

The inclusion of principles of gender equality and women's human rights for a gender-sensitive constitution

Mrs. Diana Opar, Regional Gender Advisor, UNIFEM

Your Excellency, Hon. Dr. Vincent Biruta, Speaker of the National Assembly
Hon Mme Angeline Muganza, Minister for Gender Issues and the Status of Women
Hon. Drocella Mugorewera, MP and President of the Forum of Rwandan Women Parliamentarians
Mr. Martin Chungong, Officer in Charge, Programme for the Study and Promotion of Representative Institutions, Inter-Parliamentary Union
Mrs. Suzanne Fafin, Coordinator, Governance Unit, UNDP
Mr. Alfred Nukezambura, Vice President, Legal and Constitutional Committee,
Hon. Members of Parliament,
Members of the diplomatic corps,
United Nations colleagues,
Delegates here present,
Ladies and gentlemen,

I would like to thank the Forum of Rwandan Women Parliamentarians and the Inter-Parliamentary Union most sincerely for giving UNIFEM this opportunity to share a few thoughts on engendering the Rwandan constitution. It is for us an honour to be part of an initiative whose aim is to provide a legal framework that ensures women's full presence and participation in the development of Rwanda. It is indeed a daunting task to accommodate the interests of the entire nation in the constitution and this preliminary consultation for women's interests to be taken into account is to be congratulated.

UNIFEM is the women's fund at the United Nations working to achieve gender equality and women's empowerment. It provides technical and financial support to innovative strategies and programmes, which promote women's human rights, their political participation and women's economic security. UNIFEM recognizes law both international and national - as a powerful tool in the struggle for social, political, and economic justice.

This presentation will focus on providing a broad framework for adopting gender equality in constitutional and legislative processes. I will begin by situating gender equality in the context of development in general. Then, endeavour to highlight some key considerations in the preparation of a gender-sensitive constitution. Lastly, the paper will share some good practices in gender-sensitive constitution formulation with UNIFEM partners.

► Gender equality and development

What exactly is a “gender-sensitive constitution”?

What this means is simply the adoption of democratic principles which include the rule of law, gender equality and the human dignity of every citizen - women and men, boys and girls. The inclusion of adequate rights for both women and men equally in the constitution is known as 'engendering' the constitution.

What do we mean by “gender equality”?

Gender equality refers to the state of men and women having equal opportunities and equal access to the same rights and benefits. The objective is to ensure that all citizens realise their full potential and contribute equally to social, cultural, economic and political development. As a rule, gender equality development agendas tend to identify and address structural distortions or imbalances in society and to promote increased and equitable participation of all in all areas of development and social life.

By adopting gender equality as a principle, conditions that perpetuate the exclusion of all citizens from fully participating in development are identified and eliminated. Sometimes, special temporary measures - such as affirmative action - are required to redress structural gender imbalances and to provide opportunities for

everyone to participate equally in development. As mentioned earlier, Rwanda's Government of National Unity has demonstrated its commitment to pursue equitable development policies that empower all segments of the population.

Despite the laudable efforts, there is still some ground to cover to ensure women's full participation in development at par with men, particularly in the areas of education, political participation and economic security. Rwanda's draft initial report to CEDAW (2001) highlights some discriminatory legal measures, against women, into which, for purposes of time, we shall not delve in this presentation. Recently, the Rwandan Cabinet set up a committee to review legislation. It is hoped that the newly established committee will work closely with the Legal and Constitutional Committee to undertake speedy review of laws that are discriminatory to women.

On the positive side, the adoption of the new law on matrimonial regimes, succession and liberalities - to mention but one example - is laudable in the sense that it guarantees equal opportunities for men, women, boys and girls to gain access to the ownership of family property, including land. The challenge is to sensitise women and girls in Rwanda, particularly, on this fundamental right to ownership.

