

Organization of African Unity

**WORKSHOP
ON
GENDER AND LAW: EASTERN AFRICA SPEAKS**

Keynote Address

by

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**Excellencies,
Distinguished Participants,
Ladies and Gentlemen,**

I would like to thank the President of the World Bank for extending an invitation to me to address this distinguished gathering on the significant subject of "*Gender and Law: Eastern Africa Speaks*". I am aware that the legal developments in Eastern Africa were examined thoroughly in your first workshop in Addis Ababa, in October 1997. Although your workshop this week is again aimed at discussing one particular region of Africa, the issues at hand are issues that affect all other countries and peoples equally in other regions of the continent. In this sense, therefore, allow me to share with you some thoughts on the subject from a continental perspective.

Let me also say that in my presentation I shall strictly confine my remarks to the actual topic. Recognizing nonetheless that there may be

considerable interest among those gathered here on various pressing developments in Africa, I will be happy to answer questions and hear remarks outside the subject under consideration.

I want to at the very outset to pay tribute to Mr. Wolfensohn, the President of the World Bank, who, since taking office, has initiated an innovative pragmatic approach to developmental issues. Under his able leadership, the Bank has evidently expanded its role to encompass critical issues of international concern such as the question of gender equality and justice, and the role of women in development. Mr. Wolfensohn's commitment to readily listen to the voice of Africa, in response to the legitimate demands and aspirations of African governments and peoples, which he eloquently articulated in his keynote addresses at his recent meetings with African leaders in Uganda and Ethiopia deserves our particular recognition.

The new direction adopted by the Bank, in my view, bears testimony to the Bank's appreciation of three critical issues. **First**, a realization and acknowledgment by the Bank that bank-financed projects and programmes in Africa (as elsewhere) must be based on the priorities

identified as such by the recipient countries themselves. This means that in the context of the Bank's work in Africa, the Bank has to listen and work in partnership with the peoples of Africa. I believe the very subtitle of this conference, '*Eastern Africa Speaks*', encapsulates this new approach very well.

Second, an acknowledgment by the Bank, as well as Africa's other development partners, that there is need to strike an appropriate balance between respect for the established societal values of the different communities in Africa and the imperatives of modernization and development. This is especially important in the debates about the place of women in society and their role in development.

It is a widely shared view that customary law is inherently inimical to the struggle for women's equality and their quest for freedom from sex and gender discrimination. However, it is very important to underscore the fact that societal values vary from community to community, and that the diversity which characterizes humanity enjoins us to respect those values which, in a given community or society, represent an internally accepted and established system of social order. I

am not making a case for the preservation of culture and tradition just for the sake of preservation. But we must have the modesty to accept that, before we dismiss other people's societal values, we need to listen to those people to understand carefully and properly what they themselves make of their own values.

This brings me to the **third** critical point which the Bank also needs to take account of: in questioning the role of customary law today, we should appreciate that not all aspects of customary law are inherently retrogressive. There are, surely, positive things which even the critics of our systems of customary law will acknowledge. The challenge is to identify those positive areas and to see how we can use them in the overall scheme of interfacing gender, law and development and constructing social systems that uphold equality and justice for all, men and women. To do that, however, I strongly believe that governments in Africa as well as our external development partners, such as the Bank, need to listen to the people who matter most in these debates: the women themselves.

In properly addressing the subject of "*Gender and Law in Africa*", I would like, briefly, to focus on three areas: the history of gender inequality and injustice in African societies in general; the current efforts by a number of individual countries to eliminate such inequalities and injustices; and the collective efforts of the OAU in addressing the issue of human rights and women's rights, in particular.

Let me start with a historical perspective. Here, I would like to distinguish between two periods: the pre-colonial era, and the colonial period. In pre-colonial Africa, as a general rule, the indigenous legal systems of the African societies did not conceive of rights in the context of "individual rights-based" juridical systems as is the case in industrialized societies. The focus was on the bundle of obligations and duties enjoyed by the community as a whole. The concepts of 'justice' and 'equality', for example, which focus on the personal rights of the individual as enshrined in modern jurisprudential theories and constitutions were, in the view of the average traditional African society, at variance with its customary law. African customary law was, therefore, essentially based on the collective interest of the "tribe" or "clan".

Thus, in pre-colonial Africa, the tribe and not the individual was at the centre of African traditional legal systems. But, even more significantly, the patriarchal structures which dominated these societies also meant that in African customary law, the rights that women, as individuals, could claim were largely constrained, if not wholly non-existent. These limitations were exemplified by various established customs and practices which degraded women to an inferior category of society. The role of women in society was predominantly restricted to the private sphere of the family, namely: child-bearing, child care, sustaining a family, and so on. Accordingly, women were generally excluded from holding ownership of, or title to, land; they were denied inheritance rights or control over household property, and upon divorce or widowhood, they remained vulnerable and dependent.

On the other hand, traditional African societies, as a matter of custom and practice, provided women and other vulnerable social groups with the protection they needed in certain situations. In almost all African societies, women, children and the elderly are recognized as vulnerable groups, who under African customary law, should be given

full protection from the harmful consequences, pain and suffering of war. And, even where women were not able to exercise rights of ownership over land, they were at least guaranteed access to such land for the purposes of sustaining a subsistence livelihood.

During the colonial period, the administrative colonial authorities attempted to impose limitations on the scope and application of African customary law. Although they shared the common objective of asserting their domination and authority over subjected peoples in Africa, the colonial powers differed in their approaches and strategies. Some who were cautious not to infringe on native laws and customs, applied the principle of “indirect rule” under which they recognized existing traditional local authorities, like the sultans, tribal chiefs, etc. Established tribal customs and practices were fully applied in local native courts subject to the so-called repugnancy test, that is to say, in so far as they were not inconsistent with the principles of “equity, natural justice, morality or good conscience” and the laws of general application introduced by the governing colonial authority. Others pursued the policy of “assimilation”, which was aimed at abolishing all traditional values and customs.

