases, we always refer to that which sits comfortably with patriarchal notions of what a woman's place should be. Women are used to this (even those who were opposed to this play). They have steadfastly challenged patriarchal cultural practices and norms. They have gone to school, own property, left abusive marriages; some have even chosen not to marry. But now many of them turn and point the finger at those who dare to challenge the last and most insidious bastion of patriarchal oppression. The

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have banned the play? Ahh, then there must be
something good in it for women!'*

notion of women's bodily integrity and autonomy; the idea that a woman's body is hers and hers alone to do with as she chooses is so scary to so many of us, that we quickly hide behind some of the very defence mechanisms we have so long challenged. Culture. African cultural values.

I think that we should be very careful how we fashion our arguments. For hiding behind cultural relativism has been the very tool used to stamp our oppression in the past. We pander to racist and sexist stereotypes about what African culture is when we do this. We paint a picture of this fossilised, immovable, intolerant, reactionary, monolithic culture. Let us also not forget that in the past these arguments have been used to safeguard dictatorial regimes. Concepts such as human rights, democracy, and gender equality were all once referred to as 'Western and alien concepts'. So whilst we

Africans were stuck in oppressive, repressed, dictatorial, cultural systems, the West was showing us the way forward? What absolute garbage. The fact of the matter is that the oppression and exclusion of peoples, on the basis of race, gender, and ethnicity and so on, is a universal practice, which each society justifies with slick explanations of culture, religion and what have you. And just as it has been practised in every society, so has it been resisted.

'Corruption of our values by Western immorality is one of the biggest challenges of our time'. So said the good Minister of State for Information Dr Nsaba Buturo in his press briefing statement. I am sure he believes it. But really, some of us think that compared to the subjugation of our economies to the West, this is a stroll in the park. But there you have it. This is where

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the minister concentrates his energies. And not very well, one might add. Let's look at subscription TV and what it frequently beams into our homes. No bans there. Let's look at all the salacious print media that is around for everyone to see. No ban there. What about all those watering holes dotted around the city, which feature goodness knows what. No, no ban there. What about the corruption that is endemic in our society and which denies so many their right to basic social welfare? Nope. No moves there either. Has he managed to get all those government officials and employees who have abandoned their children to at least pay child support? Last I heard, that was not on his radar. In fact no action anywhere except for where some women want to stage a play called *The Vagina Monologues*. Ahh.

Of course we have heard from a number of those who have seen the play and condemn it as pornography from the West. I cannot argue with their experiences; it is pointless to do that. Because in doing so I silence them,

relegate them to the back of beyond, as somehow completely unimportant. Their view is important, and they can exercise their right to stay away. I hasten to add that several others have seen the play, myself included, and have been liberated by it. Our views and experiences have simply been ignored and silenced by the bully boy tactics of some of our ministers (whose backgrounds we are all really keen to know) and their cronies. The play has a different effect on different people. It is as simple as that. And in that sense this play is no different from any other.

'The message is good but you should have packaged it differently' some now say. Hello? Have you been on the moon? What have women's organisations been doing all these years? Sixteen Days of Activism Against Gender Violence. Seminar after seminar. Tree after tree chopped down, to produce report after report which presents these issues to fit comfortably with people's sensibilities. And where are we? As I write this, these reports sit, gathering layers of dust in a number of people's offices. In the meantime, the crisis escalates (this is by the government's own reckoning).

'Say it in vernacular!' others scream. They throw this as the biggest defence against staging the play. Well, as I recall, a number of this same group argued for 'gender sensitive language' in the drawing up of the 1995 constitution. This principle document now uses 'he' and 'she', 'woman' and 'man' as the case warrants. Why did they do this? Language, they argued, is patriarchal in nature. It is socially constructed and it reflects societal, cultural norms. Quite right too. And by the same token I say that any language that refers to the essence of womanhood, the vagina (by that I mean that which distinguishes a woman from a man) in ways that are derogatory should be questioned and challenged. Not protected and defended.

