

Addressing Formal and Substantive Citizenship

Gender Justice in Sub-Saharan Africa

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Introduction

This essay presents an overview of key issues in literature on gender justice, citizenship and entitlement in the sub-Saharan Africa region. The essay begins with definitions of the key terms, making a special effort to draw from literature generated within the region. The second section, constituting most of the essay, is a review of the key literature, arranged by problem areas on which the literature on gender justice has focused. Problem areas I address are:

- formal or explicit exclusion of women from full citizenship status;
- religion and custom;
- gender inequalities in property relations;
- gender inequalities in family relations;
- women's access to justice;
- sexual and reproductive health and rights; and
- gender justice in economic liberalization.

The third section is a brief reflection on links between research and advocacy on women's rights in the region. The fourth reviews key initiatives by funding organizations, while the fifth summarizes a region-wide assessment of the key achievements in and challenges to achieving and institutionalizing gender justice. The final section makes recommendations on thematic priorities for applied research from 2005 to 2008.

Definition of terms

Gender justice

Most writings both within and outside the region (both academic and in development practice) accept the meaning of the word 'gender' as the social construction of difference between men and women or, as Okin phrases it, 'the deeply entrenched institutionalization of sexual difference' (Okin 1989:6). However, the applicability and relevance of the concept to the African context has generated a surprising amount of contestation among scholars in the region. On one side are African academics who dismiss the concept as Eurocentric. Following the work of Amadiume (1995) and Oyewumi (1997) ¹ they critique the concept's tendency to produce dichotomous models that do not adequately capture the African reality (Steady 2002). They question three assumptions they see as underlying the concept of gender. First, the

assumption of a universal subordination of women, which results in exclusive focus on power relations between men and women, is perceived as narrow because it overshadows other power relations based on race, ethnicity, class and religion which may be a more significant axis of subordination in some situations (Steady 2002). Such a narrow focus in the African context results in a disembodied feminism (Touré 2002).

1 See Bakare-Yusuf (2002) for a critique of Oyewumi's dismissal of 'gender' as a Western concept with no application in Yoruba society.

Second, the separation between public and private and the assumption of men have privileged participation in the public sphere (Steady 2002). This second assumption is criticized for consigning women to powerlessness. It also ignores the possibility that women could draw power from family, religious systems or female secret societies, or provide evidence that women's public participation can vary depending on lifecycle, with older women serving as elders in some communities (Steady 2002; cf. Tamale 2002, who identifies 'domesticity' as the defining feature of women's subordination in Africa). The third assumption, which is largely unacknowledged, is that of a nuclear family model. This makes inevitable the use of gender as the organizing principle in any critique of hierarchy or differentiated roles within the family. Yet the isolated nuclear family is not the dominant family form in the African and other non-Western contexts. Also, 'power centres' are diffused through other kinship categories, which may be based on age, seniority or distinctions between those born into the family and those marrying into it (Oyewumi 2002).

The positions taken in this apparently academic debate are present as undertones in discussions relevant to defining gender justice. There appears to be a perception that those who deny that unequal gender relations are a central feature of African social relations are more likely to take a less politicized definition of gender justice. They are seen as being more likely to adopt neutral definitions, such as 'empowerment of both men and women' commonly found in agencies which embrace gender mainstreaming. Those who take the view that unequal gender relations are central are more likely to take an explicitly political position that defines gender justice as being about overcoming women's subordination (AdeleyeFayemi 2004:45; Tamale 2002; Mama 1996, 2002).

How then is gender justice defined? American liberal theorist Susan Moller Okin defines justice as being about 'whether, how and why persons should be treated differently from one another' (Okin 1989:8). Her definition implies that justice is always relational: How I am treated in relation to someone else? This is very much an American liberal sense of justice, because it looks at similar treatment of similarly situated individuals—justice as equal treatment in a procedural sense. Alternative conceptions focus on substantive justice. The relevant question is whether the outcome leaves the affected person better—or worse-off. Substantive justice does not stop at a sameness standard that presumes comparability in people's diverse situations.

In defining gender justice, some literature in the sub-Saharan Africa region deliberately positions itself in opposition to this sameness or difference approach (Gouws 1999; McEwan 2001). Drawing from the South African context, Gouws

argues that if we mean no more than equal treatment then we will do little to eradicate entrenched power relations on which discrimination is based (Gouws 1999:58).

Outside of the South African context there is little attempt in the literature to explicitly define gender justice, because a large part of the discussion of gender inequality has taken place through the medium of development (Touré 2002; Mama 2002; Ampofo et al. 2004). As a result, there has been less emphasis on clearly defined concepts as would be the case in scholarly discourse. Even scholarship tends to emphasize the empirical rather than the conceptual, often a function of responding to the needs of the agencies commissioning the work (Touré 2002). Initiatives such as the Strengthening Gender and Women's Studies for Africa's Transformation project² are working to change this state of affairs. Scholarship is only now catching up with the practice and attempting to articulate an African sense of gender and related concepts such as gender justice and gender inequality.

Nonetheless, implied meanings of gender justice that emerge from various writings include the following elements:

- Fair treatment of women and men, where fairness is evaluated on the basis substantive outcomes and not on

² www.gwsafrica.org

the basis of a notion of formal equality that uses an implied 'sameness' standard. This means that in some cases, different treatment may be what is needed for a just outcome (Gouws 1999; McEwan 2001).

- Fairness should be at the level of interpersonal relations and at the level of institutions that mediate these relations and offer redress for wrongs (WLSA Zambia 2001:7).
- Acknowledgement that given a long history of gender hierarchy that has disadvantaged women, gender justice inevitably implies realigning the scales in women's favour (Tamale 2002).
- Questioning the arbitrariness that characterizes the social construction of gender (Touré 2002).

Therefore, gender justice is about more than simply questioning the relationship between men and women. It involves crafting strategies for corrective action toward transforming society as a whole to make it more just and equal (Touré 2002); and it means 'a place in which women and men can be treated as fully human' (Mama 2002). Moreover, it implies moving away from arbitrary to well-reasoned, justifiable and balanced—that is, fair—social relations.

Citizenship

Writings on citizenship in the sub-Saharan Africa region question narrow and linear definitions that approach citizenship as simply the relationship between state and citizen. The literature argues for conceptions of citizenship that take into account the

fact that one's experience of citizenship is mediated by other markers of belonging. For instance, such factors as the basis of race, ethnicity, family connections or economic status should be considered (Ndegwa 1997; Kabeer 2002). Feminist and gender studies have emphasized the importance of such a situated understanding of citizenship for women, and how crucial it is that any such analysis proceeds from an understanding of women's lived experiences (Pereira 2002; Okoye 2002).

The literature has also highlighted instances of explicit outright denial of full-citizen status to women. For instance, this is manifested by citizenship laws that allow men to pass on citizenship to their foreign wives and children, but does not allow the same right to women married to foreigners—an issue that was given profile by the Unity Dow case in Botswana. Botswana has since changed its citizenship law, but for other sub-Saharan countries this continues to be an issue (Ncube 1998 on Zimbabwe; Pereira 2002 on Nigeria). In Kenya, women's rights organizations hoped that deliberations on a new constitution would present the opportunity to redress this inequality. But their demands met with surprising hostility and this exclusion then became firmly entrenched in the draft constitution. It was adopted by a Constitutional Conference in March 2004, whereas before it had existed in ordinary legislation (the Citizenship Act). In effect, it will be harder to challenge if and when the new constitution is enacted.

In addition to challenging this literal and explicit exclusion from formal citizenship status, the literature also draws attention to a 'covert and unacknowledged asymmetry in citizenship' (McEwan 2001:53). In a substantive sense, women are consigned to 'second-class citizenship' because of the absence of protection for women's rights in crucial areas, systemic failure to implement the rights they do possess as citizens, and failure to recognize their contribution (for instance, to the national economy) (Tamale 2002; Pereira 2002; FIDA-Kenya 1996). Two often-cited examples of absence of protection of women's rights are as follows.

- A failure to define 'sex discrimination' or to explicitly forbid sex discrimination is key. This was the case with Kenya's constitution until 1997, and Zimbabwe and Botswana until 1996 (Mvududu and McFadden 2001:182; Ncube 1998; Pereira 2002). Benin, Niger, Zambia, Lesotho and Swaziland do not mention the equality of men and women at all (Mvududu and McFadden 2001:183; Adjamagbo-Johnson 1999).
- Exemption of religious and customary laws dealing with family from the anti-discrimination provisions of the constitutions is common. Such omissions have far-reaching implications for gender equality within the family and for women's economic security at key moments of vulnerability, such as post-divorce or following bereavement (Nyamu-Musembi 2000a and b; WLSA 1995). Even in contexts where religious and customary laws are not explicitly exempt, as in the South African constitution, gender equity advocates insist that domestic relations still do not come under state scrutiny. Instead, 'private patriarchies' continue to pose practical hurdles to the realization of full citizenship by women (McEwan 2001:53; Naggita-Musoke 2001; Gouws 1999; Naggita 2000; Sow 2002).

Based on the concerns reflected in the literature, a definition of citizenship that would make sense for a discussion on gender justice would have to address both formal and substantive citizenship. Formal citizenship is about rights and obligations between

state and citizen. Ideally, it would entail having one's personhood recognized fully through the according of rights on an equal basis with other citizens. Substantive citizenship goes beyond the confines of formal politics and law to encompass 'the economic, social and political relationship between social groups and structures of power that mediate the standing of individuals in the polity (McEwan 2001:51). It entails the absence of constraints imposed by lack of action on the part of state institutions, or constraints imposed by norms, relationships and institutions at the sub-national or informal level that mediate one's experience of formal citizenship, regardless of gender.

