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PANEL ON THE ROLE OF JUSTICE IN THE ADVANCEMENT AND IMPLEMENTATION OF THE HUMAN RIGHTS OF WOMEN

THE ROLE OF JUSTICE IN THE ADVANCEMENT AND PROTECTION OF WOMEN'S RIGHTS

1. Introduction

The issue of the role of the courts in the advancement and protection of women's rights has been raised in several international and regional fora in the light of the difficulties being encountered by women throughout the world in fully enjoying their rights. The issue was previously raised at the Dakar and Beijing Conferences and some recommendations were put forward on it. The issue was again addressed at the subregional meetings organized by the Economic Commission for Africa for the decade review of the implementation of the Dakar and Beijing Platforms for Action, during the first half of 2004. Participants in these meetings noted that significant progress had been made since the accession of their countries to the Convention on all Forms of Discrimination against Women (CEBAW) and the international instruments on human rights particularly on paper but not in reality. Women do not enjoy all their basic rights owing to the incongruity between national legislations and international law as well as the inconsistence of the conflict between modern law, common law and religious law at the national level. Added to these factors are the complexity of administrative procedures, total ignorance of the judicial procedure, inadequate monitoring of the violations of the basic rights of women within judicial systems, incomplete information on individual basic rights and the persistence of negative attitudes towards women by formal and informal legal practitioners involved in conflict resolution and the administration of justice. Thus research and studies carried out in several countries have highlighted the tragic situations in which some of them have been operating in their quest for justice from state institutions or community bodies responsible for conflict resolution and ensuring respect for human rights.

How do we improve the situation and ensure that the legal system actually plays its role as defender of freedom and protector of human rights? To answer this question we are first of all going to quickly review the international law dealing with the human rights of women. We shall then examine how international norms are introduced into national legislations and the progress made by African countries in this field. Part three of this report will be devoted to the implementation of these rights by the legal system. Access to a judge being the actual guarantee of access to the law, we shall address the issue of the right to justice as recognized by the universal declaration of human rights and the African Charter on human and people's rights as well as the additional protocol to the African Charter relating to the human rights of women, the multiplicity of the legal systems existing in Africa and their impact on the human rights of women.

2. Recognition of women's human rights

2.1. International instruments for the advancement and protection of women's rights

We all know that gender equality is a major concern of our time. Gender equality which has been claimed for so long a time has finally been universally recognized by a number of legal instruments. Indeed, some conventions, treaties, declarations and world

conferences recognize gender equality at the civil, political, economic, social and cultural levels. We do not intend to go deeply into the past to understand, the different stages and the campaigns waged by women and men to ensure gender equality. Nor are we going to review all the international instruments adopted on the issue, given their number and diversity. We will only mention a few instruments we consider basic.

These instruments are international and regional. Some of them are general and others specific to women's rights.

2.1.1. General texts

(a) 1948 Universal Declaration of Human Rights

There is first of all the 1948 Universal Declaration. It was the first international document to make mention of gender equality. It was formulated in terms encompassing both women and men – a departure from a tradition dating back to the French revolution, meaning that the rights proclaimed were only valid for men. This achievement was made through the activity carried out by the members of the sub-commission on the status of women which is a subsidiary body of the Human Rights Commission established by the United Nations in 1946.

(b) International treaties relating to economic, social, cultural, civil and political rights adopted in 1966

These instruments governing all human rights, compel states to guarantee the equal right of men and women to enjoy all the rights enshrined in them.

2.1.2. Instruments specific to women

(a) Thematic instruments relating to women's rights

After the proclamation of the United Nations Charter and the Universal Declaration of Human Rights, the United Nations Commission on the Status of Women started work by preparing the instruments relating to some categories of rights such as the Convention on the Political Rights of Women (20 December 1952), the Convention on the Nationality of Married Women (29 January 1957), the Convention on Consent to Marry, Minimum Age for Marriage and Registration of Marriages (7 December 1962) and the Convention for the Suppression of the Traffic in Persons and on the Exploitation of the Prostitution of Others (2 December 1949). These instruments governing some aspects of women's rights have been blamed for being too general. In addition, they do not include the measures necessary for enjoying or guaranteeing these rights.