And then there are the 'Pastor' Sempas of this world. With them, one should waste as little energy as possible. So I will not bother much, except to say, that someone from the police, please enforce the ban and throw this man in jail. He has been reading at will, for all and sundry to hear, the very excerpts from the play that were banned by the Media Council. And boy, does this man shout! 'The bandit is enjoying this!' laughed members of the cast as we listened to him read the script on the radio a few days after the play had been banned. (He actually reads quite well). But here's the thing – this man has had the opportunity to read the book from cover to cover, and

having done so he has arrived at his own conclusions about the play. Fair enough. But what he then seeks to do is to deny others the same opportunity to make up their own minds by calling for the play's ban.

Well, this is after all in keeping with the tradition in the wave of charismatic churches that is sweeping this nation. Any man (for they are usually men) who can shout beyond a certain decibel can set up a 'church'. And in this so-called church he is free to preach what he chooses in the name of God. Many a wealthy lifestyle by our 'pastors' has been funded from the proceeds of the congregation's sweat. 'Bring no coins here!' they shout. 'God only wants notes!' They expect absolute obedience from their followers. They tell the congregation what to think, do and say – some even whom to marry. They have killed their congregations in Kanungu, and have hoodwinked women into believing they are carrying miracle babies in Kenya. They hold night vigils for 'healing' and 'curing' the sick of HIV/Aids. The term 'born again' becomes the new mantra and licence to engage in some of the most iniquitous and scandalous behaviour imaginable. But no matter. If people choose to go to these churches, I do not have the right to stop them. I recognise and respect their right to do it. That they do not extend me the same right to watch *The Vagina Monologues* is neither here nor there. One of us has to be principled.

Incidentally, someone called up on one of the TV stations to ask the 'good Pastor' Sempa why his church is littered with used condoms every time he has night prayers. I have never seen anyone look as pitiful as did this man. Actually, for a moment he looked like a frightened mouse. But only for a moment. For this man is nothing but a slick performer if you like that sort of thing. Quickly he regrouped and hid behind a barrage of slanderous attacks on Isis-Women's International Cross Cultural Exchange (a co-host of the V-Day Campaign in Uganda). This is a very morally upright man of God after all.

I regret very much the government's handling of this play. But I also know that you cannot keep a social movement down, certainly not through actions such as these. Those in power forget very quickly that the generation of ideas, their examination, debate and dialogue are the hallmarks of a democratic society. Drunk with power, they use the long arm of the state to silence people in ways that are so transparently unfair and unjust (and incidentally very highly immoral). And they plant a seed that germinates

quietly underground. You cannot suppress ideas just because they upset your sense of propriety. And to lean on the apparatus of the state to do this is outrageous and in the long term highly damaging. Leaders who pander to cheap popularity at the expense of principled governance very quickly lose the respect even of their most ardent supporters. For intrinsically, deep in the recess of their sub-consciousness echoes that tiny but persistent voice: Today, it has been the turn of so and so. Tomorrow, might it be me? Don't take my word for it. Let us examine our histories very carefully.

The positive side to all this, is that this play and the issues it is trying to raise have reached a wider audience than would ever have been possible had the state not interfered in the way it did. 'You mean these ministers and all have banned the play? Ahh, then there must be something good in it for

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women!' Radio stations, email list serves, arguments, counter arguments, discussions in living rooms, on *matatus*, in the market place, with parents, children, siblings, cousins, aunts and uncles: it is everywhere. Young people have been exposed (as it were) to the hypocrisy of the older generation. They have watched as scoundrels, wastrels, wife batterers, runaway dads, swindlers, idlers, extortionists and playboys have formed a most unholy alliance with men of the cloth to see this play banned. And they have watched in utter disbelief those in the women's movement who have joined this band of merry men. It is the pedagogy of the oppressed, we try to explain. Oh no it is not, say they. It is downright dishonesty, opportunism and immorality.

But all that is by the by. The play is banned and that is all that matters now. Or is it?