Review of key literature in sub-Saharan Africa

This section reviews the literature in the region, highlighting key issues which preoccupy gender-justice advocates.

Formal or explicit exclusions of women from full citizenship status

This issue has already been referred to under the discussion on definition of citizenship, above. Formal restrictions to women's citizenship status are the norm rather than the exception in the region. These restrictions are present even in recently revised constitutions, such as Nigeria's 1999 constitution. Section 26 (2a) of this country's 1999 constitution grants Nigerian men the right to confer citizenship by registration to their foreign wives, but no such right is granted for Nigerian women married to foreigners (Pereira 2002; Okoye 2002). Recent reforms, such as Uganda's 1995 constitution, South Africa's 1995 citizenship law, and Botswana's amended citizenship law following the Unity Dow case do away with these restrictions.

The continued operation of such overt exclusion of women from full citizenship is quite paradoxical in view of decades of international attention to women's human rights. There is renewed interest in the subject of gender and citizenship and in the framing of gender injustice in terms of lack of citizenship (Okoye n.d.; Pereira 2002; Lewis 2002). This needs to be picked up in designing a research agenda for gender justice in sub-Saharan Africa and is discussed further in my 'Recommendations' section, below.

Religion and custom

The discussion above has already referred to the exemption of customary and religious family norms and practices from the prohibition of discrimination under various African constitutions. This feature cuts across the region.³

Literature in the region points to a worrying trend of increasingly conservative expressions of religion and custom which are openly hostile to a gender justice agenda (Abdullah

³ Among the constitutions that contain such exemptions in various forms are Angola, Benin, Botswana, Ghana, Kenya, Lesotho, Mauritius, Namibia, Niger, Seychelles, Swaziland, Zambia, and Zimbabwe.

2002; Mbow 2002; Mama 1996; 2002; Sow 2002; Sow 2003; Pereira 2002).

This trend is nowhere else more visible than in Northern Nigeria. Following the 1999 elections, several state governments in northern Nigeria have declared the extension of Islamic *sharia* law from family matters to criminal matters. International appeals by human rights groups have given high profile to cases of women convicted and sentenced to death by stoning on adultery charges. Currently sharia operates in twelve states, with plans for its adoption in ten more states (Pereira 2002). Nigeria has a total of thirty-six states, so if this happens a majority of the states will be governed by sharia criminal law. Therefore, controversies this issue generates will no longer be confined to a few states. The issue of the fundamental conflict between sharia and the rights provisions in the federal constitution, such as gender equality, remains unresolved (Adbullah 2002). The cases in which higher courts have quashed sharia convictions have been decided on technical grounds, for example, that the law should not have been applied retroactively (Ladan 2002). Commentators point out that this tip-toeing around direct questioning of the system, particularly its lopsided and gender-biased criminalization of sexual activity, is simply postponing the obvious conflict with the federal constitution's principle of equality (Pereira 2002).

Gender inequalities in property relations

Disparity in access to and control of resources is seen as one the most important indicators of gender injustice in the region. Gender-based inequality in access to and control of land comprises the bulk of the literature on unequal power relations, because land is the most important resource in an agriculture-based economy, and also due to centrality of land in defining social status. The arguments made for gender equality in land relations can be classified into four categories (Mbaya 2001:145):

1. welfare (land as security against poverty);
2. economic efficiency (women's access to and control of land will provide incentives for better use of the land and will help move them beyond subsistence production);
3. equality (inequality in land distribution is a signifier of entrenched gender inequalities); and
4. empowerment (control of land has symbolic status in family and society).

The gender-based injustices highlighted in the literature can be summed up as follows.⁴

- Few state programmes address landlessness in general, and landlessness of female-headed households in particular. The few incidents of state-led land reform have either lacked a gender component altogether or were inadequate. For instance, reforms might simply provide poor women with land without the necessary inputs to make the land productive and valuable (Meer 1997; Gaidzanwa 1995; Ishengoma 2002; Vijfhuizen 2001). Included in this literature is a discussion of the attendant problems of lack of access to credit facilities, extension services, limited access to marketing facilities or to relevant decision-making bodies.
- Under-representation or complete lack of representation of women in key decision-making institutions on land and other key resources. Some countries have not

addressed this problem at all; others have made recent changes stipulating minimum representation for women (for instance, Uganda and Tanzania's 1998/9 reforms in land laws).

- Lack of accessibility of land bureaucracies, such as registries and dispute resolution tribunals. This is a

4 In addition to the writings specifically cited here, useful sources on gender and land in the region include: on Gambia, Touray (1998) and Sisay-Sabally (1998); on Ghana, Kotey and Tsikata (1998), Dowuona-Hammond (1998); on Sierra Leone, Tejan-Cole (1998), Thomas et al. (1998); on Nigeria, Ayua (1998), Tilly-Gyado (1998). On the region in general: Butegwa (1994).

general problem and it does not affect only gender equality. In many countries the land system needs to be rationalized and simplified for it is too complex for a lay person to navigate through it. The fact that illiteracy rates are generally higher for women suggests that women could be at a greater risk of being disserved by the institutions.

- Inequities are embodied in customary practice. Specific ways in which custom is seen as disempowering and dispossessing women include: patrilineal succession, which excludes daughters; the embedded notion that property ultimately belongs to the husband and his lineage, not to the couple (or marital partnership where polygamous) and, therefore, that wives cannot participate in major decisions; inheritance practices that do not recognize a widow's claim, especially over property that is described as ancestral and belonging to the lineage; perception of daughters as transient 'passers by' and wives as 'comers in' to the family so they have no durable interests in the family's resources; and notions that the labour of wives and children is owned by the husband/father.

- State-initiated programmes that lead to erosion of women's property rights or reduced control over land by women. The most common example is the land titling programmes that have been undertaken in the region to varying degrees. In countries such as Kenya, titling has been going on since the 1950s. An almost universal trend across the region is that titling programmes often result in a transition from family holdings to individually owned land parcels registered in the name of the 'male head of household' (Lastarria-Cornheil 1997; MeinzenDick et al. 1997). In Kenya for instance, only 5 per cent of registered land titles nationally are held in women's names (Nyamu 2000a; 2000b). In Uganda, the figure is 7 per cent (Tamale 2002; Kabonesa 2002). These statistics are remarkable, given that there is no legal requirement that land be registered in the name of the 'male head of household'. It is justified on the basis that this is what reflects the custom or expectations of the communities involved (Pala 1983; Nyamu 2000a; 2000b), notwithstanding evidence that it in fact contradicts customary practice: in most communities while the authority of fathers/husbands is recognized they are not perceived as the outright owners of family land. Major decisions such as sale are only made with the consent of other family members (Pala 1983; Nyamu 2000b 2002; Lastarria-Cornheil 1997; Shipton 1988; Mbilinyi 1994; Davison 1987).

The discussions by gender justice advocates point out that even though women's authority over land is limited under customary tenure, there is no justification for the presumption that men have absolute ownership. Most African customary tenure systems recognize certain limits to a husband's authority, such as the need to consult the wider family network before major decisions are made. However, when state-led titling programmes are undertaken and titles issued only in the husband's name, such controls are eroded. It is then possible for the land to be freely transferable as a commodity where the interests of family members, including women, are jeopardized. This has happened in some cases involving mortgage or outright sale of land (Lastarria-Cornheil 1997; Shipton 1988; Nyamu-Musembi 2002a; Mbilinyi 1994; Davison 1987).

However, to criticize state-led titling programmes for ignoring customary controls is not to argue for a simple return to customary tenure. Some gender justice advocates point out that such an unproblematized return to custom is already influencing some policies within the region. This includes such aspects as land-tenure reform policies where key decision-making authority over land allocation are vested with traditional authorities, without engaging at all with the unequal gender relations that shape those traditional authorities (Whitehead and Tsikata 2003).

Writings on gender injustice in property relations face the challenge of presenting clear solutions for a problem that arises from the interaction of multiple and complex factors. For instance, formal laws were introduced to facilitate the transferability of land as a commodity. However, by focussing on individual ownership, other property rights were displaced, ever-changing social norms affected relationships in the context of increased contestation around scarce resources. Taken together, this situation triggered new forms of exclusion and reinforced old ones. As a result of these sorts of situations, some literature calls for a focus on a dynamic questioning of the attitudes and ideologies that justify and maintain inequalities (Tamale 2002; Nyamu 2000a; 2000b).

Research gaps in gender and property relations

Research on the question of gender and land in the sub-Saharan Africa region needs to reduce concrete institutional practices that reinforce gender inequalities in property relations. Where favourable laws or policies have been won or conceded, there is little research on how institutions (both formal and informal) are implementing them and with what results for women. Anecdotal evidence suggests that the practice is mixed but, emphasizes that institutions usually fail to deliver what laws or policies promise. For example, a change in the law in Botswana in 1996 was intended to do away with the requirement that women obtain their husband's counter-signature for land transactions. However, a 1998 review of laws affecting women found that when women made applications to the Land Boards for allocation of land, they were still required to produce evidence of their husband's consent (Mbaya 2001:30).

