

STRENGTHENING WOMEN'S ACCESS TO JUSTICE: MAKING RIGHTS A REALITY FOR WOMEN AND GIRLS

Concept Note

SYNOPSIS

The concept note responds to the challenges to women's access to justice, gender equality and women's empowerment alongside the gaps and lessons learned from strategies, approaches and interventions aimed at addressing them. The concept note is aligned to IDLO's Strategic Plan and its (forthcoming revised) Gender Strategy; its specific programs in various regions and countries on women's access to justice; the various knowledge and research products produced by IDLO, including *Accessing Justice: Models, Approaches and Best Practices on Women's Legal Empowerment*,¹ and key policy engagements at the local and global levels, including with UN Women and the Committee on the Elimination of Discrimination against Women.

I. CONTEXT AND PROBLEM STATEMENT

A growing number of international policy and legal instruments, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Beijing Declaration and Platform for Action, UN Security Council Resolutions on Women, Peace and Security, and their related processes, have emphasized that access to justice for women and girls is not only a right in itself, but also an essential factor in the enjoyment of other rights, and a factor in sustaining peace and sustainable development. Agenda 2030 for Sustainable Development highlights the importance of women's access to justice to achieve Goal 5 (gender equality and women's empowerment) and Goal 16 (peace, justice and the rule of law). However, ensuring the realization of women's access to justice is challenging. A rapid review of challenges to women's access to justice shows three priority areas of concern:

A. Discriminatory legal and policy frameworks. Despite progress in various areas, an estimated 90% of countries (155 out of 173) have legal provisions that discriminate against women.² Thirty countries still have laws that place men as head of households; 19 legally require wives to obey their husbands; 32 prohibit a woman from getting a passport without her husband's consent; and 100 countries have legal restrictions on what types of jobs women can do.³ Laws or customary practices in 102 countries still deny women the same rights to access land as men.⁴ About 35% of the world's women suffer from gender-based violence. Unfortunately, 'conventional' legal reforms continue to ignore gender inequalities. They tend to sideline the need to reform discriminatory personal laws, despite widespread recognition of substantial gender inequalities in this area. Advertently and inadvertently, reforms tend to promote adherence to discriminatory customary laws and traditions under the guise of supporting 'local' laws or regulations. They are sometimes poorly conceived – lacking significant analysis of the context – thus exacerbating gender inequalities.⁵ In other cases, effective enforcement is difficult in the absence of secondary legislation (rules and regulations), processes and resources.

¹ IDLO. 2013. *Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment*, available at: http://www.idlo.int/sites/default/files/Womens_Access_to_Justice_Full_Report.pdf.

² Ibid.

³ World Bank, *Women, Business and the Law*, 2016.

⁴ OECD, 2014 *Social Institutions and Gender Index*.

⁵ For example, in several countries, land tenure reforms granting ownership to heads of household or requiring land registration in the name of trustees resulted in disenfranchising women from their earlier control or access over land and resources.

B. Limited Justice Sector Capacities to Deliver Justice for Women. Unresponsive justice institutions continue to deter women from seeking justice. Under-reporting and case attrition is acutely problematic in gender-based violence (GBV) instances.⁶ In many cases, conventional justice reforms have effectively sidelined the justice needs of women. For example, they have:

- ignored intra-household and intra-community disputes, because they see them as private matters and outside the realms of public dispute resolution;
- under-invested in judicial subsectors that matter most to women, such as family courts, specialized GBV mechanisms, or small claims tribunals; and
- focused on the type of justice system (formal versus informal), rather than on the justice outcomes that would benefit women most.

In fragile, conflict and crisis situations, women's access to justice is especially challenging. Legal reforms are often not coupled with process reforms enabling women to claim and enforce their rights. Often, women are left with rights without remedies. Finally, justice reform processes typically fail to address gender bias - personal and organizational - and to systematically integrate gender concerns into capacity and competency building programs for the judiciary and other justice sector actors.

C. Exclusion and Disempowerment of Women. Although there is increasing recognition of the importance of women's inclusion, women are often excluded from fully participating in and benefiting from various aspects of law, justice and development work. Distance - whether geographic, financial, political - from justice structures prevents women from claiming and realizing their rights. Women face additional hurdles due to discriminatory social and cultural norms and practices. GBV remains one of the most challenging obstacles to women's empowerment. It hinders women from exercising their rights, such as political participation, freedom of movement, marriage and family life, employment, education, health, as well as in seeking redress for rights' violation, hence further perpetuating and enforcing women's exclusion and disempowerment. In many areas of sustainable development, including land and natural resource governance, food security, and climate change, women are still largely excluded from decision-making processes at community, local and national levels.⁷

II. OUR PROGRAM: STRENGTHENING WOMEN'S ACCESS TO JUSTICE

Responding to the challenges above, IDLO seeks to implement a global program on *Strengthening Women's Access to Justice: Making Rights a Reality for Women and Girls*.

