

It is argued that, while it is true that legal norms are not enough in themselves to achieve gender equality, advances in the dismantlement of systems of gender oppression are impossible without having the fundamentals in place. The foundation of gender equality consists of policies and legislation that seek to extinguish gender inequity and inequality. As will be seen, recent research found that much work is still required on this aspect, which constitutes the very first level of creating an enabling environment for the promotion of women's human rights. The salience of the issue was underlined at the Beijing+10 meeting in New York in March where African nongovernmental organisations campaigned for the appointment for a special UN Rapporteur on Laws that Discriminate against Women.

Interlinking international instruments

The most significant of the international gender mechanisms are, first, the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) of 1979 and, second, the Beijing Platform for Action of 1995. CEDAW has been ratified by 179 states of which 76 became parties to its optional protocol, which enables women to file complaints directly with the CEDAW Committee. The Beijing Platform has been ratified by 189

states. 51 of the 53 African states have ratified CEDAW and 17 have signed its optional protocol. CEDAW was groundbreaking as it created an international bill of rights for women and established the principle of equality through civil and political rights, including sexual and reproductive rights; and rights affected by cultural factors (EGM 2005: 7). The Beijing Platform for Action complements the convention. The platform addresses twelve areas of action for women's development: poverty; education and training; health, including reproductive health; violence; armed conflict; economy; power and decision-making; institutional mechanisms; human rights; media; environment; and the girl child. A special session of the UN General Assembly in 2000 produced an outcome document entitled "Women 2000: gender equality, development and peace for the 21st century". At this session governments acknowledged that further action was required to fully implement the Beijing Platform. The link between gender equality and progress for society as a whole was emphasised.

Other significant steps were the Millennium Declaration and the adoption of the Millennium Development Goals (MDGs) in 2000. In the Millennium Declaration, 191

governments resolved to promote gender equality and the empowerment of women as “effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable”, to combat all forms of violence against women, and to implement CEDAW. Gender equality was included as a separate goal among the eight MDGs, a breakthrough for women which also strengthened the Beijing Platform as an instrument. There are several areas of convergence between the Beijing Platform and the MDGs, as their “common theme is to improve the well-being of humankind” (Amuyunzu-Nyamongo, 2005: 2). The Beijing Platform states that the advancement of women and the achievement of equality between women and men are a matter of human rights and social justice, and “prerequisites for achieving political, social, economic, cultural and environmental security among all people”. Other international instruments with gender as a cross-cutting concern include the resolutions of the International Conference on Population and Development of 1994, the Copenhagen Consensus on Social Development of 1995, the Rome Statute of the International Criminal Court of 1998³, the UN Convention Against

³ The Rome Statute declares rape, sexual slavery, enforced prostitution, enforced sterilisation, forced pregnancy and other comparative forms of sexual violence as crimes against humanity.

Organised Crime of 2000 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990.

Most African states have adopted the Dakar⁴ and Beijing Platforms for Action, and embarked upon a regional process of creating mechanisms for the eradication of gender discrimination. The Constitutive Act of the African Union (AU) has as one of its founding principles “the promotion of gender equality”. The AU opened the space for the increased participation of women in decision-making structures on the national, sub-regional and regional levels. The AU Commission functions on the basis of 50-50 gender parity and one in five members of the Pan-African Parliament is required to be a woman. The AU Women’s Protocol contains articles on the eradication of discrimination against women; women’s right to dignity; women’s right to life, integrity and security of the person; the elimination of harmful practices; women’s equal rights in marriages, separation and divorce; women’s access to justice and equal protection before the law; women’s right to participate in political and decision-making processes; women’s right to education, economic and social welfare and health, including

⁴ The regional African meeting in preparation for the Beijing Conference was held in Dakar, Senegal, in 1994.

reproductive rights; and women's right to protection in armed conflicts. The inclusion of articles on widow's rights and on inheritance rights is regarded as a breakthrough, as these are livelihood issues particular to Africa which are often relegated to the sidelines.