In Lesotho the 1979 Land Act was supposed to make it possible for women to own land in their own right, but research by Women and Law in Southern Africa (WLSA) in 1998 documented a curious practice: married female employees receiving a building loan as part of their employment benefits were required to bring their husbands to sign the necessary papers at the workplace and at the bank before the

funds could be released, making it impossible for married women to acquire land independently (Mbaya 2001:46).

In Kenya, transactions such as sale and sub-division of agricultural land are supposed to be approved by district-based Land Control Boards. These routinely require a formal hearing to establish that family members whose interests are likely to be affected have consented to the transaction. Although enquiries are made of wives and sons, brief observation of such boards' practice suggests that no mention is made of daughters' interests (Nyamu 2000b). It would be useful to carry out more systematic empirical research, particularly in the countries where recent changes in land laws have been accompanied by the establishment of new institutions at the grassroots level who have responsibility in allocation of land and in resolution of conflict. Examples of these new institutions include Tanzania's Village Land Councils and Uganda's Land Tribunals, both at the parish and district levels, following the enactment of the new land laws in 1998.

Research on gender inequalities in property relations also must address mainstream private sector institutions—banks and other financial institutions—and the relevant regulatory environment. This research needs to show that regulatory frameworks that appear at a first glance to have nothing to do with gender relations actually play a crucial role in shaping institutional practices which have far-reaching, gendered consequences. Gender bias in the operation of credit and the mainstream financial sector as a whole has been written about, citing women's lack of collateral is due to non-registration of their interests in family land. But this is often discussed as something entirely separate from property law reform—or family law reform. Rarely is there a thorough questioning of underlying biased assumptions in financial-sector reform that results in adverse consequences for women. One study that does cite this is a GERA study of Uganda's financial sector reform (Kiiza et al. 2000). Reforms that were supposed to encourage small- and medium-scale entrepreneurs to borrow had largely benefited men—but this is a sector that is dominated by women. The study highlights three assumptions behind these financial sector reforms that account for this outcome, stating that the typical entrepreneur who is intended to benefit from these reforms:

1. owns titled land in a large urban centre;
2. has resources to hire experts to write business plans and feasibility studies; and
3. has a long-established relationship with a bank.

As a result of these unstated and unacknowledged assumptions, the bulk of lending since the reforms were instituted has gone to the manufacturing sector. Very little goes to the agricultural and retail marketing sectors where women are concentrated.

More studies like this are needed because literature on gender inequalities in property relations mostly focus on family and state titling programmes, leaving the private sector untouched.

Gender inequalities in family relations

Research in this area is already quite comprehensive, thanks to groups such as WLSA. Their most recent research in the late 1990s and early 2000s played a crucial role in highlighting and documenting the mismatch between rapid transformation in African family arrangements and slow-to-adapt government policies and judicial practice (Ncube et al. 1997; Kidd et al. 1997; Chuulu et al. 1997; WLSA 1998; Ipaye 1998). The literature demonstrates how the contemporary African family experience destabilizes variables taken for granted in defining family, such as co-residence and biological parents having primary custody of the child. Empirical research in several countries shows that where state policies and practices operate with these misplaced presumptions, people adapt their family forms in order to avail themselves of benefits such as allocation of municipal housing. However, problems become visible when disputes arise, because judicial practice tends to be inflexible; courts insist on applying prescriptive rules rigidly—for instance, on succession—with unjust results for less powerful family members such as divorced wives, widows and orphans.

Despite impressive research and advocacy efforts, change is slow. Little has changed at the level of institutional reform, either formal or informal. The late 1960s and the 1970s saw an era of enthusiasm for comprehensive reforms in family law throughout the region. In 1968 Kenya set up a commission for the review and reform of marriage and divorce laws, and another commission to reform succession laws. Uganda set up a similar commission at the same time. In neither country were the commissions' proposals enacted into law (Mayambala 1996; Nyamu 2000b). Tanzania enacted a law that borrowed heavily from the proposals of the Kenya commissions (Rwezaura 1998).

Now it appears that the momentum for comprehensive family law reform has died down in most countries of the region. The strategy of family law reform advocates appears to have shifted to a more piecemeal approach, approaching one problem area at a time. Uganda's ongoing effort to pass an all-encompassing domestic relations law is an exception. Examples of problem areas tackled so far include:⁵

- **Guaranteeing women's marital property rights:** The literature questions laws and judicial practices based on the assumption that women are non-productive dependants, rather than contributors to family property in their own right who are entitled to equal division of family property (Kidd et al. 1997; WLSA Zimbabwe 2000; Nyamu-Musembi 2002b; Bowman and Kuenyehia 2003; Kaudjhis-Offoumou 1996). The literature also questions overt gender-based distinctions in family law and practice that affect adversely on women's claims to

⁵ For a useful compilation of readings on family law and other issues of gender and law in the sub-Saharan Africa region see Bowman and Kuenyehia (2003).

property. For instance, in some countries courts are required to take a wife's adulterous conduct into account in deciding on spousal support and marital property division, but no such account is taken of a husband's adultery (Tibatemwa-Ekirikubanza 1995:74).

- **Regulating unofficial cohabitation to mitigate women's vulnerability:** (Gopal and Salim 1998; KabeberiMacharia and Nyamu 1998; Rwezaura 1998; KaudjhisOffoumou 1996).

- Devising legal frameworks for assuring women's rights in polygamous unions: (Mayambala 1996; TibatemwaEkirikubanza 1997).
- Eliminating biases such as father preference or paternal power in custody disputes and son-preference in inheritance disputes. These biases are present in official policy and judicial decision-making and are invariably justified as custom, despite evidence that customary practice itself allows more flexibility (Armstrong 1994; Stewart 1998; Belembaogo 1994; Adjamagbo-Johnson 1999; Sow 2003)). The women's movement in Senegal has run a very high profile campaign on this issue.⁶
- Inadequate laws on maintenance (support for children and spouses requiring it) after divorce, and poor enforcement of support orders (particularly child support) (Armstrong 1990; Banda 1995).
- Succession and inheritance: The literature on gender justice related to succession and inheritance is concerned with inadequate legal protection of widows. To begin with, the very status of widowhood is surrounded by uncertainty. In a context where most marriages are customary marriages which are unregistered, it is not uncommon for a dead husband's family to refuse to recognize his partner as a widow, where property or custody issues are contested (WLSA 1995; Kameri-Mbote 1995; Tibatemwa-Ekirikubanza 1995). Second, ritual

⁶ See www.famafrique.org/parenteconjointe/forum/summary.html

practices are required of the widow, such as seclusion for a period of time and non-consensual sex with a male relative of the deceased husband (WLSA 1995; Human Rights Watch 2003).

The issue of widowhood and inheritance looms ever larger now given concerns about the increased precariousness of women's entitlements in the context of post-conflict reconstruction and HIV/AIDS. The sheer scale of these catastrophes makes visible the insecurity of women's entitlement to family resources. Family arrangements are becoming increasingly fluid, largely in response to adverse economic conditions, with the very definition of family constricting or expanding depending on availability and scarcity of family resources at any one point. Inclusion and exclusion from family membership for specific purposes—such as inheritance—is increasingly being determined less by predictable 'rules' and more by factors such as reciprocity and responses to practical hardships such as caring for HIV/AIDS sufferers and orphans (WLSA 1995:11,23).

Arguably, the key factor in explaining why years of research and advocacy on gender justice in family relations have not translated into action is that in most of sub-Saharan Africa, family relations are governed by an overlap of statutory, customary and religious systems of law. The bulk of family decisions in dispute or non-dispute situations are made not by reference to formal law, but by reference to cultural or religious practice in whatever form. Empirical material by WLSA, Women and Law in East Africa (WLEA), Women in Law and Development in Africa (WiLDAF) and other sources attest to this (Rukata 2002; Sow 2002; Bowman and Kuenyehia 2003). It is not simply that these systems co-exist side-by-side. Most people govern their

relationships by reference to two or more systems, which makes the search for gender-just solutions anything but straightforward.

Views of gender-justice advocates vary on what should be done about gender injustices based on the basis of custom and religion. Some invoke international human rights norms and ideals of 'women in development' to argue that such customary and religious practices should be abolished through legislation or refusal to accord recognition to their institutions.⁷ Others acknowledge the challenges that custom and religion pose for gender justice, but also recognize their wide application for the majority of women and therefore the need to engage with them in some form to explore their potential contribution to struggles for gender justice (Nyamu 2000a; Nyamu 2002a; Rukata 2002; Nhlapo 1995; Stewart 1998).

This will continue to be an important area of research given the trend noted earlier regarding the rising influence of invariably conservative expressions of custom and religion within the region. It is important that the agenda for gender justice engage with this trend—it cannot be ignored.

There are a few examples of organizations devoted to research and advocacy on the issue of reform of customary and religious laws. The Centre for Applied Legal Studies (CALS) has been involved in the process of reform of customary law of marriage and succession initiated by the South African Law Commission. CALS has been working closely with the Rural Women's Movement.⁸ Women Living Under Muslim Law (WLUML) has also focused on Islamic family law, documenting and comparing its application in various countries, and the implications for gender justice (WLUML 2003).

Gaps in research and advocacy on gender justice in family relations

On the whole, a large body of research already exists on this topic, as is evident from the overview above. What could generate new knowledge and open up new possibilities for realization of gender justice is an examination of recent governmental and non-governmental initiatives that engage directly with reform of customary and religious family norms

⁷ For a comprehensive review of this literature see Nyamu 2000a.

