

GENDER MAINSTREAMING AND WOMEN'S HUMAN RIGHTS

by

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Because the UN Sub-Commission, a think tank of the Commission on Human Rights, has raised the issue of gender on the one hand and women's human rights on the other, I wish to address these in the light of their link to each other and the debate on whether to have an item on Women's Rights. In accordance with the mission of the NGO Committee on the Status of Women, a coalition of over 60 international non-governmental organizations, gender mainstreaming should be integrated in all the agenda items and that women's human rights should also be in the agenda.

At the outset I wish to underscore that there seems to be a tendency to identify gender with women and human rights with men; that when we speak of "gender", we immediately identify it with women as victims and when we speak of human rights, we see men as actors, when in fact women are both actors/contributors to development as well as victims of violations of human rights. As a result, we see emerging from this dichotomy of victim/actor a stereotyping once again of roles in the realm of human rights. This has occurred in spite of the fact that basic human rights instruments and international conventions, conclusions and resolutions have been adopted, as well as declarations and commitments which address women's rights as human rights, and that mainstreaming a gender perspectives should be integrated when addressing developmental goals, empowerment, violations, inequalities and discrimination. Just to cite the most important of these instruments and standards are: Art. 2 of The Universal Declaration of Human Rights; Art. 3 of the International Covenant on Economic, Social and Cultural Rights; Art. 2 of the International Covenant on Civil and Political Rights; the Preamble of the International Convention on the Elimination of All Forms of Racial Discrimination; The Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; ILO Fundamental Non-Discrimination Conventions 100 and 111; International Conventions on the Protection of the Rights of Migrant Workers and Members of their Families; The Declaration and Platform for Action of the World Conferences on Women, notably the Fourth Conference in Beijing and Beijing Plus5 in New York; and the other World Conferences of the 1990s the Earth Summit in Rio, the World Conference on Population in Cairo; the Summit on Social Development in Copenhagen and Copenhagen Plus 5 in Geneva; the Habitat Conference in Istanbul and Plus 5 in Nairobi; the World Food Summit in Rome.

What is the difference between Gender and Women's Rights?

In the first instance, gender is cross-cutting. It refers to the comparative or disparate roles, responsibilities and opportunities for both women and men in a given society, whereas women's rights are rights based on the specificities of the physical and biological nature of women, particularly her capacity to bear a child which should be recognized as having the same right as all other rights. While both address women's rights, the former is based on achieving a level playing field whereas the latter is both a basic right to a reproductive role and an empowerment tool for the disadvantaged half of the population.

In principle gender is never neutral because of the historical evolution which has tended since time immemorial to subordinate women's role in society to household work and family duties. Therefore when we mainstream a gender perspective, we undertake a process that looks at

each human right with the eyes of women and men as equals, analyzing whether there are differences between them in choices, opportunities, access and treatment; assessing the implications for women and for men of any planned action including legislation, policies or programmes in any area and at all levels so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.

Because we work on the premise that women and men have equal rights, there is a tendency for interventions to become “gender blind”, which means they are couched in abstract or generic terms but which are implicitly male-biased. For example, using a cohort of men to study cardiovascular disease and using the resultant data as a standard for both men and women, when in fact there are sex differences with such diseases.

It is essential that mainstreaming a gender perspective should be transparent and addressed separately from the treatment of specific rights of women for the following reasons:

1. Discrimination

Discrimination based on gender are either direct or indirect. Direct discrimination originate from a sex bias in standard setting which started in the early stages after the creation of the United Nations and the ILO, when women were perceived as “the weaker sex” physically and socially, therefore were not permitted to engage in certain forms of work under the guise of protective legislation. Indirect discrimination in economic and social rights has emanated from economic and social terminologies that have been historically based on the division of labour by gender, a traditional reflection of women’s and men’s role in society, segregating paid work in public life which are dominated by men and unpaid work in private life largely carried out by women.

