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## THE STATUS OF WOMEN'S HUMAN RIGHTS IN KENYA AND STRATEGIES TO OVERCOME INEQUALITIES

Maria Nzomo\*

This paper takes the position that the human rights of women are inalienable and an integral and indivisible part of universal human rights, which we define to include the right to full and equal participation of women with men, in the political, civil, economic, social and cultural life at all levels. The International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which is one of the international instruments that explicitly focuses on women's human rights, is quite comprehensive in its coverage. Consisting of 30 articles, CEDAW covers women's human rights in all aspects of their lives—political, economic, social and cultural rights. CEDAW indeed provides an adequate framework for elimination of gender based discriminations, corrective affirmative action and protection of women's human rights. Despite the existence of CEDAW since 1979, women everywhere are still struggling for the recognition and upholding of their human rights. The increasing magnitude of women's human rights violations is a clear indication that CEDAW has received little beyond rhetorical support by the 199 plus governments who have ratified it. Indeed, it has been noted that state parties to the convention have lodged 80 substantive reservations to it—the highest number for any international convention. Furthermore, like all national and international machineries created to promote women, the CEDAW monitoring committee lacks the necessary resources (staff and funds) required to fulfill its mandate. Consequently at the United Nations, women's human rights issues are only accorded marginal attention.<sup>1</sup>

The marginalization of women's human rights issues is even more apparent at the regional and national levels. Firstly, not all countries have ratified CEDAW. Secondly, some of those who have ratified CEDAW have not incorporated these international legal provisions into municipal law. Thirdly, even of those who have incorporated CEDAW into their municipal laws, the majority has not in practice translated these provisions into action. This is the situation that prevails in Africa, where women's human rights abuses are rampant and on the rise, especially in relation to violence against women, as well as personal liberties and property rights.

### **Women's Human Rights in Africa: An Overview**

The struggle for women's empowerment and rights in Africa as elsewhere in the Third World has been an uphill battle against patriarchy, poverty and autocracy. The

struggle dates back to the pre-colonial times and has taken different forms depending on the socio-economic and political circumstances prevailing in a given historic epoch. The basic and persistent problem has been that women's resistance to gender oppression has occurred within a context of production and governance that has always been patriarchal and dominated by men.

In the post-colonial era, African women have made a few gains in their struggles for democracy and human rights. But on balance, the trend in the status of women's human rights in Africa is increasingly one of violation rather than promotion of those rights. In my view, the major factors contributing to this situation include on the one hand, autocratic African governments, characterized *inter alia* by manipulative tendencies, intolerance, harassment and muzzling of those who do not support the status quo, on the other hand, underdeveloped economies built upon highly patriarchal societies with high illiteracy rates especially for women, which possess extremely low levels of gender, civic and legal rights awareness.

In this regard, African governments have since the onset of the post-colonial era acquired the negative reputation of not only being autocratic but also of being habitual violators of the fundamental human rights of their citizens. Amnesty International and other human rights watch groups have over the years compiled numerous reports documenting gross violations of human rights in all its aspects in most African countries. However, both reporting and action has tended to focus on violations of civil and political rights and underplayed or completely omitted economic and socio-cultural rights. And yet it is in these neglected areas of rights that African women's human rights are most grossly abused and violated due to the highly patriarchal and backward socio-cultural structures and practices. Indeed, in Africa the existing socio-cultural institutions, more than the legal and political institutions, provide the greatest arena for women's oppression and violation of their human rights and present a major obstacle to their empowerment.

To compound the situation, in most African countries there are at least three systems of often contradictory laws concurrently in operation namely: (i) statutory/constitutional law, (ii) customary law and (iii) religious law. Although in theory statutory law is viewed as constituting the supreme municipal law, in practice, customary and religious laws tend to prevail especially on issues deemed to be of a private rather than public nature, such as marriage, divorce, custody of children, inheritance, property ownership and reproduction. This position is

sanctioned by male-dominated African governments that prefer to treat issues of gender relations as falling within the realm of "African Culture" and hence beyond the jurisdiction of government. Furthermore, due to low levels of functional literacy as well as legal and gender awareness among women, even in those situations where women's rights are provided for by law, the women are held back from exercising such rights not only by tradition but by ignorance of the existence of those rights.