⁸ www.kit.nl/gcg/html/south_africa_cals_and_gap_pro.asp

and practices. The CALS Gender Research Project is already undertaking work in this area. The centre has been involved in a study in which they are documenting their own experience as a key actor in advising on and monitoring South Africa's systematic reform of customary family law. Groups such as Baobab for Women's Rights have been at the forefront of litigating cases challenging the legality of sentences handed down by sharia courts, questioning the legality of the decisions by reference to Islamic legal principles as well as Nigerian constitutional principles. There are lessons to be learned from these initiatives that move away from what has been the conventional approach in this area, namely, of granting of rights in formal law and hoping that women will use them

Women's access to justice

The bulk of research and advocacy on women's access to justice concerns itself with making courts accessible to women and other marginalized groups. It focuses on restricted access to justice institutions on account of factors such as geographical location, affordability, language and absence or inadequacy of legal assistance services and legal awareness on the part of women (Kuenyehia 1990; Butegwa 1990). Since the mid-1990s, some works have gone beyond a narrow focus on women's use of courts or formal legal services. WLSA research on women's access to justice adopted an approach that involved 'following' women through the various paths they took to pursue justice in various situations. This broadened the ambit of institutions that are thought of as 'justice delivery institutions' in relation to women's access to justice beyond courts to family, church, police, legal aid offices, social welfare departments, municipal housing agencies, residents associations, and district administrators (WLSA Zimbabwe 2000; WLSA Zambia 1999; WLSA Botswana 1999; COVAW-Kenya 2002).

Other issues addressed by literature on this theme include:

- under-investment in those parts of the judiciary that have a significant effect on women, such as family courts

(Mills 2003; Nyamu-Musembi 2005), and the attendant under-provision of legal aid services in those areas;

- under-representation of women on judicial institutions and other administrative agencies central to the administration of justice (WLSA Zimbabwe 2000; WLSA Zambia 1999; WLSA Botswana 1999);
- a pattern of gender-biased decision-making when judicial or quasi-judicial institutions have been decentralized to the local level (Khadiagala 2001; Byamukama 2001).

Research gaps on women's access to justice

Literature in this area has a long history in the region. However, it is quite surprising that research has not yielded the systematic, quantitative data that would be crucial to making a case, for instance, for more investment in those parts of the justice sector that serve women the most, or to question resource allocation decisions that further widen the gender gap in access to justice institutions and legal services. There is no data available to answer basic questions such as use of probate and administration of wills by the general population. This would enable an assessment of whether the wave of reforms to succession laws have meant that more people are using the formal system rather than customary or religious systems. Moreover, have these services been used by women? Quantitative studies would also monitor and convey the effect of legal empowerment initiatives. As well, they could explore correlations between an increase in the number of women serving in the judiciary and court decisions favourable to gender equality. All represent strategies to have on hand when seeking to influence policy.

The absence of such data can be attributed to the absence of a quantitative inclination and the necessary skills among the people who have been active in this field, who are largely legal professionals and paralegals. A starting point toward addressing this gap would be to link up with the expertise accumulated by those in the region who are involved in gender budget-initiatives.

Sexual and reproductive health and rights

Tackling gender injustice in this area has to contend with deeply entrenched ideas of masculinity and femininity, the former associated with dominance while the latter is associated with passivity. These ideas are by no means unique to sub-Saharan Africa (Bell et al. 2002:17). The literature on sexual and reproductive health in the sub-Saharan region observes that in general, women have little sexual and reproductive autonomy. This refers to control over decisions such as whether or not to have sex, whether or not to have children, how many children to have and how to space them, whether to use contraception, what type of contraception to use and whether to carry a pregnancy to term—and what measures to take to prevent sexually transmitted diseases (Adjetei 1995). To this list may also be added what action to take in cases of infertility. Anne Hellum's research in Zimbabwe shows responses ranging from a couple's joint decision to adopt or foster, seek medical treatment or traditional healing, to a husband's unilateral decision to take a second wife (Hellum 1999). All of these examples imply varying degrees of a wife's control over the decision. Contemporary discussion on sexual and reproductive health and rights has tended to revolve around three issues: family planning, abortion and HIV/AIDS.

Family planning

The aftermath of the UN Conference on Population and Development held in Cairo in 1994 marked a transition from population control to family planning strategies. The former focuses simply on limiting total population size or slowing down the population growth rate in a country, and therefore women's reproductive health features only instrumentally as a means to this end. The question of their rights never arises. The latter approach enables the pursuit of multiple goals such as providing services that enable people to exercise choice over fertility (including offering infertility treatment), improving maternal and infant health, and improvement of the status of women to give them more control over reproductive decisions as well as opportunities to develop other aspects of their lives (Bowman and Kuenyehia 2003:248).

A review of reproductive laws and policies in seven Anglophone countries in 1997 found that a majority were in the population control mode. Some examples: Ghana's policy was expressed in form of targets, such as 'reduce total fertility rate from 5.5 per cent to 3 per cent'; and 'reduce number of women who marry before age 18 by 80 per cent' by the year 2020 (CRLP 1997). A subsequent review in 2001 shows that the Cairo conference did influence a shift in some of the countries, notably Kenya, South Africa and Zimbabwe, to take a more holistic approach (CRLP 2001). On the whole, even in the aftermath of the five-year review of the Cairo Platform, the population policies of Anglophone Africa still struggle with the balance between population stabilization and personal autonomy in matters of reproduction and sexuality (CRLP 2001; Ampofo et al. 2004:689).

Initiatives by women's rights organizations have engaged with the state to press for:

- Enabling laws and policies: challenging state policies and practices of front-line service delivery officials that reinforce women's lack of control over sexual and reproductive decision-making. For instance, in some countries, state-run health clinics are not allowed to give family planning advice or services to a married woman without her husband's written consent. A husband does not require his wife's consent to seek such services (Adjetey 1995). A culture of silence over sexual matters makes it even more difficult for women to raise these issues, let alone organize to challenge such official practices.
- Assurance of quality of services through regulation: contraceptive safety has been a key issue in view of allegations of dumping sub-standard pharmaceutical products on African women, absence of informed consent, and down-playing or outright withholding of information on side-effects (Bowman and Kuenyehia 2003:253).
- Assurance of quality of services through investing in public awareness and education programmes on proper use of family planning technologies.
- Initiatives aimed at social transformation to increase women's bargaining power in family planning decisions. Examples include campaigns that convey messages on the co-responsibility of men and women in family planning and parenting, and official programmes that are designed with this in mind as is the case in Tanzania and Zimbabwe (Bowman and Kuenyehia 2003:255).

Abortion

In all sub-Saharan African countries except South Africa, abortion is dealt with under the criminal law. In most countries there is absolute prohibition except where necessary to save the mother's life or where her physical health is threatened. (Examples include Ethiopia, Kenya, Malawi, Mali, and Senegal, Tanzania, Nigeria, Côte d'Ivoire, Cameroon). In others the restriction is broadened to include not only physical but mental health and also incidents of rape or incest and any risk of abnormality for the baby (Botswana, Burkina Faso, Ghana, Zimbabwe). The broadest exceptions take all these factors into account as well as the mother's age, the potential effect on other children in the family (in Zambia), which would open the door to consideration of economic circumstances (CRLP 2001; Bowman and Kuenyehia 2003; FIDA-Kenya 2002b).

South Africa's law stands out in contrast to the rest of the region because it makes explicit an intention to create a 'right of choice' and to reverse previous laws that were restrictive. In the first trimester, the decision rests solely with the mother, and the procedure may be carried out by a trained midwife. In the second trimester termination will be allowed if a medical practitioner certifies that there is risk to the mother's physical or mental health, or that there is risk of abnormality, or if the pregnancy resulted from rape or incest, or if continued pregnancy would significantly affect the social or economic circumstances of the woman. Even in the third trimester, termination is permitted with the opinion of two medical practitioners and where there is danger to the woman's life or risk of severe malformation or risk of injury to the foetus.

Women's rights groups, health professionals and government bureaucracies designated to deal with women have made proposals for reforms to broaden the range of exceptions, and also to remove administrative and procedural obstacles that further restrict access to services even where termination is legally permitted under the exceptions. The main argument used in these proposals is that such action is necessary to save the lives of a high number of women who die from unsafe, illegal abortions. A corollary argument is then made on the basis of cost to the health service, which must deal with complications resulting from unsafe illegal abortion. In many countries, maternal mortality from illegal abortions is the primary cause of death for women between the ages of 15 and 44 (CRLP 2001; FIDA-Kenya 2002b). Activists have found it politically difficult to argue for the South African model and this has not been offered as a proposal in any other country in the region—although it is often referred to (see for example FIDA-Kenya 2002b). Even these narrowly tailored proposals encounter immense opposition.