The Program seeks to enhance access to justice for women and girls through mutually-reinforcing outcomes: (a) increased women and girls' capacities to understand and claim their rights; (b) improved national and local capacities to deliver justice to women and girls; (c) strengthened legal and policy frameworks on women's access to justice; and (d) enhanced evidence on successful strategies for informed policy and decision-making on women's access to justice.

⁶ Findings for example in a province in South Africa showed that only 17 percent of reported rapes reached court and just 4 per cent ended in a conviction for rape. In a 2009 study of European countries only 14% of reported cases ended up in a conviction, with rates falling as low as 5%. In a survey of family courts in Morocco, 68% of women who experienced domestic violence expressed a preference of resolving it within the family. Few doctors are trained to collect evidence in rape cases. UN Women. Progress of the World's Women, In Pursuit of Justice. (2011-2012).

⁷ For example, women often lack information on land and natural resources deals, whether for forestry, mining, energy, agriculture, tourism, urban development or other use, made by the state, developers and community leaders, and are not invited to negotiations over these transactions.

Goal: Enhanced access to justice for women and girls

Outcome 1: Increased capacity of women and girls to understand and claim their rights

Legal empowerment of women and girls is central to creating a culture of justice. Not only it improves women's access to justice, but also the quality of justice they receive.⁸ Through legal empowerment, women become equipped to claim their rights and demand accountability, while at the same time bringing about sustained change in their communities.

IDLO's proposed program will increase the understanding of women, girls and their communities around women's rights and the processes to negotiate and claim them.

Relevant outputs/activities will include:

- Capacity building targeting women and girls to fight discrimination and access justice;
- Capacity building targeting civil society organizations (CSOs), especially women's organizations, to promote women's legal empowerment and access to justice; and
- Capacity building targeting communities to promote women's rights and participation.

Outcome 2: Improved national and local capacities to deliver justice to women and girls

The capacity of national and local justice institutions to deliver justice is critical. It enables women and girls to claim and access a range of rights and resources. This makes a wider contribution to achieving equitable and inclusive development outcomes, including education, health, political participation, employment and economic opportunities.

This outcome targets a broad range of national and local institutions that deliver justice or engage in formal, informal, and customary forms of dispute resolution, to ensure that these institutions – at the individual and organizational levels – are adequately responding to women's justice needs, including on GBV, family disputes, and other violations of their rights.

Relevant outputs and activities will include:

- Capacity building targeting state institutions, at national and local levels, to protect women's rights and deliver gender justice;
- Engagement activities with informal / customary justice systems to promote and ensure women's rights; and
- Capacity building targeting CSOs, to enhance their capacity to provide legal assistance and support services for women claiming justice for rights violations.

Outcome 3: Strengthened legal and policy frameworks on access to justice

Gender-responsive laws signal the commitment of the State to gender equality and women's empowerment, create a framework for implementation and contribute to changes in social norms in favor of women and girls. They help deter gender discrimination, promote gender equality, and foster the emergence of inclusive, equitable and accountable institutions that are responsive to the needs of the wider population.

⁸ IDLO. 2013. Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment, available at: http://www.idlo.int/sites/default/files/Womens_Access_to_Justice_Full_Report.pdf, at 7.

This outcome will target legal, social and other actors involved in legal, regulatory and policy reform for gender equality at national and local levels. In addition to government entities, such as parliaments, ministries of justice, other government ministries and commissions, and local government institutions, it will target non-state legal actors involved in such reform process, including CSOs, women's organizations, academia, and community leaders.

Potential program outputs/activities will include:

- Capacity building targeting legal actors to combat discriminatory laws and support the adoption of gender-responsive laws, policies and regulations;
- Technical assistance for legal actors in the effective implementation of gender-responsive laws and policies; and
- Capacity building / technical assistance targeting women and their organizations to strengthen their capacity to participate in legal, policy, regulatory and justice reform

Outcome 4: Enhanced evidence on successful strategies for informed policy and decision-making on women's access to justice

As challenges to women's access to justice are multi-dimensional, addressing them requires multi-dimensional, comprehensive and coordinated efforts to arrive at lessons and solutions. In other words, an evidence-base is necessary to inform policy and program development in rule of law, access to justices and sustainable development at global and local levels. Unfortunately, the existing evidence base is limited and does not respond fully to the challenges faced. This outcome attempts to address this evidence gap by targeting national and local decision makers alongside development partners and agencies working on women's rights and access to justice.

Potential outputs/activities will include:

- Research conducted on women's access to justice: what disputes do women face, where do they go to address them, challenges they encounter and good models;
- Strengthened multi-sectoral platforms on women's access to justice at national or local levels;
- Policy discussions convened on good practices on women's access to justice, sharing relevant lessons and models across various actors, themes/sectors and countries and supporting the use of evidence-based information and analysis; and
- Supporting efforts at the national level to report on women's access to justice in line with Goals 5 and 16 of Agenda 2030 and other international or regional reporting commitments.

