

NAVIGATING COMPLEX PATHWAYS TO JUSTICE: WOMEN'S PARTICIPATION AND LEADERSHIP IN CUSTOMARY AND INFORMAL JUSTICE SYSTEMS



The majority of justice seekers worldwide resolve their problems through customary and informal justice (CIJ) systems. Women constitute the largest group of users of CIJ systems for diverse reasons, and rely on them for resolution of justice problems related to family and civil matters, access to land and natural resources, housing, and debts, among other issues. Women are not only users of CIJ systems, but also providers of justice within those systems. Women's participation and leadership in CIJ systems is widespread, though their various roles and contributions are often under-recognised.

Anchored in Sustainable Development Goals (SDGs) 5 and 16, the rule of law plays an instrumental and enabling role in the recognition and fulfilment of women's rights, contributing to gender equality, the empowerment of all women, and the promotion of peaceful, just, and inclusive societies. CIJ systems that respect the rule of law and women's human rights, especially their right to participate equally in the delivery of justice, have a particularly positive impact on access to justice for all.

WOMEN'S PARTICIPATION AND LEADERSHIP IN CIJ SYSTEMS: A MULTI-FACETED REALITY

The discourse on women's engagement with CIJ systems tends to focus on women as justice seekers and beneficiaries of justice provision. Where women's participation and leadership in CIJ

systems is discussed, it is often limited to the role of women as decision-makers or adjudicators. Yet, women play multiple and varied roles in justice delivery and dispute resolution in CIJ systems.



Barriers To Women's Participation And Leadership

- Limited access to economic and other resources
- Societal attitudes and stereotyping
- Insecurity and gender-based violence (GBV)
- Formal legal and constitutional impediments
- Customary and religious considerations
- Lack of support for women's organisations

State customary court officials. Women participate as justice providers in state customary courts, which bestride the formal and informal justice systems. In Malawi, the leadership of female customary leaders like Chief Teresa Kachindamoto contributed significantly to reducing the prevalence of child marriage. Chief Kachindamoto annulled more than 4,000 child marriages after her appointment in 2003 and engaged her more than 900,000 subjects around the issue, using her authority as their traditional leader.

State religious court officials. Steady but slow progress toward increasing the presence of women in religious courts has been hailed for boosting women's participation in the public sector and for improving access to justice for disadvantaged female litigants, especially in family matters. In Malaysia, female Islamic judges have been appointed to courts since 1960 and several women have since chaired such courts.

Community mediators and arbitrators. In Somalia, IDLO supported the establishment of Alternative Dispute Resolution (ADR) Centres that blend elements of arbitration, mediation, and other conventional methods while preserving alignment with *Xeer* customary norms and emphasising consensus-building and voluntary agreement by parties. ADR Centres promote the active engagement of women as adjudicators, counsellors, and advisors—notably, 22% of adjudicators are now women.

Family mediators. In many cultures, women play an important dispute resolution role within families, especially as mediators, negotiators, and arbitrators. In Kenya, a significant proportion of justice problems are solved in an informal manner, often handled by family members in the first instance, before being taken up by friends, religious and cultural leaders, and institutional third parties such as chiefs.

Mediators on peace, conflict, and security concerns. In the Philippines, in response to effects of armed conflict, women leaders have emerged in the local government *barangays* to ensure justice outcomes meet the needs of women and other excluded or vulnerable constituencies.

Mothers, spouses, sisters and close relatives of male CIJ providers also perform an important role in resolving disputes. In Sierra Leone, a chief's wife exercises considerable influence through bringing cases to the attention of the chief, but may also have influence over how the cases are handled and decided.

Women paralegals advising CIJ mechanisms or female justice seekers not only contributes to increasing women's knowledge of customary law and justice processes, but also shapes the cultural acceptance of women's participation in CIJ systems. In Malawi, the inclusion of female paralegals within the national Village Mediation Programme led to an increase in the number of cases brought forward by women, while in Uganda, the work of women paralegals associated with the Federation of Women Lawyers Uganda led to effective follow-up on sensitive cases, including GBV cases.