What is worth noting in all this is that the position of the African woman in pre-colonial African society hardly changed during the long years of colonial rule. Any changes, such as they were, in the scope and application of customary law effected by the colonial powers were not necessarily aimed at emancipating the African woman from patriarchy. Due to a complex array of social, cultural, economic, historical and other factors, customary law in post-independence Africa has continued to lag behind in the struggle to shed it of the sex and gender inequalities that largely characterized it in the pre-colonial and colonial eras.

It is true that for most African communities today, it is thus the system of customary law that continues to present the larger obstacle in the quest for equality and the empowerment of women. It is little wonder that some commentators have tended to single out customary law as a critical part of the system of institutionalized inequality in African States. The extent to which this is the case is, of course, a matter that I must leave to the experts gathered here to determine. However, on my part, I would like to underscore the fact that, happily, some African

States have recognized the need to address these shortcomings in their legal and social systems.

It is pertinent to note that the OAU, through the work of the African Commission on Human and Peoples' Rights, which as you know was established under the auspices of the African Charter with the twin-mandate of protection and dissemination of human rights in Africa, is actively building partnerships with some sections of civil society in various African countries to help strengthen the human rights systems of those countries. A number of these groups are women's rights advocacy groups, and some enjoy consultative or observer status with the OAU and the African Commission.

Last month I announced the establishment by the OAU of an *African Women's Committee on Peace and Development*. This Committee is expected to function as an advisory body to the OAU and the United Nations Economic Commission for Africa (ECA) on issues relating to gender, peace, security and development in Africa.

However, these continent-wide initiatives by the OAU will not amount to much unless they are accompanied by the necessary political will and support from Member States. And at the national level, the constitutional and legislative reforms in favour of gender equality need to be matched by real structural changes in power relations in society. It is obvious that while society may commit itself to gender equality and non-discrimination through the adoption of constitutional guarantees and by subscribing to international human rights instruments, society may as easily perpetuate inequality and discrimination by invoking contested traditions and cultural practices.

It is important to reiterate here that the effectiveness of the law itself, including human rights law, may, in large measure, ultimately depend on the extent to which it is sensitive to cultural issues. Yet, it is equally important to emphasize that the subordination of women to men under the guise of preserving tradition and customary law cannot be justified at a time when the world is seeking a collective commitment towards establishing true equality and unimpaired human rights for all.

It is to be noted that customary law, is not, of course, the only system of law which is, or has been, used to entrench sex and gender-based discrimination. Historically, all types and systems of law have been employed during various epochs, and to varying degrees, as a tool for men to secure their dominant position in society and to deny women equal access to, and participation in, all spheres of cultural, economic, political and social life. The point that I am seeking to make here is simply that we need to recognize that the phenomenon of using the law or appealing to custom and tradition to justify discrimination against women, or their exclusion from participation in all spheres of development, is not unique to African societies. To make this point is not to suggest that Africa should ignore or downplay the extent of the problem of gender discrimination. Quite the contrary. As I have already stated, the importance of this issue deserves urgent and serious attention.

Let me now say a word or two on strategy. Ultimately, the challenge is to recognize that nothing can change, and change effectively, without engaging and listening to the voices of those who are at the centre of this debate, the women. African women, in partnership with other progressive and civic-minded sections of society

and with international support, ought to be given space to determine what is good for them. Any legal reform aimed at achieving gender equality and the removal of culturally sanctioned gender discrimination necessitates the widest popular participation to achieve an all inclusive national consensus. Given that the injustices suffered by women over the years stem from complex cultural, social and historical factors, the adoption of a multi-dimensional approach is essential. Thus, the removal of gender discrimination ought to be seen as a process-oriented strategy and objective. Two obvious questions arise in the regard.

- How do women make their voices heard more clearly?
- And what is the role of external parties?

In response to the first question, as you are fully aware, reforming age-old established social customs is an arduous and uphill struggle. The concrete realization of gender equity is, and shall remain, an on-going process. In this struggle, the support of our international partners is of considerable importance. Favourable change for women is always likely to be opposed by a variety of forces, comprising both men and women. But maximum benefits would be gained if we saw the whole matter as

an on-going process that has to be continuously built on and vigorously pursued. Obviously women are major stakeholders in this and their voices should be more loudly heard.

As for external parties, that is to say international institutions such as the World Bank, I can only reiterate what I said earlier, that they have an important role to play in support of Africa's efforts. Now that Africa is putting its house in order, in terms of the political renaissance and democratic re-awakening taking place, and formulating appropriate action-oriented strategies, the international community should be involved in the process, and provide the necessary encouragement and support. Such institutions, with their relatively better endowed material and human resources, ought to work for the widest possible participation in the realization of the aims and objectives I have attempted to outline this afternoon, and which you will no doubt address in greater detail in the course of your workshop. Their support for gender equity, equality, justice and the empowerment of women would go a long way towards enabling the ultimate triumph of the forces of positive change over those of regression.

I would like to conclude by making a more general observation which nonetheless has some bearing to the relevance of your workshop. As Africa strives to get out of the vicious circle of poverty and underdevelopment, it has to harness all its resources, especially human resources.

The women of Africa, who have played such an important role in our liberation struggles as well as in our social and economic development, have to be fully involved in our societies today. It is important that we overcome the social and systemic prejudices which have relegated women in our societies and which have socially established norms which work against the process of the integration and empowerment of women. The potential of women in our continent has yet to be fully realized; and in order to achieve meaningful development, we must bring the women to the centre of our development strategies.

I thank you.