

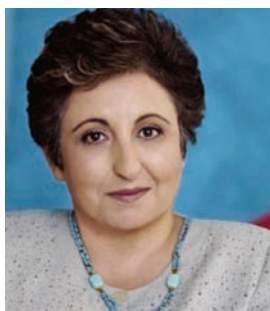
ACCESSING JUSTICE:  
MODELS, STRATEGIES  
AND BEST PRACTICES  
ON WOMEN'S EMPOWERMENT



The International Development Law Organization (IDLO) is an intergovernmental organization devoted to empowering people and enabling governments to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity.

Front cover image: UN Photo / Martine Perret





**SHIRIN EBADI**  
Human Rights Lawyer  
Nobel Peace Laureate

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**D**iscrimination against women is often justified in the name of culture. For 27 years, I have lent my voice to campaigns by women's rights advocates, lawyers and other activists to end the unequal legal position of women and girls and to ban corporal punishments such as stoning, flogging or cutting off hands. I have learnt from my work that to implement women's rights on the ground we need to frame women's demands in a language that is culturally appropriate and culturally persuasive.

The present study highlights the critical role legal empowerment strategies can play in changing and challenging oppressive gender relations that are justified under the name of culture. By showcasing an impressive range of legal empowerment approaches in diverse geographical and cultural settings, the study indicates the value of empowering women, through efforts aimed at legal education, legal training, the provision of legal services and the creation of a space for women to question and negotiate discriminatory 'cultural' norms.

The initiatives presented in the study indicate that legal empowerment strategies can slowly pay long term dividends, by allowing women to claim power from those who rule in their name, rather than leaving reforms to the whims of the state and community decision-makers, whose interests often lie in the preservation of the status quo. The key message of the study is that by empowering women to claim their rights, women are better equipped to bring about change in their communities. I am confident that when such projects are pursued in conjunction with legal and institutional reforms, we will finally make progress in making women's rights a lived reality.

➤ THE KEY MESSAGE OF THE STUDY IS THAT BY EMPOWERING WOMEN TO CLAIM THEIR RIGHTS, WOMEN ARE BETTER EQUIPPED TO BRING ABOUT CHANGE IN THEIR COMMUNITIES ◀



**IRENE KHAN**  
Director-General, IDLO

**F**ar too often, in far too many countries, women cannot find justice. They are denied the very essence of the rule of law — that we are all equal, and equally protected by the law.

Gender equality is increasingly a feature of national constitutions, yet the law frequently continues to restrict women's rights and

freedoms, dictates their submission to male relatives, and limits what women may own or inherit. Tragically, even as it interferes with how women live their lives, the law fails to protect them from gender-based violence.

Governments and the international community have invested heavily in legal systems. In some places, the situation for women is improving. In many settings, however, women still suffer appalling discrimination and violence. Even where women have rights, they may not know they have them. Add to that a host of economic, social or cultural barriers — poverty, poor access, lack of education, social stigma, family pressure, fear of violence, the unfamiliarity with, or lack of confidence in, state institutions — and it is easy to understand why women rarely turn to courts and the legal system for justice.

More often than not, whether out of choice or necessity, women look to informal set-ups in their rural communities to settle grievances. Matters that concern them most frequently — family disputes, inheritance, access to land and ownership of it — are usually handled at the village or community level. It costs less, the process is less formal, the people are familiar, and one need not travel far.

This is not to say that informal justice systems provide fair outcomes for women. On the contrary, many such systems raise serious human rights concerns. Customary justice may reinforce traditional hierarchies and discriminatory practices, and exclude women from the decision-making process. It often fails to recognize marital rape or domestic violence as crimes; in some cases, it encourages brutal treatment of women.

Women's own experience, in fact, suggests the issue at stake is not the choice of one form of justice over another. No measure taken in isolation — whether it is a law banning gender discrimination, or the nomination of women leaders in a customary justice system — will in and of itself bring about change, as long as the political, social and economic factors that feed injustice and gender discrimination are left unaddressed. What matters is to ensure that women do get justice, no matter where they seek it. And even as attempts are made to improve formal legal systems, customary systems cannot be ignored.