Women lawyers as legal aid providers and CIJ providers. Although they generally do not directly represent disputants in CIJ systems, women lawyers can give legal advice on how the disputants should approach their cases and navigate justice mechanisms contributing to the delivery of better justice outcomes for women. In the *Shalish* CIJ system in Bangladesh, the participation of lawyers was identified as contributing to combating corruption and ensuring that cases are referred to the correct authorities.

Customary law assessors and reviewers in higher formal courts. In Kenya, appeals from the *Kadhi* Muslim religious courts lie with the formal High Court, while in Zimbabwe, the Magistrates' Courts are responsible for reviewing and hearing appeals against judgments from the traditional chiefs' courts. In both countries, women sit in higher and appellate courts as judges and magistrates and safeguard against violations of women's human rights.

Custodians and teachers of CIJ operations and practices. Indigenous women, in particular, have a key role in supporting intergenerational transmission of community histories and spiritual traditions. In Australia, the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council developed tools, including a mobile app, to promote adequate understanding of Indigenous knowledge, language, traditions, and practices that help CIJ systems to adjudicate on and address conflicts and other concerns that may arise from the non-application or improper application of rights and principles.



PATHWAYS TO INCREASED PARTICIPATION AND LEADERSHIP

- **Enhanced representation across public and political arenas.** Instituting gender parity measures in leadership positions in CIJ systems is a robust means of demonstrating women's capabilities as leaders, decision-makers, and justice providers.

- **Capacity development and support for women CIJ actors.** Strengthening women CIJ actors' knowledge of the law and rights awareness is critical to support their role in CIJ systems, addressing resistance, and promoting their advancement. Equipping women CIJ actors with knowledge of formal laws and the skills to apply them as well as creating linkages with women in the formal justice system can be critical to building the capacity of women leaders in CIJ systems.

- **Gender-responsive legal and customary normative reforms.** Comprehensive gender-responsive reforms ensure all normative frameworks, whether formal, customary, or informal, equally benefit women and girls in all their diversity. Such reforms enable better protection of women's rights in all contexts, and also serve to remove barriers and incentivise women's participation in CIJ systems.

- **Positive media portrayal of women in CIJ systems.** Working with media can facilitate the process of social change as a means of instituting legal change. Positive stories of women holding positions in CIJ systems should be amplified as a way of recognising their work and encouraging others to be capable leaders.

- **Community awareness, education, accountability, and engagement.** Community awareness and education can support a general shift away from negative beliefs, perceptions, and positions on women's participation and leadership in CIJ systems and must be complemented with feedback platforms to enhance accountability at different levels. Such interfaces ensure that challenges faced by women community leaders and CIJ actors are flagged as early as possible and solutions to address them are discussed.



- **Gender-responsive CIJ systems.** Working with CIJ systems that are open to gender reforms and CIJ actors that champion gender equality can catalyse women's participation and women's access to justice. Capacity-building and training programmes for CIJ actors can complement efforts to improve women's participation in CIJ systems and ensure that gender equality and human rights principles are respected.

- **Understanding privilege and intersectionality.** CIJ leaders will need to recognise intersectionality and advocate for women who may not enjoy the same privilege as they do in terms of class, race, ethnicity among others.

- **Access to and use of technology.** Access to and use of technology, including online dispute resolution platforms, can be amplified to increase women's access to justice and their participation and leadership in CIJ systems. The use of technology can be an equaliser in closing the gender justice gap and in improving technology-facilitated participation of women, including in CIJ systems as justice seekers and justice providers.

RECOMMENDATIONS FOR ENABLING WOMEN'S LEADERSHIP AND PARTICIPATION IN CIJ SYSTEMS

1

Recognise and amplify the important and varied roles that women play as leaders and justice providers in CIJ systems.

2

Affirm women's human rights as a significant and critical component of engaging with CIJ systems.

3

Support women's movements and protect civic space to increase advocacy for women's participation and leadership in CIJ systems.

4

Eliminate discriminatory laws and reform legislation to improve women's rights, including as justice providers in CIJ systems.

5

Combat gender-based violence and discrimination against women justice providers in CIJ systems and ensure an enabling environment for their participation.

6

Strengthen investment in CIJ systems as part of people-centred, gender-responsive justice reforms.

7

Deepen partnerships and alliances for women's participation in CIJ systems.

Supported by



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