(b) Convention on the Elimination of all Forms of Discrimination against Women

In view of these criticisms, and also the need to have an instrument that encompasses the various aspects of women's rights, the Commission on the status of women prepared a

document which contains all the rights which had been recognized and proclaimed in other instruments. This document is the convention on the Elimination of all Forms of Discrimination against Women (CEDAW) of 18 December 1979. Firstly, it defines discrimination against women and sums up all the rights they should enjoy. The authors of this document wanted to highlight the indivisibility of the human rights of women and put forward the measures that need to be taken. States are to ensure that women are able to enjoy these rights and that countries achieve full development.

2.2. Regional instruments on the advancement and protection of women's rights

Protocol to the African Charter on Human Rights

This protocol was prepared on 11 July 2003, by the second Assembly of Heads of State and Government of the African Union held in Maputo, Mozambique. It complements the African Charter on human and people's rights, aimed at promoting the basic rights of women in Africa and ensuring their protection. Indeed, article 18, paragraph 3 of the Charter merely recommends to State parties to ensure the elimination of any discrimination against women and to guarantee the protection of the rights of women and children as stipulated in international declarations and conventions.

The protocol contains the principles set forth at the 1993 Vienna World Conference on Human Rights, the 1995 Beijing Conference on Women and the 1994 Dakar Regional Conference. They urge States to take the concrete measures aimed at highlighting the rights of women in order to eliminate all forms of discrimination and violence based on gender. In particular, it takes into account the specificities pertaining to Africa, and some aspects which were not dealt with by the convention on the elimination of all forms of discrimination against women such as:

The right to food security (article 15); the right to decent housing (article 16); the right to a safe and viable living (article 18); the right to sustainable development (article 19); the rights of the widow (article 20); and the right to the social security of elderly women (article 22). The protocol condemns all prejudices against the integrity of women, which are too often justified in the name of secular traditions such as genital mutilation. In a new approach, it defines new rights for the African women, such as the right to abortion in cases of rape or incest. As at 31 August 2004, the protocol had recorded 31 signatures and four ratifications (Comoros, Libya, Namibia and Rwanda).

3. Women's rights are an integral part of human rights

Human rights are defined as "*a set of principles and norms founded on the recognition of the dignity inherent to all human beings and which aim to guarantee their universal and full respect*".

The International Conference on Human Rights, which was held in Vienna in June 1993, states in its paragraph 1.1 that "human rights and democratic freedoms are inherent to all human beings and their promotion and protection is primarily the responsibility of

governments". It adds in paragraph 1.5 that human rights are universal, inseparable, interdependent and closely related, and in paragraph, 1.18 that the basic rights of women and the girl-child are inalienably, integrally and indissociably part of the universal rights of the individual.

The world conference had to discuss women's rights because of the inadequate attention given by States to the issue. They consider women's rights as belonging to a different category and not being fully integrated into human rights. In addition, these international instruments have not given enough attention to the rights of women in the sphere of their private life, their reproductive rights, violence, rape and other traditional practices harmful to their health[1]. Thus, "the rights and freedoms guaranteed to people of both sexes in public life could be compared with human rights and their violation, often committed by government officials, may be punished. On the other hand, the rights and freedoms which naturally belong to women in private life, are not always compared with human rights and remain in the realm of impunity because their violation takes place at home within the family, by members of the family. However, women, in their dignity and integrity suffer from these violations in the same way and under the same conditions as the other abuses of their human rights.

It was this situation that led the United Nations to give greater attention to the abuse of the human rights of women whether they are perpetrated in public or at home, and to make some statements on the identification of these rights with the larger group of human rights.

This brief survey of the international and regional instruments on the rights of women shows that significant progress has been made in this field and that greater importance has been attached to the specific rights of women and the discriminatory situation in which they live, as well as the measures states must take to remedy the situation.