Pambazuka News 201, 7 April 2005



LETTER TO THABO MBEKI FROM AFRICAN WOMEN

MOHAU PHEKO AND LEBOHANG PHEKO

South African leader Thabo Mbeki, in his state of the nation address at the opening of parliament in Cape Town last Friday, focused on plans to support the government's accelerated and shared growth initiative (ASGISA), aimed at boosting economic growth and job creation. But Mohau Pheko and Lebohang Pheko, from the Gender and Trade Network in Africa, take Mbeki to task for failing to adequately consider the country's women in his latest plans to fast-track growth.

Dear Mr President Thabo Mbeki,

You have missed a great opportunity in the state of the nation address to articulate the problems confronting the women of South Africa. Why is it after 50 years of contributing to resistance, opinions, wisdoms and economic growth in this country when you mention us in your speeches we are merely lumped together with the disabled, who should also take exception to this patronising marginalisation?

Since this is the 50th year in which women can celebrate their tremendous contribution to this country, it is worth using it to sum up what the last 12 years have been like in terms of economic policy. In adopting a market-led macroeconomic strategy, we should tell you that the relationship between women, markets and the state has been increasingly complex. The market in the past 12 years has not acted in the interests of women nor has the state always acted in the interests of women. This has resulted in a rather disconnected policy framework which has failed to accurately evaluate the realities of women's lives, which are controlled through the interaction of economic, political, social and cultural forces based on class, gender and race. The policy framework has also failed to evaluate women's role in social

reproduction and how they maintain life within the family and communities they live in.

It is deplorable that women in the South Africa's policy framework are still treated as dependents and instruments for family survival or state objectives. South Africa has long neglected gender as a category in the economic analysis of poverty, growth, inequality and the concentration of wealth. The frameworks suggested for poverty eradication by 2014 do not empower the majority of women in their own right. They tend to view women from a skewed perspective of 'neediness' rather than recognising women's wisdom, intellect, and achievements.

More importantly the assumptions in your accelerated and shared growth initiative for South Africa (ASGISA) do not spell out how the women of this country stand to benefit from this plan. The latest labour survey still reports that women are the most unemployed in the country. The most recent United Nations Human Development Report for South Africa confirms that

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women are still the poorest in our country and this trend is downward. In ASGISA, who are you accelerating growth for? How will you ensure that women qualitatively and quantitatively share in this growth? What type of growth are you talking about? The pattern of growth is as important as the rate of growth. Some growth patterns even if they increase per capita income and consumption may in the long run be detrimental to women as we have experienced in the current neoliberal framework. Economic growth without a distribution mechanism is inimical to women. Economic growth that depends on cuts in public expenditure, productivity, on labour deregulation are a danger to women in this country. Growth patterns or resource allocation that do not meaningfully integrate women or result in growth equity are all costly to the women of this nation.

Many of your policy makers and public servants do not understand

that women experience poverty differently from men because of gender inequalities which result in different access to entitlements, economic leverage and social advancement. Women are subjected to the intergenerational transfer of poverty. Women have fewer economic resources, less access to labour markets. They shoulder greater household responsibilities and many have restrictions on their mobility. These interlocking disadvantages result in women having less time to access your expanded works programme and less power to negotiate opportunities. How will ASGISA respond?

Gender equity is the power relationship that enables men and women to have equal access to the scarce and valued resources of their society. Within asymmetrical, unequal power relations at the household level women are

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the least powerful. These asymmetries include employment, education, wages, personal autonomy, healthcare, leisure and decision making. The over-weaning posture and support given to the male private sector has not been extended to women in the same way. Business and economic commissions set up to advise the president are still dominated by men. Trading enterprises have put severe limitations on market opportunities for many impoverished women and has allocated to them the nooks and crevices. The issue is not just the quantity of market opportunities, it is also the quality. Many women work in the informal market under conditions of insecurity, are subjected to police harassment and exploitation and have little bargaining power and freedom to organise. At the same time, the commercialisation of common property and cutbacks and privatisation of healthcare and education have deprived women in poverty of access to affordable resources to improve their conditions. To what extent does ASGISA address these issues and how will it act as a catalyst in changing these critical dimensions?