At an African regional women's human rights meeting, organized by Women In Law and Development in Africa (WILDAF) and held in Nairobi in March 1993 in preparation for the 1993 U.N. World Human Rights conference in Vienna, the country status reports presented showed that the major factors that contribute to the violation of women's human rights in Africa are:

- (i) Lack of legal, gender and civic rights awareness
- (ii) Retrogressive socio-cultural attitudes and values
- (iii) Inadequate, discriminatory legislative frameworks

### Kenya

The women's human rights situation in Kenya is in many ways similar to that prevailing in other African countries. The differences where they occur are of degree rather than kind.

At the international level, Kenya is a signatory to all the major instruments on human rights. However, there has been no accompanying move requested by these conventions to promote, implement or observe what Kenya had bound itself to do. No steps have been taken to incorporate these instruments into municipal law. Indeed, the Kenyan constitution presents a major bottleneck in the realization of women's human rights. Whereas the constitution dedicates a full chapter to the protection of fundamental human rights and freedoms of the individual, irrespective of race, tribe, place of origin or residence, political opinion, color, creed or sex, the succeeding section (82) that outlaws discrimination does not provide against discrimination on the basis of sex. The effect of this constitutional failure to explicitly outlaw discrimination on the basis of sex, means that differential treatment on grounds of sex is not considered to be discrimination by law. Furthermore, section 82 also contains other provisions that virtually eliminate the freedom from discrimination. These provisions designed to protect against discrimination are not applicable in personal and customary law. For this reason, customary and religious laws, which are based on patriarchy and ideology of subordination of women to men, reign supreme. The woman is basically the "property" of her spouse when married and of her father and male relatives, if unmarried. For many ethnic groups in Kenya, customary laws permit wife beating as a form of discipline and circumcision of women is still practiced in some communities as a form of controlling women's sexuality. In certain Kenyan communities, widows are still inherited by the brother or a close male member of the dead husband's clan, as a way of controlling their sexuality and perpetuating patriarchy. In other words, the view of women as sexual objects of men is still very strong

in the psyche of many men. This is why perhaps some Kenyan men still do not take seriously the heinous crime of rape which has increased. Such offenders see rape as a form of sexual control of a man over a woman, rather than as a gross violation of a woman's human rights. Traditional food taboos that denied women the right to eat certain nutritious foods that are only reserved for men, are still practiced by a few communities in Kenya.

In regard to women's freedom of movement, association and assembly, women still operate under the heavy weight of socio-cultural beliefs that impinge on that freedom. For example, in urban areas, a woman not accompanied by a man may be denied access or service in a hotel. If spotted walking alone at night, the police may arrest an innocent woman and charge her with loitering with the intention of engaging in prostitution.

Aside from customary laws and traditional practices, there are other laws in the Kenyan constitution which also have the effect of discriminating against women and violating their human rights, including the following:

*Section 82 of the Constitution* (see above).

*1975 Employment Act*, which contains inbuilt discrimination on terms, conditions, and type of work for women, including housing, medical, maternity leave and working hours.

*1981 Law of Succession Act* which fails to provide for inheritance rights for pastoral women.

*Family Law*—The contradictions in the existence of four systems of laws in Kenya (Hindu Law, Islamic Law, African Christian or Civil Law and Customary Law) create ambiguity and possibility of manipulation in interpretation of laws concerning women's rights in a manner that infringes on women's human rights.