Heads of state in Africa also adopted a Declaration on Gender Equality in Africa in July 2004, which states their commitment to the various international instruments, as well as addresses areas of concern to women on the continent. These include women's access to land; their inheritance and property rights; their exclusion from decision-making in conflict resolution while conflicts disproportionately impact on them; the recruitment of girl children as soldiers and sex slaves; the strengthening of the gender machineries on national level with more human and financial resources; the high incidence of HIV/AIDS among women and the lack of state support, given that the burden of care for AIDS-affected people falls on women; and the adverse impact of gender inequality on economic growth in Africa. The New Partnership for Africa's Development (NEPAD) also stresses gender equality, and may enhance women's human rights through the African Peer Review Mechanism's social development indicators (UNECA, 2004a). Of particular importance for African

women is Security Council Resolution 1325 of October 2000 which states that women have to participate fully and equally in conflict prevention, peace-keeping and peace-building.

A dismal picture remains

However, despite all these noble intentions and declarations, many of the globe's women are worse off than a decade ago. International research conducted by the Women's Environment and Development Organisation (WEDO) and released at the Beijing+10 meeting in New York found that "government inaction has stalled progress on national implementation of global commitments". Not only have few countries dropped their reservations in terms of CEDAW but "explicitly discriminatory laws still remain" in some cases.

This situation was confirmed at the preparatory African meeting for the Beijing+10 conference, attended by African ministers of women and gender affairs in Addis Ababa in October 2004. They acknowledged that despite women's mobilisation, advocacy and increased political representation at national and regional levels, the "normative gains" made are yet to manifest in "substantive changes" in African women's lives. An indication of the difficulties faced in enacting such norms is the (in)operation of the

national gender machineries in Africa, which is illustrated by the fact that only 22 African states⁵ responded to the review questionnaire on the implementation of the Beijing Platform sent out on behalf of United Nations Secretary General Kofi Annan in preparation for the Beijing+10 meeting.

The persistence of the unequal impact of poverty and conflict on women led the ministerial meeting to conclude that laws and policies *per se* will not bring about gender equity or respect for women's human rights. Indeed, "[w]omen's limited access to productive resources including land, water, energy, credit, means of communication, education and training, health and adequately remunerated employment, has contributed to a situation where more African women live in absolute and relative poverty today than ten years ago. The cumulative effects of HIV/AIDS, TB and malaria, food insecurity, low economic productivity, low levels of education and the upsurge in sexual violence have left African women and girls vulnerable and with considerable challenges." (UNECA 2004a).

⁵ These states are Algeria, Botswana, Burkina Faso, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Cote d'Ivoire, Djibouti, Egypt, Ethiopia, Guinea, Kenya, Liberia, Mauritania, Malawi, Namibia, Sudan, Togo, Tunisia, Uganda and Tanzania. South Africa did not respond to the questionnaire and, apart from supplying the preliminary report as required by the

The ministerial meeting highlighted the following specific areas of concern:

- Women's right of autonomy over their own bodies continues to be undermined through gender-specific violations of women and girls' human, sexual and reproductive rights. Sexual violence directed at women and girls during armed conflict on the continent has become worse. Women continue to be denied protection from torture in conflict situations (*Business Day*, 9/3/2005).
- Even in countries where HIV prevalence is decreasing, the number of infected and affected girls and women are still growing, giving the pandemic a "female face". The practice of polygamy and harmful traditional practices such as early marriage and female genital mutilation exacerbate women's vulnerability to HIV/AIDS.
- Women and girls are still at risk when pregnant, as 1 in 16 pregnancies in Sub-Saharan Africa end in maternal death.
- Africa is the only developing region in the world where poverty has become exacerbated in the 1990s, with women now

Beijing Platform, South Africa has not handed in any of

constituting 70 percent of both the urban and rural poor in some countries (UNECA 2004a and 2004b).