The growth process suggested in ASGISA will in fact create new patterns of poverty deprivation for women because the issues that create inequality have been embedded and reproduced in ASGISA. In our country, women are responsible for social reproduction and daily household management. Since ASGISA is dependent on labour flexibility, inadvertently, women are the ones who will pay the cost by having to devise coping and survival strategies when household incomes fall and prices rise.

When food prices increase, when user charges for water, healthcare, electricity, and education are introduced and increased, the access of women to these services is affected, especially in a situation of poverty. There has been the casualisation of women's work to lower unit labour cost, not just in

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the informal sector but also in the formal sector in terms of outsourcing or subcontracting arrangements. What is happening is that economic growth will depend on increased efficiency becoming a transfer cost subsidised by women from the paid economy to the unpaid work of women at the household level. That second economy you keep talking about consists of millions of women who subsidise the first economy without any fruits of growth accruing to them. Women especially in the rural and peri-urban areas are concentrated in the agricultural sector and the informal sector where the rate of growth and the potential for growth is relatively low to non-existent. In the industrial sectors women are concentrated in the unskilled or semi-skilled categories and have limited access to the opportunities and benefits of economic development and growth. Is ASGISA a sufficient tool for standing up to these challenges?

The role of the state in distributing resources along gender, class and race lines to ensure access is critical if there is to be any meaningful developmental benefit for women. These social constructs and lived realities are essential

THE STRUGGLE FOR WOMEN'S RIGHTS IN AFRICA

mediating factors. The state is not a private company but a nation requiring government intervention to enable social cohesion, people participation and conscious distribution of the fruits of growth.

Pambazuka News 241, 9 February 2006



SHOWING THE RED CARD TO TRAFFICKING IN HUMAN BEINGS: FOUL PLAY EXPECTED

SOLWODI (SOLIDARITY WITH WOMEN IN DISTRESS)

Germany played host to the World Cup in 2006, bringing thousands of soccer fans from across the globe together in one place. The World Cup also lured unsuspecting girls and women from Africa and other parts of the world who had been tricked by promises of good jobs and high pay. The trafficking of girls and women for the purposes of sexual exploitation is an unfortunate consequence of an event of this kind, but one that must be treated seriously.

Germany is in soccer fever. From 9 June to 9 July 2006 Germany is host to an estimated 1 million foreign football fans and a further 2 million domestic supporters. Under the motto 'A time to make friends', the national authorities and tourist offices are determined to improve Germany's image abroad and show that it can be a hospitable and friendly country. Much has been done in the hosting cities to ensure the visitors feel at home – but there are

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in the sex industry or in a relationship*

fears that it will not be fun and games for everyone involved. Traffickers and pimps are seizing the chance to make money by bringing thousands of young women into the country to satisfy the sexual appetite of the fans. In most cases, the women have no idea what is waiting for them when they

*As soon as the girls get a chance
to start a new life, they take it and
work hard to succeed.*

accept a job offer abroad. The traffickers target vulnerable women from the poorest countries where hopes and dreams often cloud vision.

'Many of the girls who come to us for help were tricked into coming with false promises, thinking they will get work in hotels or restaurants', says Sister Lea Ackermann, founder of the women's aid organisation SOLWODI (Solidarity with Women in Distress). 'They hear about a chance to earn enough money for their families and have very unrealistic ideas of life in the West. Even those who know they will be working in a bar or brothel have no idea of the exploitation, abuse and violence that is waiting for them. Often the women are locked up by the brothel owners and forced to work in prostitution under terrible conditions. They see little of the money they make – the pimps and brothel owners make money at their expense.'