As far as African countries are concerned, many of them have ratified the international conventions on the rights of women. Unfortunately, in the absence of a regional follow-up mechanism which could gather the main information related to human rights issues, it is difficult, due to time constraints and the unavailability of sources, to provide, in this document, a complete list of accessions. This is regrettable. However, thanks to the African Gender and Development Index (AGDI) which Economic Commission for Africa (ECA) is in the process of preparing, we will be able, very shortly, to obtain these data and also to assess the progress made in the implementation of the treaties and conventions which African countries have ratified. This index which contains some quantitative and qualitative indicators will be launched during the seventh African Regional Conference on Women to be held in Addis Ababa, Ethiopia, October 2004.

It goes without saying that African States have acceded to a large number of these instruments (the convention has been ratified by almost all the African countries, except the Sudan and Somalia). In ratifying them, States committed themselves to taking the legislative, constitutional, legal and administrative measures to bring them in line with the international commitments involved in their ratification. The question therefore is how States can follow

[1] Hafidha Chekir "the status of women between texts and resistance", the case of Tunisia,. Chama edition p.87.

up these measures in practice and what should be the role of the legal system in the advancement and protection of the rights of women?

4. The role of justice in the advancement and protection of the rights of women

In the field of the rights of the individual and particularly the rights of women, the role of justice is essential. But before discussing this role properly, it is necessary to know, first of all the meaning of the word "justice". The term justice in this report refers not only to the public service of justice administered by judges in the judicial and administrative system and by some government officials and representatives of the law but also to the customary law applied by traditional and religious leaders. We shall focus on customary law in view of its importance in the African legal system, in order to be able to really understand the way justice is exercised.

The role of justice is to seek after "fairness", by judging breaches of the law and imposing appropriate penalties. The principles governing justice are universal. Justice must be qualified, rapid and simple. It must be able to respond to any appeal by anyone without distinction, be accessible to all (financially) and as quickly as possible. In this way, each one can see his/her rights defended in litigations if he/she complains to the Court of Justice.

Many articles in the Universal Declaration of Human Rights (articles 7,8,9,10 and 11) as well as the International Covenant on Civil and Political Rights and the African Charter on Human and People's Rights (articles 3 and 7) define the right of access to justice.

Article 14 of the International Covenant on Civil and Political Rights of 16 December 1966 mainly provides that "every person has the right to ensure that his case is heard equitably and publicly by a competent, independent and impartial court, established by law, which shall decide on either the validity of any action brought against him, or dispute over civil rights and obligations.

Judges must ensure that the law is applied in a just and equitable manner to all without discrimination. They should thus, according to the Universal Declaration of Human Rights and the African Charter on Human and People's Rights abide by the international instruments in cases of human rights violation.

Article 8 of the Universal Declaration of Human Rights: Every one has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights.

Article 7 of the African Charter on Human and People's Rights:

1. Every individual shall have the right to have his cause heard. This comprises the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.

This direct submission of a case to national jurisdiction is very important. It is an excellent tool for making a claim in as far as the African Charter on Human and People's

Rights has been ratified by the vast majority of African States. The obligation to refer to international instruments is unfortunately unknown by African judges and persons subject to trial, both men and women.

This will lead us to discuss the issues linked to the integration of international norms at the national level.

5. Problems linked to the application of the law and the promotion and protection of the rights of women.

5.1. The integration of international legislation in domestic law

In carrying out their duties, judges have a range of national and international rules placed at their disposal by different State authorities, depending on the country.

Governments are the first actors responsible for the domestication of international rules. Their action is essential in implementing human rights instruments at the domestic level. It is Governments who will ensure that treaties are ratified by the legislative organ and also published as required by the constitutions of some countries. According to the basic laws of these countries, publication is a necessary condition for international treaties to enter into force. Publication is required to bring to the attention of everyone, public authorities (including judges) and citizens, the existence of these laws. Governments that ratified these treaties due to mere complacency will sometimes defer or refrain from publishing them. However, this practice is questionable at the level of international law, especially at the level of the law of treaties. Article 27 of the Vienna Convention on the Law of Treaties of 23 May 1969 clearly stipulates that a party cannot invoke the provisions of its domestic law – including its constitution – as justification for the non-application of a treaty.

