
ACHIEVING THE 2030 AGENDA AND AGENDA 2063: THE RULE OF LAW AS A DRIVER OF AFRICA'S SUSTAINABLE DEVELOPMENT

June 1-2, 2016

Hyatt Regency Dar es Salaam, The Kilimanjaro
Dar es Salaam, United Republic of Tanzania

Equality and empowerment through access to justice: views on gender BACKGROUND PAPER

OBJECTIVE

Access to justice is a right as well as a means for safeguarding and claiming other rights. Ensuring access to justice is a matter of supply and demand: it involves, on the one hand, empowering people to seek it, and on the other, strengthening institutions to deliver justice and protect rights.

This paper draws attention to gender-based discrimination, poor legal protection and lack of access to justice that affect women and girls in Africa. It highlights the specific challenges for the economic empowerment of women in Africa. The purpose of the paper is to provoke a discussion on the lessons to be drawn from Africa's experience for legal empowerment strategies and other measures to overcome the barriers to gender equality.

CONTEXT

Investment in the empowerment of women and girls is a well-recognized development priority in Africa. Aspiration 6 of the African Union's Agenda 2063 underlines the potential of Africa's people, especially its women. The Ten-Year Implementation Plan of Agenda 2063 is committed to full gender equality and the significant empowerment of African women by 2023 at the national, regional and continental levels. Gender equality is also clearly incorporated in the 2030 UN Agenda for Sustainable Development.

Furthermore, African governments have declared 2010-2020 as the African Women's Decade, 2015 as the Year of Women's Empowerment and Development towards Africa's Agenda 2063, and 2016 as the "African Year of Human Rights with particular focus on the Rights of Women".

Over the past decades many African countries have made progress in setting up legal and institutional frameworks for gender equality. Measures have been taken to close the gender gap in education, and improve women's economic and political participation. In 11 African countries, women hold almost one-third of the seats in parliaments. That is more than in any other region of the world. Rwanda is the first and only country in the world where more than half the parliamentarians are women.

Progress, however, has been marked by significant gaps and regional and national differences, compounded by the uneven impact of poor local infrastructure – particularly energy and water – on women and girls. The concrete realization of women's rights remains one of Africa's greatest challenges.

DISCUSSION

The law is a powerful tool for promoting and protecting the rights of women and girls. All African countries except two have ratified the Convention for the Elimination of Discrimination against Women (CEDAW) and the Maputo Protocol. Many countries have also made constitutional, legislative or policy guarantees of equality.

The challenge lies in the implementation of the laws and the sustained political will to achieve substantive equality through gender-sensitive policy making. For instance while all African countries enshrine the principle of non-discrimination in their Constitutions, in a number of countries that same Constitution curtails women's rights, either by permitting customary rules to govern marriage or by formally exempting inheritance and property ownership from the non-discrimination provisions.¹

National laws in a number of African countries restrict women's full enjoyment of equal rights in various fields, putting women, especially married women, in a secondary social status. For instance, in fifteen countries on the continent, married women do not have full freedom to choose their domicile, in 35 others, they are obliged to "obey" their husband, and in nine countries they are not permitted to apply for a passport in the same way as their husbands.²

Women make up two-thirds of the agricultural labour force in Africa and produce the majority of Africa's food but comprise only 15% of landholders (that is, those who exercise management control over an agricultural holding as owners or tenants, or through customary rights), ranging from under 5% in Mali to 30% in countries such as Botswana, Cape Verde and Malawi.³ Customary land tenure systems widely exclude women from ownership or control of land or restrict their right to inherit land, making divorced and widowed women particularly vulnerable to dispossession, even in situations where the formal legal system and state policies provide for gender equality.

Furthermore, women's landholdings tend to be smaller and of poorer quality than those held by men. They have less access to essential inputs – land, credit, fertilisers, new technologies and extension services. As a result, their yields tend to be significantly lower than men's. This has serious consequences not only for women's economic situation but also for food security.

Female labour force participation rates are high throughout sub-Saharan Africa. They reach 85-90% in countries such as Burundi, Tanzania and Rwanda, and almost equal to men in countries such as Nigeria, Togo and Burundi. However, women are engaged primarily in low-paying occupations or are self-employed in the informal sector with little or no legal protection.