Exploitation of African girls and women

According to official reports, victims are trafficked to Western Europe from Asia, South and Middle America, Africa and Eastern Europe. Of the 998 women who contacted one of the 10 SOLWODI centres in Germany last year, 236 originated from African states, with Nigeria, Kenya and Ghana taking the lead. Not all women who contact SOLWODI-Germany are victims of trafficking in the narrower sense of the word. But in almost every case they are brought to Germany with hopes of a better life, only to be confronted with violence and sexual exploitation, whether in the sex industry or in a relationship. Take Kenya, for example, which is considered to be an emerging centre for human trafficking. As a transit country, victims of traffickers are illegally brought from South Africa and Asia via Kenya's harbours and across the borders destined for Europe, where they are exploited in domestic labour or commercial sex work. Kenya is also a country of origin, where Kenyan girls, in particular those from the coast region, are first lured into sex work by rich

tourists during their holidays. In some cases their exploiters even take them to Europe, but there is seldom a happy end to the story. Without legal documents or only a tourist visa, they have no way of legally finding work, which means they remain completely dependent on their exploiters.

Solidarity with the victims

Those victims who find themselves stranded in Germany and hear about SOLWODI can contact one of the 10 counselling centres spread across the country. SOLWODI-Germany offers its clients access to information and support and helps in finding ways out of the distressing situation. Where possible, clients are supported in taking legal action against their tormentors. Those eligible for SOLWODI's returnee programme are helped by the counsellors to develop plans for the future. Together with non-government organisations in the home countries, the counsellors organise the return home. Depending on the individual situation, clients may be able to receive financial assistance with an income-generating project, such as setting up a small vegetable stand or a hairdressing business. In the case of Kenyan women, returnees may continue to receive counselling and support from the sister organisation, SOLWODI-Kenya, which has centres along the coast in the Mombasa, Mtwapa and Malindi areas. SOLWODI-Kenya, which was founded over 20 years ago, has long been engaged in outreach programmes for women and girls at risk of being drawn into prostitution and offers counselling, education on women's rights and HIV/Aids, and vocational skills training.

Prevention is better than salvation

As part of its World Cup anti-trafficking activities SOLWODI-Germany launched a prevention campaign to warn potential victims in the typical countries of origin and transit. Material was sent to more than 100 organisations in Middle and Eastern Europe, Asia and Africa to explain the dangers of accepting lucrative job offers in Germany during the months leading up to the World Cup. For those women who could not be reached by the prevention campaign and who now find themselves in trouble in Germany,

SOLWODI has set up a multi-language hotline from 1 May till 31 July 2006. Helpers who speak both German and at least one further language are staffing the hotline, which is available around the clock. Although the hotline is set up for foreign women in distress, calls have also been received by male customers who have reported cases of suspected forced prostitution and violence in brothels they have visited. This goes to show that SOLWODI's awareness raising activities within Germany have been successful in also reaching the male population. Since there is no market without demand, the customers play a key role in trafficking and forced prostitution.

The best way of preventing women from becoming victims lies in empowerment. Elizabeth Akinyi, SOLWODI-Kenya's leader in Mombasa, says that most of the 15- to 18-year-olds who get into commercial sex work are school drop-outs from poor families. 'Initiation into transactional sex for cash or goods and favours starts between the ages of 12 and 13 years. Many

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girls have dropped out of school because their parents or guardians are not able to meet their basic needs for food, education (fees, uniform, books etc), shelter and clothing. Girls who are victims of the commercial sex exploitation of children do so to supplement family income.' It is important that they understand the dangers of being involved in commercial sex work and that there are alternatives. 'This can be discussed when they come to SOLWODI', says Ms Akinyi. 'Almost every girl who contacts us would prefer to quit commercial sex exploitation by men and instead go for vocational or skills training. We have a waiting list for girls who want vocational training. None of the girls want to remain at the mercy of men who abuse them. As soon as the girls get a chance to start a new life, they take it and work hard to succeed. The commercial sex exploitation of children is one of the worst forms of child labour and we need to advocate for these poor girls who do not understand the health risks involved. SOLWODI works with young girls

from ages 8 to 25 years who are at risk and those already in sex work. Our biggest problem is finding enough funds to pay for the school and college fees. We also urgently need a rescue centre.'