In a world where plural justice systems are a reality and show every sign of enduring, the best answer is therefore to empower women, so that they may themselves bring about the change to which they aspire. Systems, whether formal or informal, must become equally responsive to women's demand for justice. Women's empowerment is fundamental to creating a culture of justice.

I hope IDLO's report, *Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment*, will be seen as an important contribution to women's struggle for justice and equality.

➤ WHAT MATTERS IS TO ENSURE THAT WOMEN DO  
GET JUSTICE, NO MATTER WHERE THEY SEEK IT ◀



# EXECUTIVE SUMMARY, LESSONS LEARNED AND POLICY RECOMMENDATIONS

# EXECUTIVE SUMMARY

**T**he law is an essential tool for advancing women's and girls' rights and equality. A robust and effective legal system based on the rule of law is central to assisting women to become equal partners in decision-making and development. Over the last couple of decades, the international community has invested substantially in programs aimed at strengthening the rule of law in developing countries. Despite this investment, the rule of law continues to mean very little for the vast majority of women and girls.

IDLO's study *Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment* explores some of the challenges and solutions for women's access to justice in diverse legal systems. It shows that women face structural and cultural barriers to accessing justice – insufficient knowledge of rights and remedies, illiteracy or poor literacy, and lack of resources or time to participate in justice processes. This is all the more so as women usually have intensive family responsibilities. Even where women can access the formal justice sector, the outcomes of the process often fall far short of those envisaged by international standards, particularly with regard to property rights, inheritance, divorce and child custody, and spousal abuse.

Focusing on legal empowerment as a way to improve both access to justice and the quality of justice women receive, the study presents strategies and best practices in both formal and informal justice systems. Legal empowerment approaches share one core concept:

using the law to enable disadvantaged groups to access justice and realize basic rights. They include legal education; legal aid services; support for non-discriminatory dispute-resolution fora to complement or supplement informal systems; training of paralegals; and rights awareness.

In considering whether such approaches can improve the quality of justice women receive, *Accessing Justice* brings together a number of IDLO-sponsored case studies in Afghanistan, India, Namibia, Rwanda, Mozambique, Tanzania, Morocco, Papua New Guinea and the Solomon Islands. These highlight a variety of lessons for development practitioners, both in terms of engagement with the informal legal sector and, more generally, for the use of legal empowerment and top-down / bottom-up strategies. In an appropriate context, carefully designed legal empowerment strategies may constitute a valuable contribution to improving women's access to justice.

The case studies also confirm that programs designed to address women's rights in informal justice systems remain a highly sensitive issue. These programs require thorough knowledge of the social, economic, and political context in which the informal system is operating. Moreover, legal empowerment approaches in both the formal and informal justice sectors are likely to be more sustainable when a) they are locally owned; and b) when they are coupled with top-down reforms to ensure domestic laws and regulations are in line with international legal standards on gender equality.



Image: Martin Sojka

> THE RULE OF LAW MEANS LITTLE TO MOST WOMEN AND GIRLS: ACCESS TO JUSTICE DEMANDS KNOWLEDGE, LITERACY, MONEY AND TIME <

<sup>1</sup>Hereinafter referred to as *Accessing Justice*.

# LESSONS LEARNED

Although small scale and taking place in different contexts, the case studies featured in *Accessing Justice* provide some important lessons as to how legal empowerment approaches can be used effectively to enhance women's access to justice in diverse legal systems:

## 1. Legal empowerment strategies can be successfully used to improve women's access to justice in both formal and informal systems

One of the key problems for the achievement of gender equality lies in the inability of many women to use existing legal standards to realize their rights. Legal empowerment strategies, through legal literacy programs, legal aid or alternative dispute resolution mechanisms, can help create a 'culture of justice' among women and ensure that principles of equality and non-discrimination are not only enshrined in law, but also translated into practice.