Once ratified and published, international treaties and conventions are a higher authority than the law. A growing number of constitutions recognize the constitutional status of international human rights rules, which can be directly invoked in the domestic order. For example, article 81 of the Basic Act of 24 October 1997 of the Congo provides thus: “From the time of their publication, treaties or duly ratified agreements have unreserved force of law for each agreement or treaty, in relation to its application by the other party.” This immediate enforceability of conventions is cited in the periodic report that the Government of Congo presented to the CEDAW Committee: “Conventions ratified by the Congo are applicable within the country’s legal order, their legal value being equivalent to that of law. This means that judges can refer to them in determining the legal status of women and can administer justice on the basis of finding a violation of a standard enshrined in an international convention applicable by virtue of its ratification and publication. Such standards thus become sources of law to which judges are required to refer.”[2]

Recognition of the immediate enforceability of the rules of conventions seems to be an established fact in many States, while in others, the precedence of domestic law means that international treaties, including human rights treaties, do not have immediate

[2] (CEDAW.C/COG/1-5-8; April 2002)

enforceability. It is therefore necessary to incorporate treaties or laws set out in treaties in national legislation. We can cite the example of Kenya: the third and fourth periodic reports of Kenya, presented to the CEDAW Committee during the January 2003 session, state as follows: "In the common law doctrine, which is operational in Kenya, international law does not affect the municipal law of the country unless parliament has specifically enacted or in some other legislative way incorporated it as the law of Kenya. Under this general doctrine, the convention must be given effect through legislative, judicial and administrative measures; however, the procedure of domestication is long and has thus contributed to the delays in implementing the Convention".[3]

Returning to the first category of country – namely those that recognize the immediate enforceability of the rules of conventions – there are obstacles on the path to integrating international law, though these are different from one State to another. The first obstacle is due to the content of the ratified or published convention, which is not precise enough to be used by a national judge. In other cases, the obstacle concerns documents that are both normative and programmatic, whose provisions need to be made concrete by means of laws.

In both cases, Governments have had to prepare bills in order to integrate international rules into domestic law. Several laws have seen the light of day in the framework of CEDAW. Though these laws are not entirely satisfactory, we can still acknowledge that great progress has been achieved in certain areas, including family law, access to land, succession, prohibiting genital mutilation and violence in general against women. (See the summary of national reports produced by ECA at the Seventh African Regional Conference on Women.)

The great majority of African countries have in fact more or less tried to comply with some CEDAW provisions but have done so with many nuances and also contradictions. Several States have introduced into their constitution clauses on non-discrimination and equality between the sexes, while derogatory rules continue to exist in their modern legislation and customs. To illustrate this paradox, we can give the example of polygamy in the Republic of Congo. Article 14 of the Basic Act of Congo provides as follows:

"All Congolese citizens are equal before law. Any act that grants privileges to nationals, or limits their rights, owing to regional or ethnic origin, political or philosophical opinion, religion, gender or physical state is contrary to the Basic Act and punishable by sentences provided for by law." However, article 166 of the family code of the same country states that: "husbands serve the community. They deserve respect and affection. In the case of polygamy, each wife has the right to claim equality of treatment in relation to another."

The case of Congo is not an exception: other African legislation commits the same aberrations. This poses the following question: how can equality be reconciled with the option of polygamy that is reserved for the man? What position will a judge adopt when s/he is confronted by such situations? Polygamy is just one example. Much other discrimination persists, such as inequality in succession, the right of Muslim women to marry a non-Muslim, the same rights in relation to nationality etc. In other countries, divergences exist within the

[3] (CEDAW/C/KEN/3-4; February 2000)

constitution itself. The basic law of the Republic of Gambia can thus stipulate in article 33 that the principle of non-discrimination is not applicable in matters relating to adoption, marriage, divorce, funerals, devolution of property because of death, and other matters concerning the status of persons.[4] Knowing that Gambia ratified CEDAW without any reservation, these provisions create situations of confusion.