Outlook

As long as there are women living in poverty and misery, traffickers will have no problem finding new victims. Just how many girls and women have been trafficked to Germany for the World Cup 2006 will probably never be known. Most will return home disillusioned and dejected. Others will remain in the country at the mercy of the brothel owners. For the traffickers the World Cup was another opportunity to trick vulnerable women and girls into coming to Europe – and they will be looking out for the next chance.

To combat trafficking and exploitation realistic alternatives must be offered to girls and young women to enable them to live an independent life free from exploitation and abuse. Empowerment, through education, training and start-up loan programmes like those offered by SOLWODI is one of the best ways to prevent girls falling victims to traffickers.

Pambazuka News 261, 29 June 2006



FREEDOM TO ABUSE – CHOICES IN THE AFRICAN BLOGOSPHERE

SOKARI EKINE

The phenomenon of blogging has exploded globally, with the new medium being hailed for its ability to democratise the global conversation. But that does not mean the blogosphere does not reflect existing prejudices within society. Sokari Ekine explores the more sinister side of the blogosphere, focusing specifically on the abuse of women.

Last weekend the number of blogs topped the 30 million mark, according to the UK Guardian technology section. In its leader entitled 'In praise of the blogosphere' it suggested that blogging 'is graduating from being a minority sport to a mainstream activity'. It listed three factors that had led to this huge spate in the growth of blogs: the ease of setting one up; the functionality of blogs that has grown to include video and audio clips plus a wide range of social networking features, particularly the use of 'tags' for sharing music, bookmarks, books and photos; and most importantly that 'they are becoming politically and socially important as like-minded people around the world share thoughts and pictures and call decision-makers to task'.

The article, like most on blogging, presents a scene of harmony and freedom of speech as the economic and technological barriers to publishing are removed, enabling the democratic grassroots media (from the blog New Media Musing) to speak out as they choose.

Other articles on the blogosphere are written in a similar vein, using phrases like 'citizens' media revolution' (from the blog Our Media) 'social media', 'grassroots media', 'mavericks of the online world' and so on. Having blogged for two years I cherish the technology that enables me to say what I like and how I like. I do not have to consider editorial constraints

or advertising interests. The only standards I have to adhere to are my own. I am free as the wind to speak as I wish.

But there is a dark side to the blogosphere. As Rebecca Blood writes: 'The weblog's greatest strength – its uncensored, unmediated, uncontrolled voice – is also its greatest weakness....' She argues that the editorial and advertising constraints on the mainstream media ensure that ethical standards are maintained. However, the lack of constraints on blogs, which at the same time make them so vibrant, compromises their integrity and therefore their value.

But blogging is not just about writing. It is also about the interaction between the writer and the readers. The writer is exhibiting their ego and the reader is engaging in overt voyeurism. We bloggers know when someone has been to our blogs, how long they spend there and what they read.

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After all that is why we are writing. We created our online identities so others would take a look and watch and try to discover through our words who we are and what we think.

The African blogosphere is one sphere that has seen a huge growth of new blogs in the past 6 months. For example in Nigeria the number of blogs has trebled in the last 9 months and each month new blogs are being created. The majority of African bloggers are still men, although the number of women is slowly increasing. African blogs tend to fall into three loose categories. First, journals or diary blogs, topic specific blogs such as technology or music blogs, and current affairs and political blogs with commentary.

The African blogosphere is no more homogenous than Africa itself. Each blogosphere tends to have its own characteristic such as more conversations between bloggers or less topic specific blogs and more commentary and so on. For example the Nigerian blogosphere tends to be equally divided

between all three blog types but with more women writing journal and diary type blogs than men. Some countries are not as developed as others. The Ethiopian blogosphere, though relatively quite small, is very active and dominated by political commentary blogs. Kenya is the largest, followed closely by Nigeria.