According to the African Development Bank, while African women are highly entrepreneurial and own a third of all businesses across Africa, up to a high of 62% in Côte d'Ivoire, they "tend to be entrepreneurs of necessity, rather than opportunity, driven into small business by the lack of alternatives." Lack of access to credit and financial infrastructure is a big constraint for women entrepreneurs. This in turn is linked to the absence of clear laws and policies to level the playing field for women.

¹ African Development Bank Group, Empowering African Women: An Agenda for Action, Africa Gender Equality Index 2015.

² World Bank, Women, Business and the Law 2016: Getting to Equal.

³ African Development Bank Group, Empowering African Women: An Agenda for Action, Africa Gender Equality Index 2015.

In the formal sector, women hold 4 of every 10 jobs and earn on average two-thirds the salary of their male colleagues. Only 15 African countries have laws against gender discrimination in hiring.⁴

A major factor constraining progress for women and girls in Africa – as elsewhere around the world – is the persistence of high levels of sexual and gender based violence in various forms.⁵ Laws and institutions fail to provide adequate protection or recourse in many instances. Of the 18 countries in the world that provide no legal protection against domestic violence or sexual harassment, 13 of them are in Africa⁶. Just over a third of the countries in Sub-Saharan Africa offer legal protection against physical, sexual, psychological and economic intimate partner violence.⁷

Women's poor legal and social status also makes them more vulnerable to HIV/AIDS, early marriage, teenage pregnancy and maternal mortality. In Sub-Saharan Africa women are at a greater risk of dying in child birth than any other region of the world.

Women are unable to seek legal protection and access justice for a combination of social, economic cultural and institutional factors, such as low levels of literacy among women, the high costs of litigation, family pressure, social stigma, as well as the physical distance and complexity of legal systems and lack of time. State institutions – courts, police, land registries, national commissions – are often under-resourced and unresponsive to women's specific needs. In fragile and post-conflict situations, laws and institutions are non-existent. Even where women are able to access the courts, the quality of justice often fails to meet the national constitutional and legal guarantees. Not surprisingly, many women often turn to informal or traditional systems of justice, where they encounter prejudice and unfair treatment.

There are, however, many examples in the African region where these barriers and obstacles are being addressed through a combination of legal empowerment strategies, legal reforms, social policies and civil society initiatives. Legal education, legal training, legal aid services, creation of spaces for women to question legal norms, improving women's access to information, including legal information and rights awareness all play a role in challenging and changing oppressive legal frameworks and in the building of new gender-responsive ones⁸.

Another measure that is leading to change is the growing number of women judges, lawyers and legal professionals in the justice sector.

GUIDING QUESTIONS

1. What are the main lessons to be learned from African initiatives to promote gender equality? What lessons can be drawn from engagement with the informal systems of justice?
2. How will SDG 5 and Agenda 2063 strengthen policies and strategies for women's empowerment and gender equality?
3. What are the main barriers to women's economic empowerment and how can rule of law and access to justice strategies assist in removing them?

⁴ African Development Bank Group, Empowering African Women: An Agenda for Action, Africa Gender Equality Index 2015.

⁵ African Development Bank Group, Empowering African Women: An Agenda for Action, Africa Gender Equality Index 2015.

⁶ World Bank, Women, Business and the Law 2016: Getting to Equal.

⁷ World Bank, Women, Business and the Law 2016: Getting to Equal.

⁸ IDLO, Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment:

4. What are the key areas where capacity development and international assistance most needed to combat gender based violence?

BACKGROUND DOCUMENTS

- African Development Bank Group, Empowering African Women: An Agenda for Action, Africa Gender Equality Index 2015.
http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/African_Gender_Equality_Index_2015-EN.pdf
- Africa Regional Report on SDG.
http://www.uneca.org/sites/default/files/uploaded-documents/SDG/africa_regional_report_on_the_sustainable_development_goals_summary_english_rev.pdf
- Agence Francaise de Developpement and World Bank, Empowering Women: Legal Rights and Economic Opportunities in Africa, 2013.
<https://openknowledge.worldbank.org/bitstream/handle/10986/11960/730710PUB0EPI001200pub0date01004012.pdf>
- IDLO, Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment.
<http://www.idlo.int/publications/accessing-justice-models-strategies-and-best-practices-womens-empowerment>
- World Bank, Women, Business and the Law 2016: Getting to Equal.
http://wbl.worldbank.org/~/_media/WBG/WBL/Documents/Reports/2016/Women-Business-and-the-Law-2016.pdf

The views expressed in this background paper do not necessarily reflect those of IDLO or the Conference sponsors.