Evidence suggests that legal empowerment approaches to enhance women's access to justice may work well in a variety of legal settings, including informal ones. For example, the fluidity and dynamism of informal justice systems can open up opportunities for modernization and progressive reforms around women's rights.<sup>2</sup> Where women are provided with a forum to discuss and (re)interpret cultural or legal rules, the system may be open to positive transformation, particularly when it is both women and men who are advocating for a reinterpretation of such rules. Legal empowerment approaches may also

work in informal justice settings because the customary authority of male leaders is generally connected to their ability to reflect the values and interests of the community.<sup>3</sup> Thus, while customary male leaders often benefit from the status quo and resist positive change for women, they may also have incentives to respond to community expectations. In the same way, bottom-up legal empowerment approaches targeting women can pressure community leaders to reform discriminatory practices. When women are informed of their rights and encouraged to discuss or challenge informal laws and practices, they can put pressure on customary justice systems to better protect basic rights.<sup>4</sup> In turn, this can reduce power imbalances and elite capture and improve the transparency of local government decision-making.

## 2. Legal empowerment strategies are most effective where implemented in conjunction with 'top-down' measures and through local partners

While the state legal system alone cannot cure gender injustice, it is a key avenue for the achievement of gender equality. Law has the ability to deter discriminatory practices against women with the threat of punishment, and the

capacity to influence and guide the behavioral norms and social interaction between men and women. A well-functioning and non-discriminatory legal system can also serve as an accountability mechanism to ensure the compliance of informal practices with basic human rights standards and to prevent power abuses, while at the same time enhancing the predictability of informal decisions.

Grassroots efforts to empower women are therefore more effective when coupled with 'top-down' reforms aimed to ensure that justice systems, whether formal or informal, are in line with international laws and standards pertaining to gender equality. The presence of supportive constitutions and national laws plays a critical role in ensuring the effectiveness of legal empowerment interventions.

Moreover, legal empowerment projects are most likely to have an impact on women's access to justice and gender inequality if they creatively draw on local knowledge and practices. This contributes to the legitimacy of the reforms and ensures their eventual sustainability.

## 3. Barriers to women's access to justice are multidimensional and go beyond legal aspects

Political, social, cultural, economic and psychological barriers that obstruct women's access to justice and legal empowerment are found at every stage of the 'justice chain'. The case studies clearly indicate that the disempowerment of women is not >>

➤ FOR LEGAL EMPOWERMENT TO WORK, CULTURAL ATTITUDES, ECONOMIC DEPENDENCY AND DISCRIMINATION MUST ALSO BE TACKLED ◀

<sup>2</sup> E Harper, 'Engaging with Customary Justice Systems' in J Ubink (ed), *Customary Justice, Perspectives on Legal Empowerment IDLO* (2011) 29, 35.

<sup>3</sup> T Mennen, 'Putting Theory into Practice – Improving Customary Justice' (paper presented at the United States Institute of Peace, George Washington University and World Bank conference on Customary Justice and Legal Pluralism in Post-Conflict and Fragile Societies, Washington, 17-18 November, 2009, 140) cited in Harper, *ibid*.

<sup>4</sup> J Ubink and B van Rooij, 'Towards Customary Legal Empowerment', in J Ubink (ed), *Customary Justice, Perspectives on Legal Empowerment IDLO* (2011) 7, 14-15 (writing in relation to legal empowerment interventions more generally).

# POLICY RECOMMENDATIONS

>> simply due to lack of knowledge, of laws and legal procedures, but rather due to a host of economic, social and cultural practices that perpetuate inequality in the community and the society at large. Programs which encourage women to object to discriminatory practices are unlikely to provide meaningful relief unless the broader economic, social and security context is addressed. Research indicates that legal empowerment projects targeting women work best when combined with activities addressing a rule of law culture, women's economic autonomy and/or discriminatory attitudes within the community. To this extent, while legal empowerment is not the panacea to the wider problems of inequality, discrimination and the poverty of women, it can make a positive contribution, which, if properly integrated with other initiatives, will place women on a better trajectory towards effectively addressing discriminatory practices.

#### 4. Legal empowerment programs designed to address women's access to justice need to be context-specific

Women's experiences in the justice system are diverse. There are no ready-made formulas as to how women can be empowered to assert their rights and act as agents of sustainable social change. Rather, a number of questions should be asked: what is the best entry point for women to be empowered to use the legal system to advance their rights? What is the forum in which women's core concerns are dealt with? Is that system open to reform or would legal empowerment have limited results in that context, due to deeply entrenched gender stereotypes, vested interests in the status quo and power inequities? Each intervention should carefully examine where the opportunities are in a given context, whether that be in the formal or informal justice system and whether that be in targeting procedural or substantive aspects. Ultimately, projects designed to be pragmatic, realistic and reflective of the local context demonstrate a higher rate of success.