This incoherence in so-called modern legislation is bound to further complicate the task of judges, which is already difficult enough owing to the plethora of laws existing in a number of countries. Where modern, religious and customary legal systems exist side by side, inevitable questions of the application of the law arise, which are often resolved to the detriment of women.

5.2. The complexity of African legal systems

As we all know, a variety of legal and judicial systems is to be found in Africa, owing to different approaches to the regulation of the social order. There are, first of all, the systems inherited from the colonial period, such as the Anglo-Saxon system (of common law) and the Roman-Dutch system; and then there are the traditional systems, which are customary or religious.

Juridical pluralism is a reality in Africa's legal landscape. It has two dimensions: institutional and material. The former means that customary law jurisdictions exist alongside modern law systems, while the latter encompasses the multiplicity of norms, which consist, on the one hand, of customs, which are the essence of what is termed traditional law, and, on

[4] 33. – (1) – All persons shall be equal before the law.

- (2) – Subject to the provisions of subsection (5), no law shall make any provision which is discriminatory either of itself or in its effect.

- (3) – Subject to the provisions of subsection (5), no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

- (4) – In this section, the expression "discrimination" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status whereby persons of one such description are subjected to disabilities or restrictions to which persons of another description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description.

- (5) Subsection (2) shall not apply to any law in so far as that law makes provision-

a. With respect to persons who are not citizens of the Gambia or to qualifications for citizenship;

b. With respect to the qualifications prescribed by this constitution for any office;

c. With respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;

d. For the application in the case of members of a particular race or tribe of customary law with respect to any matter in the case of persons who, under that law, are subject to that law.

the other hand, law which is of Western origin and is generally known as modern law, or written law.

Some countries, such as Algeria, Egypt, Mauritius, Morocco and Tunisia, have established a unique legal system which falls under the Ministry of Justice. However, there is a multiplicity of juridical roots even within groups of countries with one legal-system. "In Egypt, for example, the State abolished all religious-based legal systems, by law No. 642/1955, but their laws remained in force. Apart from legislation based on Islamic Law there are still a number of Christian and Jewish systems. In regard to the Muslim community, however, Egypt has a number of inchoate laws regulating different aspects, rather than a single family code. This carry-over from classical jurisprudence is to be found in all extant Muslim legislation. This poses a problem, where the written law is contained in a slim text, a sort of summary"[5]

Tunisia has recorded major progress in the area of women's rights and in the administration of justice. Between 1956 and 1957, it established a unified system, in the legislative as well as the judicial spheres, for all nationals. This homogeneity has yielded more respect and protection for women's rights.

In most sub-Saharan African countries, customary and religious legal systems exist side by side with modern courts. While the former apply custom, the so-called modern courts are often able to choose between applying positive law or customary law. This duality in judicial systems and in law reflects the variety of ethnic groups and religions on the continent. While, however, it may be a sign of tolerance, it has a number of disadvantages, and raises many problems at the level application, in which women are the big losers. This arises where, for example, conflict between modern law and customary law leads to the application of customary law, which takes precedence in some countries. These laws, none the less, are still applied even in countries where the legislator has abrogated those that are discriminatory towards women by reason of the propagation of negative attitudes, or cultural resistance to change.

We turn now to a description of the functioning of these systems, beginning with the modern system.

5.3. Modern legal systems and the advancement and protection of women's rights

In general terms, legislations across Africa accord women, as human beings and legal subjects, to week redress in courts of law. According to the nature of the complaint or crime, women can see their cause prevail in civil, penal or administrative courts. A palpable degree of equality exists in this regard between men and women. However, women's rights that are appreciated by judges are not solely the result of national laws. As we have seen in section III, the conventions which have been ratified, are more or less applicable in the legal sphere. Armed with these rights, women can normally obtain redress in the case of violation of their rights. Studies which have been carried out in a number of African countries and particularly

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[5] Sami A. Aldeeb Abu-Sahlieh. Le droit de la famille dans le monde aral constants et defies.

in West Africa, East Africa and Southern Africa show that for most of the countries covered, the judicial institutions have applied women's rights in accordance with universal principles. Many women have seen their rights vindicated and their rights respected and protected. However, despite the goodwill of some judges advance and protect the rights of women, there is still much to be done in this area. The literature highlights a number of inadequacies, as described below.