Favouring men’s continuous economic activity has thus established the male paradigm for income-earning work. Examples are terms like “economically active population” or economic activity” which definitions come from UN Systems of National Accounts that include persons who actually produce goods and services for the market and the production of goods in households for their own consumption but excludes unpaid services for the consumption of the household which produces them and are termed as “housework.” ILO defines economic activity as “all work for pay or in anticipation of profit. In comparison, no norm has been adopted for domestic services rendered within the house. As a result, women’s activities although rising over the last decades in “economic activities” remain undervalued and lack social safety nets because of the non-recognition of their double burden of unpaid work at home. *This invisibility and non-valuation of unpaid work has a domino effect on all other rights as rights to education, housing, food and to health and social security protection as well as to the right to development.*

Another illustration of indirect gender discrimination and disempowerment of women in laws and by-laws are found in conditions from membership which exclude them such as in mixed agricultural cooperatives in which ownership of land is a prerequisite and where women are not legally permitted to own land, even when they cultivate the family property. *It is therefore necessary to look not only at the intent or purpose reflected in rules or action, but also at the actual effect generated.*

2. Autonomy

Regarding the suggestion on a need for legal analysis and a code of conduct concerning autonomy, this should mainstream a gender perspective because in the large majority of the population, women and men do not have equal voice and equal authority in both public and private domains. From birth (and even before birth), the girlchild has less chances of survival and equal treatment throughout her life course because of her sex. *Many use women's reproductive role as a deterrent to acquiring and exercising autonomy such as obtaining education and training, developing her own career, acquiring a right to land, property and income earned; access to capital and credit, etc.*

3. Obscuring Women's Rights

In an effort to have neutral language and universal application, the rights of women are obscured, such as in the General Comment 4 of the Right to Adequate Housing contained in Article 11(i) of the International Covenant on Economic, Social and Cultural Rights, which fails to analyze the differential effects of rights to men and women, e.g. the violence that women so often suffer from forced evictions due to domestic violence which threaten physical safety of occupants and financial loss. Through a Canadian NGO's lobbying, the Committee on ESCR has demonstrated its openness to an interpretation that incorporates women's substantive experiences of inequality in the housing sphere. This specific case illustrates that *there is an imperative need to articulate unequivocally and unambiguously women's experiences of inequality, otherwise women will remain invisible and their human rights illusory*. Basic principles of women's rights have to be contextualized by women's lives and we propose that human rights law start to reach into the private sphere of the home in cases of domestic violence.

4. Spatial Rights of Women

With regard to rights within the house, women who are increasingly engaged in income-earning activities and unremunerated work within the home often have no right to a separate space for work, rest and recreation. This lack of space due to her gender role of primary caregiver raises the essential issue of engendering human rights to housing and other economic, social and cultural rights. Women's rights cannot just be an add on element but should be taken within the context of social organization and order and women's position within that organization and order. *Using substantive equality differentials to understand women's structural and systemic disadvantage should therefore be addressed.*

5. Constitutional Recognition of the Principle of Equality and Non-Discrimination

Adoption of gender sensitive legislation and policies are important prerequisites to guaranteeing and protecting women's economic, social and cultural rights. If need be, constitutional amendments have to be introduced. *While the contents have to be tailored to suit the country situation and culture, it is fundamental that they have to be in line with international human rights instruments such as the Beijing Platform for Action, the Convention on the Elimination of All Forms of Discrimination Against Women and the Millennium Summit Declaration.*

6. The Role of the Media in Promoting Gender Equality and Women's Human Rights

Uncontestably the role of the media is significant in promoting gender equality and the promotion and protection of women's human rights. A case in point was the UN Press

Release on the Sub-Commission dated 30 July 2002, which reported on Constitutional Amendments in Turkey which included legal equality of spouses and in Pakistan, measures to eliminate violence against women such as the treatment of “honour killings” as crimes of premeditated murder. It omitted however to report on the Government’s measure to enhance women’s seats in parliament and the creation of a National Commission on the Status of Women, which are milestones towards the advancement of the status of women in that country. I would urge more of such reports in the future.

7. Integrating a Gender Perspective in all Agenda Items of the Sub-Commission

Finally, Mr. President, I wish to express our satisfaction on the adopted in the revised agenda of integrating a gender perspective into all the agenda items. Indeed, we have heard some government members giving a gender perspective but we feel that the process is as yet not systematic and I would request you, Mr. President, to remind this August Body to integrate a gender perspective each time you introduce an agenda item. Lastly, we wish to extend our heartfelt congratulations to you, Mr. President, the Vice-Presidents and the Rapporteur for your well-deserved elections and express our thanks for giving us NGOs the possibility to make our statements and to interact during the working group sessions where we listened to the excellent interventions of Sub-Commission members.