HIV/AIDS

The centrality of sexual and reproductive autonomy has become more evident in view of the HIV/AIDS crisis in sub-Saharan Africa. The HIV/AIDS crisis has made more obvious the link between women's ability to exercise control over decisions around their sexuality and bodily integrity, and their ability to protect themselves from sexually transmitted diseases. Statistics show that the main mode of transmission of HIV in the region (and globally) is heterosexual, and that women are at greater risk than men, and younger women are a particularly high-risk group. As of 2004, statistics showed that a woman in sub-Saharan Africa is 1.2 times more likely than a man to be infected with HIV. Among young people aged between the ages of 15 to 24, this sex ratio rises to 2.4 (UNAIDS 2004).⁹

Literature on gender and HIV/AIDS highlights the failure of many initiatives to take into account gender inequalities and power differentials, which are present at every stage of the prevention-care continuum. They affect the possibilities of prevention (which implies ability to negotiate in sexual relations—whether and how to have sex), ability to access appropriate information, ability to access quality care and overall chances of survival (Bell et al. 2002: 5). The literature calls for a rights approach which embodies greater recognition that women's sexual and reproductive rights are crucial to increasing options for HIV prevention. In addition, the literature stresses the need for an awareness of the interdependence of sexual and reproductive rights to the broader context of inadequate control of resources, religious belief and practices, as well as poor governance (Bell et al. 2002).

Other issues covered in the gender and HIV/AIDS literature include:

- stigma and discrimination experienced by people living with AIDS; and
- increased burden of care on women, in a context where health systems are weak and there is little investment in home-based care along with no social security.

Responses of women's movements in the region have taken a combination of service delivery and advocacy approaches. Service delivery responses include:

9 Factors that account for a higher ratio in this age group include early marriage and 'survival sex' (sex in exchange for material gain, whether commercial or not). (BRIDGE 2002:21).

- counselling, medical care, targeted preventive measures (such as provision of the female condom) nutritional support, care for orphans and vulnerable children.10 Community-level awareness raising, but main activities focus on supporting women infected or affected by HIV/AIDS;
- income-generation projects to support women and families affected; and
- formation of support groups at the national and community levels, plus international networking among HIV-positive women.11 The networks also undertake advocacy and awareness raising work.

Advocacy responses have focused on:

- campaigning to ensure free and universal distribution of anti-retrovirals, including giving priority to prevention of mother-to-child transmission,12
- community level action against stigma, which deters testing and access to care and treatment services;
- 'engendering' the approaches of National AIDS Control Programmes. Examples include challenging prevention messages that promote gender stereotypes or that are 'gender neutral' and which fail to question unequal gender relations (Bell et al. 2002:29,30); and
- undertaking participatory research on sexual and reproductive rights so as to respond more adequately to the needs of HIV-positive women in designing programmes on prevention, access to care, treatment

10 See, for example, Women fighting AIDS in Kenya (WOFAK: www.wofak.or.ke.) For examples of other country-specific NGO (or joint NGO and government) service delivery initiatives in the region see www.unaids.org/en/geographical+area/by+region/subsaharan+africa.asp.

11 International Community of Women Living with HIV/AIDS (ICW): see www.icw.org

12 By far the most widely known initiative is South Africa's Treatment Action Campaign: see www.tac.org.za

and support. This has been undertaken largely through and by members of the International Community of Women Living with HIV/AIDS in various countries. Participatory research projects have included comparative 'mapping' of advocacy and policy opportunities in the region.13

Research gaps in sexual and reproductive health and rights

The area of HIV/AIDS registers many research and advocacy initiatives as well as sources of funding. Therefore, this need not be a primary area of focus, except with regard to the implications of HIV/AIDS on issues such as social protection, inheritance and access to resources, along with women's labour market participation as has been highlighted in the sections on property relations and on economic liberalization.

There is a case to be made for focussing on sexual health conditions that are stigmatizing for women but which tend to be ignored because they are not considered life-threatening or as 'cutting edge' issue in the health sector. Examples include post-birth conditions such as vesico-vaginal fistula (VVF), or incontinence. Conditions such as this are easily eclipsed by the sheer magnitude of the HIV/AIDS crisis in the region. A few initiatives for treating these conditions have been established, but even where initiatives exist the key challenge has been how to get women to overcome the stigma and avail themselves of the treatment.¹⁴ This forms a small part of a

¹³ For example the 'Voices and Choices' participatory action research project in Zimbabwe aimed at improving the sexual and reproductive rights of HIV-positive women by starting from an understanding of their lived realities. See www.icw.org/tiki-index.php?page=ICW's+Past+Activities. See also Feldman et al. (2002). Other ICW initiatives have included increasing the understanding of interested parliamentarians, and strengthening links between groups of HIV-positive women and the parliamentary process so that they can better influence it.

¹⁴ See, for example, Abah 2002, documenting innovative use of community theatre as an entry point to public debate on this highly stigmatizing condition in Northern Nigeria.

five-year research programme on sexual and reproductive health and rights that has just been set up under the coordination of IDS, Sussex in partnership with two African regional research networks INDEPTH (Ghana) and the African Population and Health Research Centre (Kenya), among other institutions.¹⁵ Even so, this still remains an area that accounts for social exclusion for certain categories of women, and a lot could be learned comparatively about what works or does not work to enable women to overcome stigma.

One other observation is that there is a health focus in sexual and reproductive health and rights research and advocacy, so that sexual rights are discussed only in the light of a health condition (Cornwall and Welbourn 2002; Ampofo et al. 2004). Sexual health is important, but as women's rights activists in South Africa have already learned, pursuing a reproductive health agenda is not always synonymous with pursuing a sexual and reproductive rights agenda.¹⁶ Therefore, research could be supported in the direction of broader exploration of the centrality of sexuality to women's (particularly young women's) empowerment and disempowerment. A starting point might be participatory action research that seeks to draw lessons from past and on-going initiatives that have involved young women so as to gain a comparative understanding of what strategies are perceived as empowering.¹⁷

¹⁵ The other institutions are the London School of Hygiene and Tropical Medicine, Engender Health (US) and BRAC (Bangladesh).

[16](#) In a fascinating account of the South African campaign on anti-retroviral drugs for prevention of mother to child transmission, Albertyn and Meer (2005) show how the campaign's focus shifted, as a variety of actors got involved and as a litigation strategy was developed, from a woman's right to choose to have a healthy baby to a right to access treatment.

[17](#) For some examples of such initiatives see Cornwall and Welbourn (2002). See also African Partnership for Sexual and Reproductive Health and Rights of Women and Girls (AMANITARE) www.amanitare.org

Gender justice in economic liberalization

Literature in the region has explored interconnections between global economic processes and local contexts that affect women particularly since the Structural Adjustment Programmes of the 1980s (Adeleye-Fayemi 2004; CherelRobson n.d.). The feminization of poverty—which is a global phenomenon highlighted with respect to other regions as well—is the underlying theme in this literature. The early literature focused on showing the negative effect of policies such as economic liberalization and privatization of basic services on vulnerable groups. Gender-specific analysis of the reforms focused on aspects such as the effect of the withdrawal of health subsidies on women's time use, well-being and care responsibilities. The result was that this literature served as an argument for social safety nets for vulnerable groups rather than as a fundamental critique of the adjustment policies. (Ilumoka 1994; Mbilinyi 1993; Stewart 1992).

A big contribution to the literature on women and economic restructuring comes from advocacy groups working on economic justice who are linked into international networks; one example is the Third World Network. Due to the advocacy focus, the literature has often been criticized for lacking in evidence of causality between economic reforms and negative and gendered consequences. In response to this criticism, there is a concerted effort to undertake more conceptual and policy-relevant work on sub-Saharan African women's engagement with the package of economic reforms in the region (Fall 1998; Tsikata and Kerr 2000). The Gender and Economic Reforms in Africa (GERA) network was formed in 1996 and launched a key publication with contributions based on action research from around the region (Tsikata and Kerr 2000). The issues covered in the publication include the gender dimension of reforms to financial services, effects of currency devaluations on rural women's food security, and the growing trend of informalization of work and casualization of labour.

This last issue is particularly important given trends that indicate increased participation of women in the labour market at the same time as there is increased erosion of workers' rights in the trend toward globalized production. Some studies, including some in the GERA collection, highlight the ambiguous space occupied by the Export Processing Zones (EPZs) in relation to labour regulations. In many countries, it is uncertain whether they are subject to regulation concerning minimum wage, maximum hours or unionization (Kenya Human Rights Commission (KHRC) 2004; Gwaunza et al. 2000). Studies have documented the injustices experienced by workers in this sector, most of whom are women. Among such injustices are:

- *Lack of prospects for skill acquisition and career advancement:* On-the-job training at the factory is very narrow and specific to the tasks, and therefore not transferable to other employment. A study on EPZs in Zimbabwe found that women were restricted to low-paying non-technical jobs, while better-paying machine operation jobs were reserved for men. While male workers were offered skill training, no such opportunities were available to women since they were not regarded as technical workers. Women workers were concentrated in the casual or temporary staff category; therefore, no investment was made in their development.
- *Low pay:* In a study on EPZs in Kenya, some workers described the wages as poverty wages. Some enterprises boast that they pay 11 per cent above the statutory minimum wage, but the statutory minimum wage is extremely low to begin with—Kenya Shillings 3000 per month (roughly £22). In addition, in Zimbabwe women were prevented from working night shifts which fetch premium wages. In Kenya, workers were forced to put in compulsory overtime for which they received no pay, because it was disguised as performance-based requirements to meet fixed production targets (KHRC 2004:34; 36–37).
- *Lack of occupational health and safety measures:* In Kenya, until May 2003, a ministerial order exempted EPZs from the Factories Act, ensuring that factory health and safety inspectors would not be permitted onto EPZ premises. Now the order has been vacated, there is no empirical evidence to prove that inspectors are carrying out inspections (KHRC 2004:22).
- *Denial of maternity benefits:* This is framed within a general climate of deterrence from taking time off work, even for medical and family emergencies. The Kenya study found that most factories conducted routine, compulsory pregnancy tests at recruitment and refused to hire women found to be pregnant. If a woman gets pregnant in the course of employment, there is no reassignment to lighter duties. Pregnancy dismissal is common, as is dismissal for any injury which renders a worker 'ineffective', which fetches no compensation. If an employee returns after child-bearing, a new contract must be signed: there is no job guarantee (KHRC 2004:45–6).
- *Sexual harassment:* This seems almost inevitable in view of the fact that the workforce is made up largely of young semi-skilled women with few economic options, while the management is largely male. These demographics are made worse by an environment of ambiguity and arbitrariness in decisions on recruitment and determination of pay levels, and a lack of institutional channels for addressing sexual harassment complaints (KHRC 2004: 38–39; Gwaunza et al. 2000).

