

## Thought Leader



Wrongs: Women bear the burden of unpaid domestic and caregiving work, landlessness and the disproportionate effect of climate change. Photo: Per-Anders Pettersson/Getty Images

# Rights of women remain out of reach

Rights are enshrined in the Constitution and Bill of Rights, as well as in international law, but until socio-cultural norms and practices are altered to reflect women's human rights, they are not secure

OPINION  
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In South Africa, Human Rights Day on 21 March serves as an annual reminder of where we were before 1994 and the strides we have made. We observe the day in remembrance of the Sharpeville Massacre, which took place on 21 March 1960 and which served as the site where Nelson Mandela signed the Constitution of South Africa into law on 10 December 1996. It reminds us of the fact that the human rights of all are an inalienable component of being human.

With the human rights protections enshrined in the Bill of Rights why, then, are women failing to see their rights translated into changes to their lived realities?

The role of the law in guaranteeing the rights and freedoms of all is significant. This was starkly evident in apartheid South Africa where the law was used as a tool of oppression. Section 9 of the Constitution guarantees the rights of all to equality and prohibits unfair discrimination on grounds of sex and gender. Furthermore, South Africa is signatory to several international and African regional instruments protecting human rights.

Specific protections for women are enshrined in the international Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). At the African regional level, protections guarantee-

ing women freedom from discrimination are enshrined in the African Charter on Human and Peoples' Rights (African Charter) and notably in the Maputo Protocol.

These instruments obligate states to respect, protect and fulfil the rights of women to freedom from discrimination. Despite these legislative guarantees, women in South Africa continue to bear the brunt of inequality and oppression.

We see this in, for example, the disproportionate unpaid domestic and caregiving roles they undertake, the economic exploitation of women working in the informal sector, the disproportionate effect of climate change on women, the fact that women own less land than men and the sexual and gender-based violence that plagues this nation.

Based on this reality, the acceleration of gender equality remains a distant hope.

Despite meaningful legal advances, they operate as paper tigers because patriarchal oppression, which finds expression in harmful socio-cultural norms, stereotypes and assumptions about women, serve as barriers to the realisation of the rights of women as contained in the Constitution, international and African regional human rights law.

The law regulates societal behaviour and functioning. Human rights law must translate into tangible change in the lives of the oppressed for it to be truly meaningful.

The CEDAW Committee, a treaty-

body monitoring the implementation of the CEDAW, notes in General Recommendation 25 that "the position of women will not be improved as long as the underlying causes of discrimination against women, and of their inequality, are not effectively addressed.

"The lives of women and men must be considered in a contextual way, and measures adopted towards a real transformation of opportunities, institutions and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns".

What this means is that for women in South Africa to see the benefits of the legislative guarantees to their human rights, entire systems — legal, economic, socio-cultural — must change. For these systems to change, "resocialisation" is essential. (While the legislative text does not employ the word "resocialisation", I have used it to describe this modification obligation.)

Resocialisation is deeply rooted in international and African regional human rights law. States are obligated to modify the underlying socio-cultural norms, practices, assumptions, and stereotypes underpinning gender discrimination, with a view to eliminating discrimination against women. Because South Africa is signatory to these instruments, the state is obligated to ensure that resocialisation measures are implemented across the country.

South African women benefit from the progressive resocialisation provisions contained in the Maputo Protocol. Of the several provisions protecting the substantive rights of women on the continent, six provisions explicitly refer to the resocialisation obligation on states.

For example, article 17 refers to the obligation on African states to respect, protect and fulfil the rights of women to a positive cultural context. In practice, what this requires of the state is the implementation of resocialisation among its populace to ensure that the real and often devastating implications of harmful socio-cultural norms, practices, assumptions and stereotypes no longer yield power over the lives of women, thereby facilitating the creation of positive cultural contexts.

Everyone is influenced by the societal conditions and messages that surround them. Much of this is internalised to such an extent that we fail to interrogate its appropriateness or truth. When judged against human rights standards, these norms and standards fail to mirror the guarantees contained in human rights law.

The socialisation processes that instil patriarchal norms, attitudes and stereotypes harming women must be undone by this process of resocialisation. This requires ongoing implementation of resocialisation measures such as education and training, revision of school textbooks in South Africa to reflect girls as subjects and active protagonists and to remove inherent biases contained in educational material, and training of police officers, social workers, medical personnel and judges and others involved in adjudicatory processes, be they formal or informal.

Some might argue that resocialisation is a naïve aspirational notion unlikely to ever occur. Perhaps there would be validity to such a claim if resocialisation were not anchored in the law. The drafters of these significant instruments were certainly alive

to the need for resocialisation as a precursor to the realisation of the substantive rights of women.

The mere presence of resocialisation provisions in international and African regional human rights law underscores the crucial role it plays in changing the status quo as it relates to women. It is not, therefore, an aspirational ideal that can be shrugged off. It is a legal obligation, one that women in South Africa can hold the state accountable to. Similarly, belief in societal change is not unfounded. Indeed, human rights law is premised on this.

The legal provisions mandating resocialisation are entirely overlooked or misunderstood by states. Notwithstanding, the South African government is obliged to take positive measures to implement resocialisation. This is critical to ensuring that the underlying socio-cultural norms that drive gendered discrimination do not obstruct the achievement of substantive equality for South Africa's women.

Without resocialisation, progressive legal guarantees will fail to substantially alter the lives of women, particularly disadvantaged and vulnerable women who face the disproportionate burdens of economic exclusion and exploitation, gender-based violence and climate change, among others. Addressing the underlying socio-cultural norms that fuel and legitimise the status quo is key to unlocking real and effective gender equality in South Africa and societal progress.

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