More areas of concern, as identified in the WEDO research, include:

- The goal of universal enrolment in primary education for girls and boys by 2005 contained in the Beijing Platform and the MDGs will be achieved in all regions except in sub-Saharan Africa and West Asia. Moreover, the rates of school dropout and illiteracy remain inordinately high for girls due to pregnancies and early marriage (UNECA 2004b); higher levels of education remain characterised by gender inequality; and the problem of gender stereotyping in school curricula and texts endures as few governments have taken corrective steps in this regard.
- The issue of access to land is of special significance to African women as they are the primary agricultural producers in Africa. While women sustain households and communities through the management of natural resources, they continue

to lack land tenure or inheritance rights in many countries. Trends such as water privatisation undermine their ability to own, use and conserve these resources and to provide for themselves and their families.

- The exploitation of “culture” and religion to propagate the “natural” status of women as primarily wives and mothers, and thereby maintaining a system of truncated rights for women.

At the bottom of the problem lies the enduring lack of commitment to gender equality among governments. This is vividly illustrated by the country reports on the achievement of the MDGs, which in some cases omitted the goal on gender equality or failed to include gender issues in the assessment of the others goals. The interpretation of the goal on gender equality has been restrictive and the integration of gender equality into others goals has been uneven (EGM 2005).

The persistence of discriminatory laws

While women’s empowerment will not be promoted by policies and protocols alone, such instruments form the basis of efforts to stamp out gender inequity. However, in many African states the

the required four-yearly reports.

violation of women's human rights is frequently backed by discriminatory policies which can still be found on the statute books. Across all sub-regions on the African continent, discrimination is especially acute in the areas of personal status, marriage subject to customary rules, property, inheritance and reproductive rights (Open Society Initiative for West Africa 2005; WEDO 2005). In fact, women's predicament in Africa frequently stems from being caught between two systems of law, the civil and the customary, which is a legacy from colonial times (Mamdani 1996). As the ministerial meeting noted, customary law is usually discriminatory towards women (UNECA 2004b).

Before discussing the discrimination that remains in laws and policies, the progress made so far has to be acknowledged⁶:

North Africa: Several countries have reviewed their constitutions in accordance with the Beijing Declaration and Platform for Action. For example, Morocco has adopted new laws on women's personal status, adultery, labour, and employment of girls while Algeria is reworking its code on personal status.

West Africa: Benin has passed a progressive family law which outlaws polygamy; laws have been adopted against female genital mutilation in Burkina Faso, Benin, Côte d'Ivoire, Ghana, Senegal and Togo. Senegal has approved laws against domestic violence and sexual harassment.

Southern Africa: laws on violence against women have been passed, including on sexual offences, the criminalisation of marital rape and the wilful transmission of HIV/AIDS. Laws have been passed to ensure equitable treatment in cases of inheritance. Reform processes are also underway in most of the countries in areas of inheritance, education, violence, citizenship, and access to and control of land.

East Africa: Ethiopia is reviewing its family law, civil and penal code while Uganda has adopted a National Plan of Action and affirmative action policies for women. Tanzania has been reviewing its policies for gender discrimination since 1992, and has passed laws on sexual offences; trafficking of women, female genital mutilation as well as legislation giving women equal status in terms of access to land. The National Family Policy is set to outlaw wife inheritance, wife exchange, and polygamy.

⁶ The information in this section mostly comes from the WEDO research report.

However, discrimination persists in the legal regimes of African states:

In *North Africa*, where Algeria, Morocco and Tunisia have adopted CEDAW with reservations, laws discriminate unfairly against women in terms of marital age; the protection of the rights of women; the right to divorce; the institution of family courts; pensions for divorced mothers with custody of children; the right of women married to foreigners to transfer their citizenship to their children; community of property in marriage; violence against women and sexual harassment.

In *West Africa*, many of the constitutions affirm gender equality but this principle is not applied to women in terms of their personal status, while marriage is governed by discriminatory customary laws. Moreover, “the laws governing the individual and the family confer in nearly all countries the monopoly of power and decision-making on the husband as the ‘head’ of the family” (WEDO 2005), with excesses such as the institutionalisation of obligatory obedience to husbands in Mali while husbands in Togo have the power to prevent their wives from taking up employment. A legal code prohibits Togo women from inheriting, while a legal code based on Islamic succession in Mali and Senegal dictates that a woman may only inherit half of what a

man inherits. Various countries discriminate against women in the workplace through denying them access to certain jobs or on the basis of pregnancy. There is a dearth of measures to tackle the root causes of violence or to challenge cultural norms which dictate that rape and domestic violence are “private family matters”. Senegal is the only country in the region which has passed legislation against sexual harassment and domestic violence.