*Violence Against Women*—The Kenyan constitution does not provide adequate provisions for violence against women. Firstly, the penal code does not treat violence against women separately except with reference to offenses such as rape, defilement and incest. Secondly, the Kenyan penal code provides for life imprisonment as maximum sentence for rape but makes no provision for minimum punishment for rapists. Consequently, in the past, rape offenders have generally received extremely lenient punishment. Furthermore, the statutory law does not provide for female circumcision, wife battery, sexual harassment, rape within marriage, widow inheritance and forced childhood marriages, etc. All these areas of law are left within customary and religious laws. Violence against women in Kenya is perhaps the one area of human rights violations that arouse most concern, especially in regard to rape and girl-child defilement. The most publicized rape case is the July 1991 St. Kizito tragedy which left in its trail over 70 girls raped, 19 others killed and scores of others injured by their male colleagues.<sup>2</sup> The government did not treat this human tragedy as a human rights issue that required review of existing legislation in this area. Some even defended this as inhuman action, arguing that the boys meant no harm, and only meant to "rape."

Despite the public outcry that followed the St. Kizito case, violence against women in Kenya has not abated. The Hawinga Girls Secondary School rape of 15 girls in January 1993 was almost a replay of the St. Kizito incident. Rape and defilement of girl children as young as two years old, of sexual torture and all manner of inhuman and degrading treatment, directed against women, sometimes by policemen purporting to obtain confessions from women suspects, rape and defilement of women in refugee camps and prisons and of sexual harassment on the job and in public places, point to the need for stronger legislations and effective implementing mechanisms in this area.

*Civil and Political Rights*—There is a complete lack of any legislation that would take into account the historical disadvantage of women and minority groups and ensure that women are adequately represented in all key decision-making bodies, in politics, bureaucracy and other public and private institutions. Lack of any provisions for affirmative action (positive discrimination) have the effect of marginalizing women in politics and other public decision-making positions.

This legislative inadequacy and retrogressive socio-cultural attitudes and values have ensured that, thirty years after independence, one is hard pressed to find even 15 women in top management positions (in both private and public sector) in a country with a population of nearly 15 million women. In all the key public sectors: the Judiciary, Parliament, Government Ministries, Universities, Industries, etc., women in key policymaking positions remain less than a handful in each sector despite the advances made by women in attaining high level (university degree equivalent) training in various professions.

Consequently, whereas the constitution guarantees women's right to participate in leadership and public life, the glaring absence of women in key decision making positions defeats this stated constitutional provision and suggests the need for remedy.

Indeed the goal of democracy and human rights cannot be attained when women remain powerless because all the major decisions affecting their lives are made by men.

### **Strategies for Attaining Women's Human Rights in Africa**

The women's human rights situation in Africa, given the prevailing conditions, requires committed action. In my view, for women to attain their human rights, they have to be empowered. They need to be in a position to insist on their rights. They must be armed with relevant knowledge and resources to act decisively and effectively. Clearly, reliance on government action, its benevolence and good faith, may not prove very useful in attaining women's empowerment. Consequently, women need autonomous channels, independent of government, to empower themselves. Once women have attained a certain amount of self empowerment they are in a position to negotiate with government and society and influence changes at legislative and policy levels. Women, for example, need to take the

initiative in transforming socio-cultural attitudes and values that obstruct their advancement. There is need for women to empower themselves and each other not only with functional literacy but quality civic and gender education geared towards capacity and skills building for leadership and lobbying.

Strategies for empowering women in Africa therefore should be based on the fundamental premise that women are involved in a power struggle. Men wield power and control over women freely because they do not "see" any real power from women challenging them. Hence strategies for women's empowerment should first seek to strengthen the women's power base, which can in turn put women in a strong position to make demands in those areas where their advancement depends on their ability to prevail upon male actors to do what they might otherwise not do for women. Compliance with women's demands for equal rights and justice depends largely on government's perception of women's real power as opposed to potential power.

The second premise on which practical and viable strategies should be based is that women themselves should serve as role models for democratic practice, if they expect men to take them seriously in their demands for gender-based democratic reforms. Women, for example, need to be seen practicing the principle of power-sharing in their interpersonal and organizational relationships, if they are demanding to share power in politics and other public decision-making bodies.