**1. Consider legal empowerment approaches as part of the solution to advance women's access to justice. Invest more resources to identify and design effective, context-specific strategies to promote gender equality.**

**2. Explore the interface of informal and formal justice settings. Empowerment strategies need to be complemented with efforts to address discriminatory laws and obstacles to the use of the formal legal sector.**

**3. Engage with informal justice systems, despite the challenges of program design. Informal justice systems should not be pivoted against formal justice systems in a zero-sum game.**

**4. Engage with civil society and support local ownership to ensure the legitimacy and sustainability of measures targeting women's access to justice.**

**5. Adopt a multi-disciplinary approach to women's access to justice. Investigate the potential of partnerships with non-legal service providers, in particular those working in the areas of women's economic empowerment and income generation, protection from violence and food security. Best practices include legal aid providers teaming up with non-legal service providers, such as combining with domestic violence counseling in women's shelters, or bundling legal aid delivery with existing services frequently accessed by women, such as midwifery services or microcredit schemes.**

Image: Benzene Mohamed Aseel Hassam





# SUMMARY OF CASE STUDIES

## Gender equality on the horizon: The case of Uukwambi Traditional Authority in Namibia

**L**egal development cooperation increasingly emphasizes that legal empowerment can only be achieved when reforms incorporate customary justice systems. This brings to the fore pertinent questions regarding the alignment of these systems with human rights standards. A typical concern is that customary justice systems often lack gender equality. The dominance of men in all three interwoven domains of customary rule — leadership, dispute settlement and normative content — raises questions on how the inclusion of women in customary structures of administrative and judicial decision-making might be facilitated, and how customary norms can be modified so that they better protect women and their livelihoods. To gain insight into these questions, this case study explores a range of activities undertaken by the Traditional Authority of Uukwambi in northern Namibia to eliminate the severe gender inequality inherent in its system of customary justice and administration. These activities include the installation of women traditional leaders, the promotion of women's active participation in traditional court meetings, and the modification of customary norms that were detrimental to the position of women. The research data collected indicates that these steps led to certain positive changes in customary practice, including the near complete eradication of 'property grabbing' and increased participation of women in traditional courts. Although the shift in mindsets needed for gender equality is still incomplete, the initiatives undertaken have enhanced the fairness and equity of traditional rule and customary dispute settlement.

## Negotiating land tenure: Women, men and the transformation of land tenure in the Solomon Islands

**L**and issues are currently high on the agenda of national governments and donor agencies throughout the South Pacific. At the center of debates about land in the Pacific lies an issue common to many post-colonial countries, namely, the interaction between customary and state legal systems. In most South Pacific nations, constitutional or statutory law expressly provides that land is governed by "custom" or "customary law".

Compared to other geographic regions, the gendered aspects of land tenure, or natural resource management more broadly, have received only very limited attention in the South Pacific. In the Melanesian nation of Solomon Islands, very little of the research on land has been undertaken by women, or focused on differences in men's and women's perspectives and experiences of land tenure. There is, therefore, a general lack of accessible information on women's experiences of customary and state laws governing land, or on the ways in which women might be empowered within these systems.

This case study examines the interaction of customary tenure systems with the state legal system in one site in the Solomon Islands. It focuses in particular on transformations in customary systems occurring since colonization, and the impact of those transformations on women. The case study examines some of the ways in which kastom and the state legal system interact in Kakabona, a peri-urban area on the outskirts of the capital of Honiara, on north Guadalcanal. The state legal system requires that landholding groups be represented by a small number of individuals. In practice, this has concentrated control over lands in the hands of a small group of male leaders who have the customary authority to discuss land matters inside a public arena. The interaction of kastom and the state legal system has therefore enabled

the transformation of customary "rights to speak" into effective ownership. The concluding section makes some general observations about the interaction of custom and the state, and the ways in which women may be empowered within these systems.