In addition to these recent studies on women workers in EPZs, since 2001, a series of studies on Gender and Work in East and Southern Africa (GWESA) are ongoing. These devote special attention to invisible workers such as domestic servants (Namara 2001; Lung'aho 2001). The main issue highlighted is the fact that these workers (an overwhelming majority of whom are women) are below the radar screen of labour regulations and unions, and also of women's human rights initiatives. Similar work focuses on women workers in the informal economy, who make up the bulk of the female labour force.¹⁸ The literature highlights their inability to benefit from health and safety regulations, laws on 'workman compensation', minimum wage legislation and social security measures such as health and retirement benefits (Dwasi 1999;

Manuh 1998). Workers in commercial (plantation) agriculture face similar problems because they are employed on a 'casual' basis, in addition to being at a higher risk of health and safety hazards (Manuh 1998; Mbilinyi 1991; Auret and Barrientos 2004).

Gaps in research and advocacy on gender justice and economic liberalization

However, I see three main research gaps. First, the studies so far have focused on the 'work sphere'—the factory, the plantation, domestic employer's household, etc. They have not gone outside this sphere to investigate the effect of women's increased labour-market participation on gender relations generally, for instance in the context of family relations. A good example of work along these lines is Naila Kabeer's work in Bangladesh, which studies not only women workers' experiences in garment factories but also the effect on their relationships within family and on their perception of themselves (Kabeer 2000). Such broader focus gives a better basis for understanding women's choices and constraints in a changing economic environment—as well as what empowerment means to the different actors.

The second gap relates to the absence of research on reforms to the social security system, which would enable broader access by women in all sectors (including rural-based

[18](#) The informal agricultural sector employs roughly 75 per cent of the female labour force (including family labour) in sub-Saharan Africa. The non-agricultural informal sector employs roughly 25 per cent (Dwasi 1999).

and informal sectors) to benefits such as health, maternity and pension benefits. Such reform is particularly important because of the current trends towards informalization of work and casualization of labour, which exclude many people from mainstream social security systems tied to employment. Preliminary research suggests that these trends have had a greater effect on women than on men (Sabates-Wheeler and Kabeer 2002) but there is need for gender-disaggregated research in order to make a convincing case for policy reform. In the context of sub-Saharan Africa, such reform is more urgent because the role of extended family support networks in providing social protection is declining due to difficult economic conditions and also to shocks brought about by crises such as HIV/AIDS.

The third gap relates to the focus on generating voluntary codes of conduct for industries. Research and activism around the rights of women workers in key sectors such as the garment and horticulture industries has played a central role in initiatives such as ethical trading (Auret and Barrientos 2004). Such initiatives by gender-justice advocates have succeeded in ensuring that gender remains at the centre of corporate accountability and is not considered as peripheral. However, the emphasis on voluntary codes has relegated discussion of legal regulation and the precise definition of rights to the sidelines, which puts into question the ultimate goal of ensuring security for women's participation in a fast changing labour market.

Links between research and advocacy on women's rights

As already observed, much of the discussion of gender inequality in sub-Saharan Africa takes place through the medium of development (Touré 2002; Mama 2002;

Ampofo et al. 2004). As a result, research has not been as strong as it could be, both at a conceptual and at an empirical level. Much of the empirical research (often commissioned by development agencies) tends to have a short-term focus and has not been systematic or rigorous enough (Touré 2002). Notable exceptions include the work of well-established research institutions such as WLSA, whose work was referred to extensively in the discussion on family relations and access to justice. Another network that has played a significant role in producing literature on gender justice in the region is Women in Law and Development in Africa (WiLDAF), which is one of the few initiatives that cuts across Anglophone and Francophone Africa. WiLDAF has generated mostly basic 'factual' literature, such as status reports on specific countries, guides or instruction manuals on issues such as legal literacy, and delivering legal aid for women (Schuler, 1990; Hodgson 2003).¹⁹ On the whole, there is very little material available on Francophone Africa, even from old networks such as the Dakar-based AAWORD (Association of African Women for Research and Development).

The last decade has seen severe decline in academic research capacity in African universities, and gender and women's studies departments have not been spared (Lewis 2002; Mama 2002). It comes as no surprise that a lot of literature on gender justice is produced by NGOs or independent research and advocacy organizations or networks. As a result of this shift, what has suffered is the training of African scholars and practitioners who are well-grounded conceptually and able to analyse context-specific sub-Saharan African realities because they possess an understanding of global trends including feminist thinking.

Initiatives such as the Strengthening Gender and Women's Studies for Africa's Transformation project²⁰ are working to

¹⁹ A substantial focus of WiLDAF's work has been to support women's rights organizations through training in organizational development and in skills such as fundraising, and also accompanying them through processes of engaging at the international level, such as the preparation of shadow reports for submission to the UN CEDAW committee (Hodgson 2003).

²⁰ www.gwsafrica.org

change this state of affairs. The project brings together work on gender and women's studies in institutions of higher education in Africa. It is striking that out of 27 such institutions, 11 described themselves as having no access to libraries or other information resources with gender-studies materials and publications.²¹ A regional academic research network, Council for the Development of Social Science Research in Africa (CODESRIA), is also investing in improving research on gender in the region through its Gender Institute, which offers training and publishing opportunities to researchers. CODESRIA has received some support from the Centre d'Étude d'Afrique Noire (CEAN)—based at the Institute of Political Studies in Bordeaux, France—but could use more.

There is also need for better dissemination and visibility of literature generated by research and advocacy in the LAC region. It remains difficult to find. Even relatively large and well-established organizations do not disseminate their material on the

internet. Among FIDA's country chapters, only the Kenya chapter operates a website. The area of information technology warrants major support.

Review of key initiatives by funding organizations

This section highlights initiatives from key donor actors in the LAC region that have touched on the major issues I have identified.

World Bank

In 1992, the World Bank's Africa Division issued a series of three working papers focussing on gender and law (Martin and Hashi 1992a b and c). The papers highlighted shortcomings in substantive areas of law such as access and control of property, labour regulation and access to work-related benefits

²¹ See 'Locating Gender and Women's Studies Teaching and Research Programmes at African Universities: Survey Results' (May 2003), available at www.gwsafrica.org/directory/index.html

(e.g., health coverage), and access to capital (through credit). They also analysed weaknesses in the administration of law, focussing mainly on problems presented by lack of clarity in harmonizing the operation of formal and informal dispute-settlement forums, as well as issues of strategy in promoting women's economic empowerment through law. However, this analysis has resulted only in relatively small, regional initiatives, which are primarily funded through the Institutional Development Fund (IDF). It supports joint government and civil society initiatives; therefore, the analysis has not been classified as programmatic work that is integrated into the mainstream of the World Bank's lending activities.²² The IDF, channelled through the Africa Gender and Law programme has supported initiatives on gender and law since 1996. The initiatives have covered sixteen sub-Saharan African countries: nine in west Africa and seven in east-central Africa. The initiative has financed joint workshops at the sub-regional and regional level, bringing together state and civil society actors, with the intention of identifying candidate countries for technical assistance and grant support for institutionalizing gender equality in laws and legal institutions. IDF support is continuing, although progress is very slow. The bank attributes this to in-country factors, such as delays in developing proposals and changes in government. The broad focus has been on women's access to legal and judicial services, with variations in each country. There has been recent emphasis at the country-level on women's access to justice in the context of post-conflict breakdowns in institutions and further threats to women's already fragile entitlements.²³

²² This is acknowledged with respect to the Eastern African Gender and Law Program in a foreword by James W. Adams (Country Director for Tanzania and Uganda) to Gopal 1999.

²³ www.worldbank.org/afr/gender and e-mail communication with Elizabeth Morris-Hughes, who set up the World Bank African Gender and Law programme, May 7, 2004.

African Development Bank

The African Development Bank has not done as much as it could to integrate gender into its work, even though it adopted a policy on gender mainstreaming in 1987. The ADB's approach to gender takes on an explicitly instrumental tone: 'Gender has therefore become an issue for development intervention because inequalities continue to exist between men and women and are a cost to development.' Apart from proposals to the effect that the ADB will take gender into account in its programming and that its staff will be trained in gender, there is no commitment to proactive action in any specific area of gender disparity.²⁴

United Nations Fund for Women

Within the sub-Saharan Africa region, United Nations Fund for Women (UNIFEM) is best known for financing and coordinating high-profile activities in the area of gender-based violence, such as the continent-wide 'Sixteen Days of Activism to End Violence Against Women', an event which started in 2002. Besides such high-profile activities, UNIFEM's Trust Fund in Support of Actions to Eliminate Violence Against Women also supports activities such as the development of training manuals for police and other law-enforcement agencies.²⁵ UNIFEM's work on violence against women is undertaken within the wider context of activities toward the effective implementation of the UN's Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). A different set of activities focuses on equipping governments and NGOs in using CEDAW.