A similar situation exists in *Southern Africa* where Lesotho and Swaziland ratified CEDAW with reservations to protect cultural norms. While all of the southern African states have adopted CEDAW, the majority have not domesticated⁷ the international instruments, with Namibia and South Africa being the exceptions. Customary law is exempted from constitutional equality provisions in many of the sub-region’s states. In Botswana, for example, the prohibition on discrimination does not extend to personal law. While southern African women constitute 55 percent of the population dependent upon land for their survival, women do not have access or control over this land, as they are still considered minors who cannot own property under the dual legal

system prevailing in the sub-region. Attempts to redress exclusionary practices have so far shown limited success, even in efforts explicitly aimed at women.

In *East Africa* all countries have ratified CEDAW except Somalia, which has been without a government for 14 years. In Burundi, Kenya and Somalia, customary law and Sharia have taken precedence, with women and girls being unable to inherit in Burundi. In Kenya, laws have mooted which would address gender discrimination but they have not been implemented. No law exists on domestic violence. In Uganda, gender activists have threatened to challenge the Domestic Relations Bill in court if it does not outlaw polygamy (*New Vision*, 30/3/2005). Practices of forced early marriages, polygamy, wife inheritance, wife exchange and female genital mutilation continue in Tanzania (UN IRIN 14/2/2005).

The ministerial meeting in Addis Ababa identified the need for legal reforms to:

- protect women and girls from HIV infection and the consequences thereof, including through compulsory education;
- prohibit harmful traditional practices;

- protect women's rights to own and inherit land and property.
- regulate the workplace, integrate the informal economy into the national wealth and institute equal pay.
- protect especially young girls from sexual violence.

Affirmative action policies should be adopted to increase the political representation of women.

Furthermore, specific legislation should be adopted to protect the girl child from sexual abuse at school, home and in the community; from female genital mutilation; poor nutrition, the burden of caring for orphans, and exploitation through forced labour.

The ministerial meeting declared that the failure to domesticate the international instruments adversely affects their implementation at the national level (UNECA 2004b). The meeting recommended the repeal of all laws and customary practices that discriminate against women.

Concluding remarks

As can be seen, in many African countries the processes of reviewing discriminatory legislation are lagging behind. In cases where reforms have been implemented, the changes have been inadequate. While the

⁷ Domestication into national law requires adoption by national parliaments.

implementation of progressive laws passed so far is essential, the domestication of the international and regional gender instruments remains a crucial first step. As this policy brief shows, this essential step is yet to be taken in many African countries.

Policy proposals

1. The revision of policies and laws should be sped up significantly to bring legal frameworks in line with the Beijing Platform and other instruments. This is especially true in the areas of personal status, marriage, land ownership, inheritance, access to resources, and violence against women.

2. Capacity and the enforceability of some of the instruments should be revisited. For instance, the SADC Protocol and its addendum on violence against women are not legally binding, rendering it a weak instrument. Another example is the AU Commission which has been assigned to monitor the implementation of the AU Women's Protocol in the face of concerns that the institution is too weak to fulfil this function effectively. Capacitating is essential if the AU Commission is to succeed in its task.

3. States should expedite their accession to agreements which they have not ratified. Apart from the AU

Women's Protocol, the Rome Statute of the International Criminal Court is an example of an important mechanism for the continent's women which has not been ratified by many African governments.

4. Tools such as the recently piloted African Gender Development Index should be adopted by governments to monitor the implementation of gender policies, as well as utilised by civil society groups to hold governments accountable for the fulfilment of their gender commitments.

5. The appointment of a special UN Rapporteur on Laws that Discriminate against Women to track the dismantlement (or lack thereof) of legal systems of discrimination.

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Suggested reading

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