## Bush justice in Bougainville: Mediating change by challenging the custodianship of custom

**S**ince 1994, the Papua New Guinean non-governmental organization, People and Community Empowerment Foundation Melanesia, has delivered dispute resolution training aimed at strengthening customary justice systems in Bougainville. Research was conducted in 2010 to assess whether and to what extent such training has been successful in enhancing the legal empowerment of marginalized groups such as women. The research focused on six access to justice indicators: participation and satisfaction in dispute resolution; protection of legal rights; mitigation of power asymmetries; operation of neutrality and bias in decision-making; balance of individual and community rights; and the influence of women in dispute resolution decision-making. The research found that the training increased the participation and satisfaction of both men and women users of the dispute resolution system. However, by neglecting to address issues of substantive legal rights and power asymmetries, the intervention failed to enhance legal empowerment to the extent it might otherwise have done. Further, while the intervention improved the justice experience of women disputants in almost every area, it had a neutral effect on the satisfaction gap between men and women. The intervention was most successful where it transferred dispute resolution skills to women and created opportunities for them to become mediators. This enabled them to engage more effectively in internal dialogue processes and challenge the interpretation and application of discriminatory customary norms. >>

## SUMMARY OF CASE STUDIES (continued)

### Engaging with customary law to create scope for realizing women's formally protected land rights in Rwanda

In rural Rwanda, women, particularly widows and divorced women, face severe obstacles protecting and upholding their interests in land, resulting in diminishing land tenure security. Women have weak rights under customary law, and while reforms have strengthened their statutory land rights, such entitlements have limited practical value in rural areas where customary law dominates. Research was launched to investigate the types of interventions that might improve the likelihood that women's land interests would be upheld in the context of customary dispute resolution. It was hypothesized that women would receive better outcomes if land-related disputes were resolved consistently at the village level, through mediation by a wider group of stakeholders, including representatives of a women's interest group. The results demonstrate that it may be possible to widen the scope for women's land claims without modifying the substantive aspects of customary law, provided that such outcomes do not sit too uncomfortably with the overarching structure of the customary framework.

### Two faces of change: The need for a bi-directional approach to improve women's land rights in plural legal systems

The complex relationship between law, land rights and customary practices is increasingly recognized as foundational to formulating successful development policies. Similarly, the essential role of women's economic participation in

development and the current trend of gender discriminatory land and inheritance customary practices have prompted domestic civil society organizations in developing countries to use statutory provisions guaranteeing gender equality to improve women's land tenure security. This case study examines the particular need for secure land rights for women in the African pluralistic development context, and the mixed results of targeting law reform as a mechanism for change. Relying on primary research conducted in Mozambique and the United Republic of Tanzania on land practices as experienced by divorced and widowed women, it evaluates strategies employed by domestic non-governmental organizations to enhance women's access to justice and land tenure security. In particular, the case study analyses whether initiatives to disseminate and use statutory law (rather than customary law) are overcoming the lack of knowledge, application and enforcement that have previously limited the effectiveness of rights-affirming legislation. Specific and general conclusions are drawn from the data to generate recommendations for donors, governments and development institutions.

### Legal empowerment of unwed mothers: experiences of Moroccan NGOs

Social stigmatization, criminal repression and legal discrimination marginalize unwed mothers and their children and impact on their ability to obtain official identity papers. Without such legal identity, they cannot access a host of other fundamental rights, and legal

empowerment can be impossible. In focusing on child registration and the procedures to receive a Family Booklet as they affect unwed mothers, this case study argues that law and development initiatives should take into account complex, intimidating legal realities that disadvantaged populations such as these women and children face. This includes existing laws that may not be applied in reality, that are discriminatory on their face, that are unclear and open to disparities in their interpretation or that are silent on an issue and thereby create legal voids.

Four youth-led local women's rights NGOs, in collaboration with an international human rights capacity-building organization, implemented grassroots-level legal rights education in diverse regions across Morocco and launched a pilot Court Accompanying Program in 2006 primarily for illiterate women in their respective communities. Initial indicators of the impact of these two initiatives hint at shifts in attitudes and behavior among unwed mothers and local authorities charged with helping them access their legal rights.