► **Some key considerations for the preparation of a gender-sensitive constitution**

Engendering a constitution can be achieved in two ways. The first way is to include a Women's Charter, which is a chapter or a space within the constitution that stipulates the rights of women explicitly. This is the example seen in South Africa's Constitution. The second is to integrate all points that protect women's rights into different sections of the Constitution. This is the example seen in the Constitution of Uganda. The Constitution of Malawi has both separate sections and integrated protections of women's rights. (Gender Platform, GGRD 1999). The merits and demerits of each of those examples are beyond the scope of this paper. Given the centrality of gender equality, the following is a broad framework for the incorporation of gender equality and human rights in the Rwandan constitution.

Women's rights frameworks

The Beijing Platform for Action and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provide a comprehensive framework for the enforcement of women's human rights and gender equality. The ratification of both by the Government of Rwanda provides a legal basis to honour the commitments therein. *To what extent, therefore, will the new Rwandan Constitution use the provisions of these two frameworks and other legal instruments to provide for a constitution that does not contain discriminatory dispositions against women?*

✓ **National mechanisms for gender equality**

The Beijing Platform for Action recommends the creation of national mechanisms for gender equality and the advancement of women. In Rwanda, the Ministry for Gender Issues and the Status of Women was created to address the issues of gender equality and women's advancement. In addition, the Forum of Rwandan Women Parliamentarians (gender desk in Parliament), the National Facilitation Initiative on the Platform for Action and the newly-formed gender unit in the Legal and Constitutional Committee are structures for the promotion of gender equality in different sectors. *To what extent will the rich practical experiences and technical expertise of these bodies be used to tap into the process of engendering the constitution?*

Violence against Women

The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993 states that: "The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community". *Is the present constitution cognisant of women's right to bodily and psychological integrity and if not, what measures will be taken to address all issues of violence against women in the new constitution?*

Cultural norms and language use

Patriarchal attitudes persist in most African societies and even when expressions such as "all citizens" and the generic word "man" is used in texts, they are not often understood and interpreted as being generic - and rightly so. There is, therefore, a need to make a conscious effort to "disintegrate" the language used in the constitution by specifying "women, men, youth, children" instead of "person" "man" etc. in order to avoid stereotypes and gender-neutral language and to ensure fairness and equality of men and women. *To what extent is the society conscious of sex and/or gender as bases for discrimination and will legislators therefore consider this fact in the formulation of the new constitution?*

Affirmative action

In Rwanda, the government has made special efforts to include women in political and public sectors despite the fact that the constitution is not explicit on affirmative action or quotas, nor has parliament made laws relevant to the principle of affirmative action. *What are the mechanisms established for a statutory quota or affirmative action and will this be addressed in the new constitution?*

These are some thoughts - arguably not exhaustive - to stimulate discussion around engendering the constitution.

Finally, allow me to conclude my remarks by citing two initiatives in which UNIFEM was involved in supporting innovative strategies for formulating gender-sensitive constitutions and legislation.

In twelve countries of Latin America, a rapist is exonerated if he offers to marry the victim in order to save the family's honour. In almost all codes, adultery is considered a crime for both sexes, except that in the case of women it would simply require having an extramarital affair, while in the case of men it would require having a stable relationship with another woman. UNIFEM and UNICEF jointly published a book to raise awareness on the discriminatory nature of penal codes throughout Latin America and the Spanish Caribbean and the need to modify them. This book provides a useful guide for identifying discriminatory articles in the constitution for amendment.

Also, UNIFEM, in collaboration with NGOs in Brazil, set up a nation-wide communications network called "Rede Revi." This network allows the women's movement in Brazil to monitor and influence debate on constitutional articles involving women's rights and interests. The network sends legislative propositions issued by women's organizations to members of parliament. It also helps to create a body of parliamentarians committed to women's issues. Other examples of good practice in engendering constitutions are the case of Eritrea, South Africa and Uganda although UNIFEM did not partner in these initiatives.

The challenge for democracies in Africa, as in the rest of the world, is to introduce long overdue changes to bring national legislation in line with existing international human rights standards. Legislation that promotes gender equality is the first step in the long road towards eliminating women's continued subordination and securing the full enjoyment of their rights as equal citizens. I thank you all for your attention. ■