UNIFEM also works to promote an enabling legal and institutional environment for the recognition of women's entitlement to resources such as land and finance, and

²⁴ www.afdb.org/en/statistics/gender_poverty_and_environmental_indicators/gender/the_gender_situation_in_africa/the_gender_situation_in_africa

²⁵ www.unifem.org/index.php?f_page_pid=126

strengthening the rights of women entrepreneurs. It is unclear from publicly available information how much of this work takes place in sub-Saharan Africa.²⁶

Ford Foundation

The Ford Foundation is a key actor in the region, and has funded a substantial number of initiatives, including (until recently) core funding for Women and Law in East Africa. Ford Foundation does not isolate gender or gender justice as a funding category. However, funding for gender justice is channelled through its work in the Peace and Social Justice programme, which is broken down into Human Rights and Governance and Civil Society. Under Human Rights the focus has been broadly on access to justice and strengthening of rights protection for the most vulnerable groups. Among these are women, racial minorities and refugees, along with the protection of sexual and reproductive rights.²⁷

Examples of specific activities relevant to gender justice that have been funded in the sub-Saharan Africa region include.²⁸

- funding for radio outreach programmes on women's rights in Tanzania;
- funding for general human rights awareness and to support civil-society organizations combating violence against women in South Africa;
- support for paralegal advice and advocacy efforts to secure economic and social rights for poor people in South Africa; and
- funding for community training on prevention of violence against women in Kenya.

In addition, the Ford Foundation has supported various civil society initiatives aimed at facilitating poor people's access to

[26 www.unifem.org/index.php?f_page_pid=11](http://www.unifem.org/index.php?f_page_pid=11)

[27 www.fordfound.org/program/humanr.cfm](http://www.fordfound.org/program/humanr.cfm)

[28](http://www.fordfound.org/grants_db/view_grant_detail1.cfm?expand1=Peace+and+social+justice&expand2=Human+Rights)

www.fordfound.org/grants_db/view_grant_detail1.cfm?expand1=Peace+and+social+justice&expand2=Human+Rights

justice, many of which have positive implications for women (McClymont and Golub 2000).

Key achievements and challenges ahead

Regional level

The most notable achievement at the regional level was the 2003 passage of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. The protocol was the result of about a decade and a half of work by women's human rights advocates. The protocol supplements the African Charter's limited provisions on gender equality and women's rights. It requires the states to take measures to outlaw gender discrimination in all spheres and take corrective action against such discrimination through laws and development plans.

CEDAW requires states to commit themselves to modify social and cultural patterns of conduct between men and women that uphold harmful cultural practices and ideas of inferiority or superiority between the sexes. This protocol addresses conventional areas of rights (i.e., those which are present in international human rights conventions), such as bodily integrity, rights in marriage (including property rights), access to justice, education, social and economic security (through employment, food security, adequate shelter), and sexual and reproductive rights. It also includes political participation, however, here the protocol is unique in specifically including a right-to-participate both in peace-building and post-conflict reconstruction. The protocol also includes areas of rights that are less conventional, such as the 'right to peace' and the 'right to a positive cultural context'. In many respects, this protocol is much more detailed than CEDAW, for example, in its provisions on gender-based violence, sexual harassment in the workplace, and in the area of sexual and reproductive rights, including protection from HIV/AIDS. The protocol also makes

special provision for vulnerable categories of women: widows, the elderly, women with disabilities, and 'women in distress'. The latter includes female heads of families, women from marginalized population groups, nursing mothers, and women in detention.

In order for the protocol to come into operation, it must be ratified by fifteen member states. As of March 2005, out of 53 African Union member states only ten have ratified the protocol. There is a concerted campaign by civil society groups to encourage more African governments to ratify it.²⁹

Other achievements at the regional level include some success in getting regional institutions to take action to promote gender justice. The Southern African Development Community (SADC) has made more progress relative to other regional organizations. SADC heads of state signed the Declaration on Gender and Development in 1997, and set up a Gender Unit within the secretariat. In 1998, SADC also adopted a declaration on Prevention and Eradication of Violence against Women and Children, thanks to the intervention of civil society organizations in the region. Under the 1997 declaration, SADC members committed themselves to the goal of having 30 per cent of government positions occupied by women by 2005 (Schoeman 2004).

Similar aspirations on representativeness are present in the new African Union (AU). It stipulates that 50 per cent of the AU commissioners should be women, and it established a Gender Promotion Directorate in the office of the Chairperson (Schoeman 2004). However, the most recent and most widely publicized AU initiative, New Partnership for African Development (NEPAD), is not explicit on its position regarding gender disparities, and has in fact been described as gender blind (Longwe 2002; Randriamaro 2002; Tadesse 2002). Gender equality is not mentioned at all in relation to NEPAD's Democracy and Political Governance Initiative, and is only

²⁹ The countries that have ratified the protocol are Comoros, Djibouti, Libya, Lesotho, Mali, Namibia, Nigeria, Rwanda, South Africa, and Senegal. See <http://hrw.org/women/africaprotocol/>

Table 1: Trends in women's participation in parliament (selected sub-Saharan African countries)

| Country | Percentage of seats held by women (1987) | Percentage of seats held by women (2000) | Percentage of seats held by women (2004) |
|---------------------|--|--|--|
| Angola | 15.0 | 15.5 | 15.5 |
| Benin | 4.0 | 6.0 | 7.2 |
| Botswana | 5.0 | 8.5 | 11.1 |
| Congo (Brazzaville) | 10.0 | 12.0 | 8.5 |
| Côte d' Ivoire | 6.0 | 8.0 | 8.5 |
| Kenya | 2.0 | 3.6 | 7.1 |
| Mali | 4.0 | 12.2 | 10.2 |
| Mozambique | 16.0 | 25.2 | 30.0 |

| | | | |
|--------------|------|------|------|
| Rwanda | 13.0 | 17.1 | 48.8 |
| Senegal | 11.0 | 14.0 | 19.2 |
| South Africa | 1.0 | 30.0 | 32.8 |
| Sudan | 1.0 | 5.3 | 9.7 |
| Uganda | 1.0 | 17.9 | 24.7 |
| Zambia | 3.0 | 10.1 | 12.0 |
| Zimbabwe | 11.0 | 14.0 | 10.0 |

referred to in connection with access to education. Advocacy efforts are already underway to engender NEPAD.

National level

The creation of 'a constitutional framework upon which to build full citizenship for women' (McEwan 2001:48) is both an achievement and a challenge in the region. Some LAC countries have recently put this constitutional framework in place, enacting strong protection of gender equality. Examples include Eritrea, Ghana, Malawi, South Africa and Uganda. For a majority of sub-Saharan African countries, however, this remains the primary challenge. Identifying this as the main challenge does not mean that the creation of a constitutional framework will guarantee gender justice. Rather, such a framework represents a minimum commitment to gender justice in principle, as well as being a signpost that points toward the kind of social relations to which a society aspires.

Indeed, in the countries that do have a favourable constitutional framework in place, challenges persist in three main areas: translating goals into specific substantive laws that guarantee gender justice in specific areas (such as family relations and property); fair procedures that facilitate access to entitlements; and extending the reach of favourable reforms beyond formal institutions to informal forums, which affect gender relations most.

Some notable achievements have been made in spite of the widespread absence of such constitutional frameworks in most of the region. One visible achievement has been the creation of 'women's bureaucracies' or 'national machinery' for implementing women's rights, in line with the Beijing Platform for Action (Tsikata 2000). However, evaluations of these bureaucracies show that on the whole they are under-funded; in some cases they subsist purely on external funding. Therefore, they have little influence on mainstream policy making and implementation.

Another visible achievement has been the adoption of affirmative measures to increase women's participation in public institutions such as parliament and local government councils. These measures have been operational in Rwanda, South Africa, Tanzania and Uganda since the late 1980s and 1990s to varying degrees of success (Goetz and Hassim 2003; Khadiagala 2001). In 2004, Rwanda was ranked first worldwide, with 48.8 per cent women in the lower house and 30 per cent in the upper house.³⁰ A review of trends shows that affirmative action measures have made a difference, as [Table 1](#) indicates. In countries in which these measures have been adopted (Uganda, Rwanda, South Africa) there is a

³⁰ Source: Inter-parliamentary Union. See www.ipu.org/wmn-e/classif.htm

sharp increase in the number of women in parliament. This contrasts with general trends in the region: these are characterized by a very slight increase, stagnation, or, in some cases, regression (Congo, Mali, Zimbabwe).

Although the achievements of affirmative action measures are significant, closer scrutiny is needed to gauge the level of influence that women have had, as well as to assess what concrete gains have been made in achieving gender justice (Goetz and Hassim 2003; Byanyima 2004; Tamale 1998).

Another area in which significant gains have been made is with respect to addressing gender-based violence. Research and advocacy efforts have focused on understanding and overcoming the socio-cultural causes of domestic violence and of its under-reporting by women, in addition to addressing inadequacies at the level of law and policy (Ofei-Aboagye 1994; Watts et al. 1995; Armstrong 1998). These efforts have made visible inadequacies in legal systems' responses to domestic violence and to sexual offences, and the fact that legal systems invariably reproduced societal attitudes that deterred reporting by women and decisive action at the level of law and policy (WLSA Zambia 2001; WLSA Mozambique 2001; Bowman and Kuenyehia 2003).