The popular discourse in Morocco claims that the main obstacle to people making use of their rights is their ignorance of the laws and their rights, which could be remedied by legal education campaigns. The experience of these NGOs working with unwed mothers illustrates how knowledge of the laws alone is not sufficient. In order to access their rights, women need concrete help in navigating government services and bureaucracies that are often indifferent, intimidating or even hostile. >>

### The trafficking of girls in West Bengal

**T**he Indian state of West Bengal is, like India as a whole, a major source, destination and transit point for victims of trafficking, largely due to porous international borders with Bangladesh and Nepal. Addressing the problem of child trafficking in India requires a multi-faceted approach, including improvement of law enforcement capacity and infrastructure, public sensitization, efforts to reduce the financial insecurity that often pushes girls into trafficking and the strengthening of community vigilance structures. Many anti-trafficking initiatives have been developed in recent years, but the scope of such initiatives is often limited, with much of the formal administrative machinery for addressing trafficking not put into practice.

One of the most formidable trafficking-related challenges in India relates to rights awareness and legal assistance. The Indian Constitution explicitly prohibits trafficking of human beings, and domestic legislation (notably the Immoral Traffic Prevention Act 1956 and the Indian Penal Code 1860) addresses many trafficking and related offences. While such legislation is not comprehensive, and would benefit from revision to ensure its compliance with international standards, the more immediate problem is the widespread lack of awareness regarding the existing protections for trafficking victims contained in these legal instruments. This has serious implications for justice delivery.

This case study focuses on IDLO's Preventing and Combating the Trafficking of Girls in India using Legal

Empowerment Strategies a short-term pilot project aimed to ensure that girls who are victims or at risk of human trafficking have access to relevant legal and regulatory systems to protect and realize their rights.

### Violence against women in Afghanistan

**V**iolence against women in Afghanistan remains a pervasive and deeply rooted problem, taking wide ranging and varying forms, from domestic violence, sexual harassment and rape to trafficking of women and children and honor killings, among others. The Afghan Constitution of 2004, domestic legislation, in particular the 2009 Law on the Elimination of Violence against Women (the EAW Law), as well as international obligations provide a wide range of protections for Afghan women.

Many women have not been able to benefit from such provisions because of an acute lack of awareness among citizens and justice personnel about fundamental rights and the implementation of domestic laws. In the case of the EAW Law, even where illegal discriminatory practices are reported, widespread beliefs among justice providers that such practices are legitimate, or a family matter rather than a legal matter, often undermine the implementation of the law. Even where the state brings acts criminalized under the EAW Law before the court, judges may decide to prosecute such acts under the Penal Code or Shari'a law instead. This often results in the acquittal of perpetrators of gender crimes, charges being reduced to less serious crimes, lighter sentences being

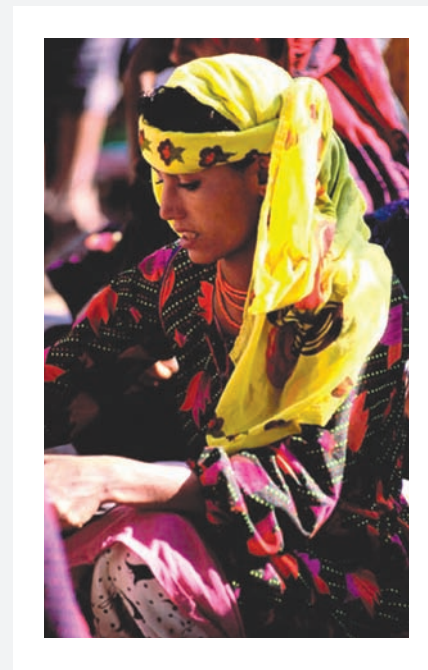


Image: Sheila McKinnon

imposed and/or women victims being accused of 'moral crimes'. This case study features IDLO's efforts to improve access to justice for women in Afghanistan through increased awareness and support for the implementation of domestic laws on violence against women. It explores the effectiveness of the Violence against Women Units in the Attorney-General's office, and the impact of a small-scale pilot project to train decision-makers in the informal justice sector. Preliminary findings suggest that the interventions have made considerable advances in improving legal awareness among women and justice providers, and in providing women with a user-friendly service to seek justice for violent acts committed against them.

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