Arising from these two premises, some of the strategies and goals that could contribute to the advancement of African women's status and rights are discussed below.

### **Political and Social-Economic Strategies: Strengthening and Building the Capacity of Women's Organizations and Lobby Groups**

There is need to transform potential majoritarian power into real power. Women need to demonstrate that they have power to achieve what they want. There is no point celebrating being 52 percent of the population, if women continue to succumb to the dictates of the male population (as in Kenya). There is also no point having millions of women's groups all over the continent, which are weak and ineffective in advancing the status of women. Women must look inward and critically assess and rectify their major sources of weakness, especially in regard to lack of cohesion and common vision in the women's movements in Africa, as well as too much diversity and too little unity.<sup>3</sup>

It seems to me that there is need for collaboration between women's organizations and lobbying groups. Furthermore, the potential lobbying power of women needs to be developed through greater coordination of the activities. In each country, for example, women need a forum whereby they can adopt a common strategy to fight such women's human rights abuses as rape and violence against women in general. So far, there has been a lack of sustained unified action.

In Kenya, for example, women across class, ethnic and party divides demonstrated a rare sense of unity during 1992

as they struggled and lobbied for adequate women's representation in Kenya's first multi-party government. But after the December 1992 elections were over, the temporary unity and sense of common purpose failed to solidify into a common vision. The state of the women's movement in Kenya is indeed as fragile and precarious as the merging of opposition political parties.<sup>4</sup>

The other weakness in the women's movement is its failure to link urban struggles with rural struggles at the grassroots level, where the majority of women live. This has led to the urban-based women's movement being accused by a hostile state of being an elitist movement of middle class women trying to divide the people's unity under the influence of Western feminism. Effort therefore needs to be made, especially by high-level women's organizations to extend the largely urban-based women's movement to all the rural areas of each country. This is where the real power lies.

In summary, the following strategies are suggested for consideration by women's organizations:

- Initiate internal democratization of women's organizations.
- Identify and support coordinating national machinery, to provide coherence and direction to the women's movement.
- Develop structural and proper communication linkages between the urban-based women's lobby groups and organizations with their grassroot counterparts in each country.
- Challenge and seek to change rather than be integrated into the undemocratic, corrupt and exploitative structures of governance and production.
- Challenge and seek to change retrogressive socio-cultural practices that perpetuate women's oppression and denial of their basic human rights.

### Conclusion

This paper focused mainly on the legal and extra legal obstacles women in Africa, and particularly Kenya, have encountered in their search for empowerment and in promoting their human rights. Some of the strategies that may yield greater empowerment for women in the future have been discussed. However, little was said about the gains made and the lessons learned from this protracted struggle for human rights and democratic change. In most African countries, democratic rules of tolerance, mutual respect, accountability and transparency and respect of basic human rights and freedoms have not yet been accepted by the major political players. This situation affords both opportunities and challenges for the advancement of

women's human rights and empowerment agenda in the 1990s and beyond.

### Notes

1. Joanna Kerr, ed., *Ours by Right: Women's Rights as Human Rights*, London: Zed Books, 1993, p. 6.
2. *Daily Nation*, 15 July and 17 July, 1991; c.f. *Standard*, 21 July 1992; 14-15.
3. See for example, M. Nzomo, ed., *Empowering Kenya Women: Forward Looking Strategies to 1997 and Beyond*, Nairobi: NCSW Publication, 1993.
4. The trend in the post 1992 election period is characterized by the mushrooming of new women's organizations, many of which are duplicating the mandate and objectives of already existing organizations. While at one level, such mushrooming of women's organizations may be viewed as consistent with the democratic principle of freedom of association and the broadening of political space for women, at another level, this trend may contribute to the weakening of an already fragile women's movement and the struggle for gender based opposition.

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