Women's access to the courts of law

Women in sub-Saharan Africa rarely have recourse to the so-called modern courts. Thus, in Mali, statistics of the Court of First Instance of Commune V, Bamako, show that very few women have recourse to non-traditional courts. Indeed, out of 710 civil cases in 1997, only 238 were brought by women while in 1998, there were 236 women complainants out of 693 cases, and in 1999, 277 women had recourse to the courts, out of 898 new cases in the registry[6].

Another study carried out in Burkina Faso on impediments to women's access to legal and judicial services[7] has also highlighted the low level of utilization of the court system by the population as a whole.

The low level of use by the population and, in particular, women, is explained by the following factors and obstacles:

(a) Firstly, many African countries have very poorly organized legal institutions. In particular, there is a very inadequate distribution of courts and tribunals across the country, apart from the fact that staffing is inadequate and poorly funded. Most of the judicial establishments and the jurists serving them tend to be concentrated in the urban areas (in Mali, according to the study cited above, 12 per cent of the jurisdictions are based in the capital, as well as 32 per cent of the magistrates, 93.5 per cent of them advocates, and 80 per cent of them notaries;

(b) Moreover, the high legal costs prevent complainants from using the court system. A study conducted recently in Kenya, and published in September 2004[8], reveals that 60 per cent of Kenyans are unable to exercise their legal rights owing to legal costs. The report goes on to say, however, that part of the expenses are taken up by bribes and fees charged by lawyers and extra-judicial agents. Indeed, access to a judge requires the help or assistance of representatives of the law personnel (such as advocates, court clerks, bailiffs, experts and notaries), some of whom are corrupt;

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6 Hameye Foune Mahalmadane, magistrate. Paper presented at the Workshop in Women's Access to Legal and Judicial Services in sub-Saharan Africa. Lome 27-30 November 2000.

7 Qui vive, Observatoire sur les conditions de vie des femmes, rapport provisoire sur l'Etude sur les obstacles à l'accès des femmes aux services juridiques et judiciaires au Burkina Faso.

8 "Balancing the scales: A Report on Seeking Access to Justice in Kenya by the Legal Resources Foundation"

(c) The language used in the modern court system is often the language of the former colonial power, which the majority of the population do not understand. Legal jargon and complex procedures discourage complainants and particularly women, who are also the majority of illiterate people;

(d) Women are also overawed by institutions which are male-dominated. Indeed the proportion of women judges in Africa is among the lowest in the world. Often, there are no women in the higher courts. In Eritrea, within framework of national reforms, magistrates elected at the local level comprised 22 per cent women, and in 2003, young women took a three-year legal training course and were assigned to the communities to serve as interpreters and advisers, and to.champion the cause of women. In Rwanda, which is a veritable exception in this regard, the proportion of women serving in the highest judicial echelon (the High Court) is higher than 41 per cent. There are three women in the Supreme Court in Guinea and Congo. In the Central African Republic, women account for 12 per cent of the judicial personnel. Women are also well represented in the judicial apparatus in Kenya, where the proportion is 36.4 per cent. Egypt appointed its first woman judge in 2003, followed by three more shortly afterwards, while in South Africa, two women sit on the Constitutional Court[9]. According to a report presented to the CEDAW Committee in 1998, Tunisia has 310 women judges (or 24 per cent of the total), of which 16 sit on the Court of Cassation;

(e) Judges are not always up to date or well-informed about international conventions on human rights and women's rights. Indeed, it has been observed that, as a result of a combination of factors, and particularly inadequate knowledge of the conventions, judges do not apply the international norms that have been incorporated into domestic legislation. However, inadequate knowledge of international conventions does not affect only judges;

