GENDER EQUALITY AND SOCIAL INSTITUTIONS IN GAMBIA

Under the 1997 Constitution, women in the Gambia are accorded equal rights with men. Yet they continue to experience discrimination and inequality, largely because the patriarchal nature of Gambian society reinforces traditional roles of women. In addition, the country has a dual legal system that combines civil law (inspired by the British system) and Islamic Sharia. Provisions in Sharia are generally viewed to be discriminatory towards women, particularly in relation to marriage, divorce and inheritance.

FAMILY CODE

Women in the Gambia face many discriminations and inequalities in regard to family matters. The laws recognise four forms of marriage: Christian, civil, customary and Mohommedan (which are governed by Sharia). The 1997 Constitution states that all marriages shall be based on the free and full consent of the intended parties, except under customary law which still supports the tradition of child betrothal. More than 90 per cent of Gambian women are governed by customary and Sharia law vis-à-vis their family relationships. The Gambia has no minimum legal age for marriage and the incidence of early marriage is high: a 2004 United Nations report estimated that 39 per cent of girls in the Gambia between 15 and 19 years of age were married, divorced or widowed. Child marriage is not prohibited by law, and some girls are married off as young as the age of 12 years.

Polygamy is permissible under Sharia and is practised; Muslim men may take up to four wives. Wives whose husbands enter a second or subsequent marriage have the option to divorce, but they have no legal right to receive advance notice regarding the husband's intentions or to give their approval.

Women also face discrimination in regard to parental authority. Sharia considers husbands to be the natural head of the family; as such, they have sole responsibility for matters concerning the raising of children.

Women’s rights with regard to inheritance depend on the law applied. Sharia provides for detailed and complex calculations of inheritance shares, whereby women may inherit from their father, mother, husband or children and, under certain conditions, from other family members. However, their shares are generally only half of that to which men are entitled. Christian women and female children can receive properties under the wills of their husbands or fathers, but may also find themselves disadvantaged. Their law of inheritance permits husbands, if they so choose, to will away all property and leave nothing for their wives and children. Gambian law offers no protection to women in such cases. Under customary law, wives are not entitled to the property of their husband unless – and until – they agree to let themselves be inherited by the husband’s family. In effect, such women are treated as a form of property to be inherited along with the rest of their husbands’ assets.

PHYSICAL INTEGRITY

Protection for the physical integrity of Gambian women is weak. Violence against women, including domestic violence and abuse is rarely reported, but its occurrence is believed to be quite common. Even though wife-beating is a criminal offence (and constitutes grounds for divorce under civil law), the police typically consider such incidents to be domestic issues that lie beyond their jurisdiction. The Gambia does have laws prohibiting rape and assault, which are generally enforced. Spousal rape, however, is not specifically recognised.

Female genital mutilation (FGM) is widespread, especially in the Gambian countryside. The practice of FGM is illegal under the Penal Code but, to date, there have been no prosecutions for violations. Previous data from the Demographic and Health Surveys indicated that virtually all Gambian women had undergone FGM. A more recent estimate from the CPTAFE (Cellule...
de coordination sur les pratiques traditionnelles affectant la femme et l’enfant), a local NGO dedicated to eradicating FGM and ritual scarring, suggests the figure to be 65 per cent to 75 per cent. The lower figure, if accurate, would represent a decline over recent years, largely due to efforts by women’s rights groups to raise awareness about the health risks associated with the practice.

The population sex ratio in the Gambia has been stable for the past 50 years, suggesting it is not a country of concern in relation to missing women.

CIVIL LIBERTIES

Women in the Gambia have civil liberty. There are no restrictions on women’s freedom of movement or freedom of dress.

OWNERSHIP RIGHTS

Women in the Gambia have very few ownership rights. Concerning access to land, only a small proportion of women have titles to land property. The problem is especially acute in rural areas: traditional and cultural practices allow women to have the right to usufruct over land but forbid them from owning it. All women, whether married or single, have access to property other than land.

The law does not discriminate against women in the area of access to bank loans or credit facilities, but women in the Gambia face several obstacles in this area. For example, most financial institutions will not grant credit facilities unless the applicant has adequate security or collateral: in most cases, they will insist on property in the form of land. Since access to land is problematic for Gambian women, so is access to credit. Because of tradition and cultural practices, rural women are, strictly speaking, thereby effectively denied access to loans and credit.

Sources:
- CEDAW (2004a), Summary Record of the 645th Meeting, CEDAW/C/SR.645, CEDAW, New York, NY.
- CEDAW (2004b), Summary Record of the 646th Meeting, CEDAW/C/SR.646, CEDAW, New York, NY.