Among the countries that have enacted new laws in the 1990s targeting domestic violence and sexual abuse are Botswana, Côte d'Ivoire, Eritrea, Namibia, South Africa, Tanzania and Zimbabwe. Various countries have set up Victim Support Units in their police services. NGO initiatives have seen police officers trained and sensitized in dealing with gender-based violence (Stewart 1992; FIDA-Kenya 2002a). In a majority of countries in the region, however, these measures are not in place. Moreover, there is low public awareness and lack of social action against gender-based violence as well as under-enforcement of relevant laws (UNECA 1999; Mbugua et al. 2001; Bowman and Kuenyehia 2003; Human Rights Watch 1995; Armstrong 1998; Nyamu and Gathii 1994; Naggita-Musoke 2001; Carrol and Ofori-Atta 1998).

Recommendations on thematic priorities for applied research in 2005–2008

The literature review section highlights the areas needing further research:

- *gender justice in property relations*: the distributional outcomes of the operation of micro-level institutions such as decentralized land tribunals, as well as private-sector institutions such as banks;
- *gender justice in the family*: examining recent governmental and non-governmental initiatives that engage directly with reform of customary and religious family norms and practices;
- *women's access to justice*: generating quantitative data to build a case that more effectively influences policy making;
- *sexual and reproductive health and rights*: focussing on a niche of sexual health conditions that are considered minor, but which have huge social exclusion

implications for women. As well, carry out comparative research about what works or does not work to enable women to overcome stigma. Also needed is research that highlights initiatives on sexual and reproductive rights that are not necessarily health focused; and

- *gender justice and economic liberalization*: investigating the effect of women's increased labour-market participation on gender relations and on how this affects empowerment. Also, research on social security reforms that are needed in order to respond to the gendered trends of informalization of work and casualization of labour.

In this section, rather than respond to each of these problem areas individually, I identify and group the thematic priorities for applied research into three broad categories. I have identified these based upon the actual purpose this research would serve:

- research that contributes to recognition and validation of women's rights and citizenship;
- research that contributes to the shaping of institutions for gender justice; and
- research that contributes to building the accountability of state, market and informal institutions.

1. Research that contributes to recognition and validation of women's human rights and citizenship

This includes research on the gender-based denial of full citizenship rights. Thanks to the Unity Dow case, this problem is documented and already has an international profile. The fact that this outright denial persists—in spite of these efforts—demands further inquiry of a sociological nature. This type of inquiry is quite different from that where the approach concentrates upon the problem being categorized as a state violation of an internationally recognized right. Research on this theme could draw comparisons between settings where movements have successfully organized to achieve gender inclusive citizenship (such as Botswana) and settings in which gendered exclusions persist. In the latter instance, some exclusions continue despite organized efforts to end them (such as in Kenya, Zambia, Zimbabwe). Broad questions could include:

- By what political and social discourses is exclusion legitimized in the various settings?
- In what terms have movements and other actors involved challenged gendered exclusion?
- How does the language used by these movements and actors resonate with the prevailing discourses that legitimize exclusion?
- How have these movements and actors related to global discourse such as international human rights, and with what results?

- Are there contexts in which no organized questioning of exclusion exists?
- What accounts for the different outcomes in the various settings?

II. Research that contributes to shaping institutions for gender justice

Research under this theme could begin by evaluating efforts made so far to make institutions gender-sensitive, for instance through stipulating representation of women (quotas) and through the creation of specialized bureaucracies. There has been considerable research on quotas: for instance, do they increase women's political influence and translate into enhanced gender equality (Tamale 1998; Goetz and Hassim 2003)? With respect to the specialized bureaucracies, basic comparative research could examine their respective achievements as well as what makes them work or not work in diverse contexts. This type of work would benefit countries in which the women's rights movement is currently proposing such bureaucracies as part of the process of constitutional change. For instance, the Nigerian Citizens' Forum for Constitutional Review has proposed the establishment of a Gender and Social Justice Commission. Similar proposals have been effected in Kenya, and the women's movement is pushing to have them entrenched in that country's draft constitution. Experiences from countries in which these bureaucracies are more established (such as South Africa and Uganda) would be useful in a practical sense. The research would be more meaningful if carried out as collaborative action research across two or more countries by the actual people involved as key actors in the processes.

Another area of research under this theme would look at the correlation between an increase in the number of women serving at various levels of key institutions (such as the judiciary, police force, and land tribunals) and the incidence of substantive decisions or policies that favour gender justice. As with the quotas for political office, the time has come to move beyond arguing for numbers to scrutiny which evaluates effect and influence. This will enable us to draw conclusions about the conditions under which participation by women in key institutions translates into positive outcomes for gender justice.

3. Research that contributes to building the accountability of state, market and informal institutions

State

In virtually all the LAC countries, governments have ratified CEDAW and other international and regional human rights treaties. They have also signed non-binding consensus documents such as the Beijing Platform for Action. However, their compliance on the whole has been weak. The general conclusion is that the goal of establishing states' accountability for women's rights through international human rights instruments has not been achieved (Semafumu 1999). The Optional Protocol to CEDAW, which came into force in December 2000, sets up a complaints mechanism which offers a new avenue for seeking redress at the international level. So far, seven sub-Saharan African countries have ratified the Optional Protocol.³¹ Research could enquire into whether and how women's rights groups or individuals in the region have made use of the Optional Protocol or mobilized for possible engagement with this procedure.

There has been some mobilizing toward securing a protocol to the African Charter to address women's human rights.

³¹ The sub-Saharan African countries that have ratified the Optional Protocol to CEDAW are: Gabon (November 2004), Lesotho (September 2004), Mali (December 2000), Namibia (May 2000), Niger (September 2004), Nigeria (November 2004) and Senegal (May 2000). www.un.org/womenwatch/daw/cedaw/protocol/sigop.htm

Women's groups have carried this out as part of a broader effort toward establishing an African regional human rights court system akin to the Inter-American and European regional systems. With governments' attention apparently shifting to less-firm 'human rights and governance' commitments under regional policy instruments such as NEPAD's Governance Review Mechanism, research needs to examine how this civil society momentum can be maintained. What kinds of alliances will be needed with other interests in the region in order to sustain efforts toward a regional system that more firmly holds states to account for human rights in general, and women's human rights in particular?

A related point is that NEPAD seems set to be the main instrument through which rich countries will engage with Africa. Therefore, perhaps the space is worth claiming, in whatever shape, by gender-justice advocates. It seems one obvious intervention could be in the periodic review of governance, by influencing the ambit of issues taken into account in evaluating performance; and by making gender equality central to how governance itself is evaluated. Research in the various countries could explore how the women's movement could better engage NEPAD, in spite of its deficient attention to gender, as well as other limited spaces shaping out under the new AU.

Market

Following the discussion of gender justice under economic liberalization, research would need to assess what difference codes of conduct have made, in the context of increased casualization and feminization of labour.

A second area of research needs to evaluate the potential of the legal framework as a guarantor of gender justice in a liberalizing economy. It is necessary to take stock of the erosion of the rights of women workers that has occurred through a subtle process that can best be described as 'legislation by stealth'. This is a reference to trends in labour regulation since the liberalization reforms started, whereby the most significant changes to the labour market have bypassed parliamentary processes. Instead, changes have taken place largely through sub-legislative devices such as ministerial orders and sector-specific policy directives. For instance, exemption of EPZs from the requirements of the Employment Act in Kenya was effected through a ministerial order, rather than an amendment to the Act. What combination of legal and non-legal measures would be effective in protecting the rights of women as participants in the new market economy? Bearing in mind that economic justice is a relatively new area for most gender-justice advocates in the region, what types of strategies should they be investing their energies in as a priority?

Third, as noted under the discussion on research gaps in the area of gender inequalities in property relations, it is necessary to develop work that examines underlying biased assumptions in financial-sector reform that have resulted in adverse consequences for women. This is necessary in order to challenge the limited view that only cultural attitudes and myopic state policies are implicated in the erosion of women's property rights. This analysis should be extended to examine routine decision-making in institutions that, at first glance, do not appear to have anything to do with unequal gender relations.

Informal institutions

In the context of this paper, 'informal institutions' refers to forums that rely on customary and religious norms to make allocative decisions or adjudicate disputes. They range from community-based institutions—such as intra-family or intra-clan forums—to state-created or state-sanctioned forums that are officially authorized to apply customary or religious law. They constitute an example of sub-national institutions which mediate people's experiences of citizenship, and whose actions could facilitate or impede the concrete realization of entitlements. As noted under the section on gender justice in family relations—as well as under the section on gender inequality in property relations—these institutions play a crucial role in determining substantive entitlements of people at the grassroots level, quite apart from what may be provided in formal laws.

In establishing accountability for gender justice at this level, it will be necessary to ask a broader question. What relationships of accountability exist between these institutions and the people who rely on (or are subjected to) them? To whom are these institutions accountable? These questions need to be answered in relation to specific local contexts and in relation to specific areas such as family relations and property relations. This will help in establishing where the focus of efforts for gender justice should be.

Research must address the following questions as well:

- How do ideas of justice, equity and fairness resonate with rights discourses in the formal sense in laws and constitutions, and with what consequences for 'citizens' who are affected by both?
- Under what conditions do principles such as gender equality acquire legitimacy in informal institutions?

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