(f) Even educated men and women are not conversant with national legislation or international treaties. This has led to an element of unwillingness to have recourse to the courts to enforce their rights;

(g) Apart from not knowing the law, other factors prevent women from fighting for their rights. The report from Congo, cited earlier, indicates that the unwillingness to lodge complaints with the courts is also attributable to fear of reprisals. A woman who has been a victim of despoilment, even where she has been informed of the avenues of redress open to her, will not have the courage to go before a judge for fear of witchcraft striking her children and herself, or repudiation or divorce. Although, from a formal standpoint, there are a number of judicial mechanisms available to women, lack of knowledge of laws and procedures, coupled with the fear of witchcraft, hamper the progress made;

(h) Apprehension as to the impartiality of male judges who tend to favour men, and the insensitivity of some women judges whose formal education has left them largely ill-

[9] Summary of Country Reports on the Implementation of the Dakar Platform for Action and the Beijing Programme of Action. E/ECA/ACGD/RC.VII/04/4. 21 September 2004. Seventh African Regional Conference on Women; Decennial Review of the Implementation of the Dakar Platform and the Beijing Platform for Action, 6-14 October 2004, Addis Ababa.

informed as to different aspects of women's rights and gender issues, have also been observed to be a discouraging factor to women complainants in the court system. Some judges interpret modern legislation in a restrictive way and rely on discriminatory customary norms which tend to be applied in preference, particularly in regard to family law and succession, skirting constitutional provisions which enshrine principles of equality for all, without gender distinctions, as well as those that recognize the primacy of international instruments over national legislation. In Senegal, for example, two categories of succession law are provided for in the national legislation, of which one is gender-neutral, while the other, derived from Muslim principles, is disadvantageous to women and girls. The laws derived from religious principles are applied in all cases where the deceased has expressly or by implication, indicated a wish to pass on his inheritance in accordance with Muslim Law. In the face of such vague provisions, some judges hold that the will of the deceased can be deduced from the fact of going to the Mosque, and thus in most cases, property is inherited in accordance with religious laws. The same applies to wife-inheritance, which is tolerated in the modern legislation of certain West African countries where they are not humiliating or have no adverse effect on the health of the widow. The criteria of interpretation are vaguely defined and expose women to the whims of families, which are able to deprive widows and orphans of the necessary resources for their subsistence under the pretext of refusal of the widow to conform to customary rituals[10];

(i) The reaction of some judges and representatives of the law, police officers and male doctors, particularly in cases of conjugal violence, rape, incest and other forms of sexual abuse, is widely exposed as well, in the various studies already mentioned. It emerges that women who are victims of violence are often intimidated and ridiculed by police officers who call them women of easy virtue and discourage them from pursuing their complaints. The same applies for health workers who sometimes even conceal the facts by falsifying medical documentation. Judges, in some cases, qualify cases of rape as assault and battery and so pronounce very light sentences; and

(j) Justice as dispensed by community-based institutions in line with local expectations is more respected than that emanating from the State and its courts. Customary and religious laws hold a particular significance for women because they govern the personal and family status of persons. They are well-known and easily accessible. In contrast to modern institutions which function in a way that makes justice inaccessible to a large part of the population, traditional chiefs are not trammeled by complex rules of procedure nor by restrictions on the receivability of evidence. They render justice without delay and this constitutes a major advantage for the population.

This last point is one of the main factors leading women to desert modern mechanisms of justice (which many still regard as a reflection of Western judicial systems

10 Examples drawn from a paper presented by Brigitte Adjagbo-Johnson, "Inégalité des droits; coexistence des droits; coutume et droit moderne, pour ou contre l'égalité," . Third session of the International Workshop on Gender, Population and Development in Africa, Abidjan 16-21 July 2003.

harking back to the former colonial power) and to seek traditional modes of conflict regulation. We now turn to a description of the functioning and effect of these systems in regard women's rights.