Recently Nigeria in particular, has become the sight of much intolerance expressed through homophobia and misogyny. The abuse of women has been particularly disturbing. Comments have been left on women's blogs and posts, written using misogynist language against women and lesbians.

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Blogging anonymously they feel free to
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This is not to say that there is anything objectionable about someone expressing opinions against homosexuality whether via a comment or through a post on a blog. However these are not simply rational comments. The comments and posts are personalised and the language used is derogatory and misogynist, such as 'lesbos need a dick whipping', 'bitches' and 'menopausal bitches'. In some instances individual women have been stalked and intimidated even as far as names being revealed. Whilst individuals are entitled to their opinions, when the conversation degenerates into offensive hate speech advocating violence against women and homosexuals, this is not acceptable.

Because people see the blogosphere as a space where they can express themselves freely and often anonymously, they feel they do not have to adhere to the constraints in speech that they would in the non-cyber world. These issues become more apparent as the number of blogs grow and as people from different backgrounds and countries are brought together in one huge global blogosphere. At any one time there are thousands of conversations taking place.

People who would not normally have contact with each other whether because of geographical space or just personal preference now have the possibility of sharing conversations. The blogosphere reflects the non-cyber world in that the lack of shared values, ideological consensus and cultural differences amongst people can and does result in conflicts and confrontations between groups and individuals on their blogs. Thus the dichotomies of gender – male and female; sexual preference be it heterosexual and homosexual; geographical location; Africa the homeland and Africa the diaspora; African and non-African – all have the possibility of being exacerbated because except in the case of gender these pairs are not often thrown together within the same space.

With specific reference to Nigeria and other African countries, women are being abused when they do not conform to certain types of behaviour. The emerging female voice on the Nigerian blogosphere is often in contrast to the prescribed gender roles in Nigeria that do not threaten existing patriarchal systems. Women can and do use their blogs to 'speak' out against male oppression in ways they may not do in their daily lives. Blogging anonymously they feel free to express their aspirations for a different Nigeria where women are not subservient to male domination. Many men find

Whilst individuals are entitled to their opinions, when the conversation degenerates into offensive hate speech advocating violence against women and homosexuals, this is not acceptable.

this problematic and feel they are loosing control and power over women. Their response is to use misogynist and homophobic language to berate and intimidate the women who speak out.

Women in the diaspora are exposed to a more sexually open environment and one where sexism and homophobia are not so socially acceptable. This is a further challenge for men in the 'homeland' who may resent and fear this freedom because it may influence 'their' women at home. It is common to berate those living abroad as having lost their cultural traditions and

become soiled by Western society, which is viewed as being morally inferior. As I mentioned earlier the blogosphere provides people with the opportunity to develop an exaggerated ego and to engage in voyeurism.

The sexual nature of the comments left by some men on blogs indicate the sexualisation of this voyeurism. Young men are able to feed each other's ego and sexuality by egging one another on as they publicly engage in 'male' chat about women, much of which includes the use of misogynist language. Some women also participate in these 'conversations', cheering the men on as they act out their 'macho-ness' and collude in the abuse of their sisters.

It needs to be said that the numbers of men engaging in abusive behaviour is relatively small. In fact a number of male bloggers have themselves been very outspoken against the abuse of women, whether in the blogosphere or in the non-cyber world, but there are still many who though not participating in abuse are silent. Despite the abuse, women are determined to continue blogging, to expose misogyny where it exists, and to find ways of supporting each other just as they have always done and continue to do offline.

The sheer number of blogs and the global nature of the blogosphere allows for the potential exchange of ideas, empathy and tolerance across the numerous dichotomies that exist in an increasingly complex and changing world. For Africa, the rapidly developing blogosphere provides the possibility of bringing about a much-needed alternative and progressive voice and cross continent collaboration through a citizens' media. It is important that these possibilities are not side tracked or diminished by a few destructive non-progressive elements. African bloggers of today are pioneers and as such it is the duty of all of us to create a blogging environment where women are free to express themselves without fear.

Pambazuka News 246, 16 March 2006



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