5.4. Traditional systems of conflict resolution

The studies mentioned above have dwelt a good deal on the role of the family and the community in conflict resolution. Conflicts must be handled primarily by near relations, and particularly the head of the family, then the village chief, or village counsellor. The Wolof (members of a large ethnic group in Senegal) have a saying that "all must be settled in the stomach of the village", and this is in order to avoid divulging the problems of the group and so covering it in shame in the eyes of other communities, and exposing its lack of inner cohesion with the object of maintaining peaceful relations, the agents mentioned above will try to find a negotiated solution which suits both parties to maintain future relations between the protagonists.

Unfortunately, it has been observed that conflicts are settled to the detriment of women. Control of these mechanisms by men hampers women in the exercise of their rights. Their inferior status relegates them to a subordinate position and the cultural context in which they live inhibits them such that they often dare not seek justice even within the informal or traditional channels. Moreover, men dominate the composition of family and village councils, as a result of which the decisions passed are often biased or impartial[11].

CONCLUSION

The realization of women's rights in Africa remains elusive both de jure and de facto. There is a wide gap between the principles set forth and their application on the ground. As officers charged with the application of the law, judges are supposed to ensure that fundamental principles of law, and particularly those relating to gender equality, are respected. However, this is far from becoming a reality, owing to cultural inertia, resistance to change and lack of awareness of international instruments such as those mentioned above. In an effort to remedy this situation, some governments have taken certain measures. Thus, for example, in 1999, South Africa's Ministry of Justice adopted a gender policy with the objective of integrating the gender dimension in policy, work programmes and law reform in connection with this subject. This is a commendable initiative that needs to be extended to other countries.

It is indeed, urgent that Ministers of Justice who are generally charged with promoting respect for right and freedoms, the law and the Constitution, through an efficient and equitable system of justice accessible to all, should incorporate the issue of gender equality in policy-making in order to give due attention to women's needs in their entirety and so allowing them to fully enjoy their fundamental rights.

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[11] Sarah Mvududu, "Existing mechanisms for women's access to legal and judicial services in selected Anglophone sub-Saharan African countries". Paper presented at the Workshop on Women's Access to Legal and Judicial Services in sub-Saharan Africa, Lome, (27-30 November 2003).

Other countries such as Tunisia have introduced the teaching of women's rights in training programmes for magistrates. Efforts have also been made by civil society. For example, the NGO "Women and Law in Southern Africa Research and Educational Trust" (WLSA) conducted research in seven Southern and Eastern African countries towards evaluating the status of women in regard to the administration of justice. "Women and Development in Africa" (WILDAF), based in West Africa, has embarked on a training proramme on women's rights, for judicial and extra-judicial officers and traditional chiefs.

No doubt, these actions have had an impact, and have created awareness among the judges, but much ground remains to be covered as long as the actions are piecemeal and fail to encompass an over-all strategy targeting not only judicial and extra-judicial actors, but also the subjects of justice. The formulation of such a strategy requires the involvement of a number of actors who will have to focus on the different aspects of the problem and highlight the following key questions:

- What measures can be taken to make people accept norms which protect women as universal and hence African norms, and not as a Western model?

- Who is responsible for the efficacy of women's rights at the national level?

- What role can the Ministry of Justice play in ensuring the advancement and protection of women's rights?

- What mechanisms can be put in place to follow up and evaluate the advancement and protection of women's human rights through modern and traditional justice systems?

- What strategies could be adopted to speed up the ratification of the Additional Protocols to the African Charter on Human and People's Right, the former relating to the rights of women and the other to the African Court on Human Rights?[12]

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[12] Article 8 : Access to Justice and Equal Protection before the Law

Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States Parties shall take all appropriate measures to ensure:

a. effective access by women to judicial and legal services, includinlegal aid;
b. support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid;
c. the establishment of adequate educational and other appropriate structures with particular attention to women and to sensitise everyone to the rights of women;
d. that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights;
e. that women are represented equally in the judiciary and law enforcement organs;
f. reform of existing discriminatory laws and practices in order to promote and protect the rights of women.

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