Thematic Areas of Focus. Women's access to justice can target a wide range of thematic concerns. To focus our efforts, we will implement this Program (during this first cycle) in selected thematic areas only. These themes were chosen because of: (a) IDLO's proven capacity to deliver on these themes; (b) ongoing innovative or promising work, with potential to yield global and local lessons for replication and scale up; and (c) existing interventions requiring rethinking / reinforcement to adequately address challenges.

The proposed thematic areas of focus are as follows:

- Gender-based violence against women and girls
- Women's rights to land and natural resources
- Economic participation of women, including legal rights and access to justice of women entrepreneurs and women in the informal economy
- Equal rights to participate in political and public life (governance)

- Women's right to health

Priority Countries of Focus: During its first phase, this program will focus on at least five countries. Priority will be given to countries in situations of conflict and fragility as well as countries facing challenges with women's legal protection. The initial five countries under consideration are: Liberia, South Sudan, Tunisia, Myanmar and Guatemala. These countries were initially chosen due to a confluence of a variety of factors: (a) existing IDLO capacity to build on its gender and rule of law work in the country; (b) requests received for enhanced in-country engagement from partners, whether at the national and local level (such as the judiciary, ministry of justice, ministry of gender, CSOs) or at the international level (e.g. UN Women); (c) an analysis of the needs identified by local counterparts showing alignment with IDLO's Strategic Plan 2017-2020 and forthcoming Gender Strategy; (d) our value added to gender and rule of law work; and (e) potential for capturing good practice lessons and replication of these interventions in other countries.

III. BENEFICIARIES

The program has a broad range of direct and indirect beneficiaries across its various outcomes, including justice actors, law and policy makers, government entities that deliver justice, as well as non-state actors, such as community leaders, academia, civil society organizations, women's groups and women and girls themselves.

IV. SUSTAINABILITY

The program will systematically support individual, organizational, and institutional capacities, ownership and influence, at national and community levels. This support will enable implementing partners and beneficiaries to initiate, innovate and implement changes towards enhanced access to justice for women. The Program is aligned to IDLO's Strategic Plan 2017-2020 and IDLO's forthcoming Gender Strategy 2017-2020, signifying IDLO's continuous commitment to gender equality, women's access to justice and women's empowerment. It is also aligned to international priorities, including Agenda 2030's Goals 5 on gender equality and 16 on peace, justice, institutions and rule of law.

V. IDLO EXPERTISE AND EXPERIENCE

IDLO's current Strategic Plan 2017-2020 specifically states that IDLO is *"committed to promoting gender equality through non-discriminatory gender-responsive laws, and institutions, enhancing women's access to justice and increasing their legal empowerment to achieve sustainable development"*. IDLO has finalized its Gender Strategy for 2017-2020 to ensure that IDLO's work effectively contributes to gender equality, women's empowerment and the achievement of fair justice outcomes for women and girls.

IDLO's expertise and experience on women's access to justice has grown exponentially in the past three years, reaffirming gender equality as a core value and principle. During the time frame of the previous Gender Strategy 2015-2016, IDLO has: (a) expanded its gender programming across various countries and themes;⁹ (b) increased opportunities to innovate gender interventions beyond

⁹ Programs with gender as a principal or significant objective expanded from 3 in 2014 to 21 in 2016. Gender work expanded across countries and themes. In 2016, for example, gender projects exist in Afghanistan, Honduras, Kyrgyzstan, Kenya, Liberia, Mongolia, Somalia, Tanzania, Tunisia, Uganda, among others.

conventional justice sector training;¹⁰ (c) enhanced advocacy on gender issues;¹¹ and (d) increased openness and capacity of IDLO employees to integrate gender into their work.

The growth of IDLO's gender work can be attributed to IDLO's unique position as an inter-governmental institution with an exclusive mandate to promote the rule of law. Our unique position enables us to:

- deliver both large scale justice sector programming on women's access to justice as well as targeted focused and innovative solutions;
- convene state and non-state actors on women's access to justice, whether at high-level or operational, local, national or global; and
- provide strong multi-faceted technical support on women's access to justice – as we are continuously building a pool of experts with expertise on the nexus of gender, law, justice and development.

Examples of IDLO's relevant programming in this area include:

(a) Combatting discriminatory laws and ensuring the emergence of gender-responsive legal and institutional frameworks. Some examples of this work include: **Kenya**, where IDLO is working with the government to advance implementation of gender provisions in the Constitution, including supporting the State Department of Gender in the Ministry of Public Service, Youth and Gender Affairs to mainstream gender internally and across various other ministries, including in policy development, legislation, planning and resource allocations. **Liberia**, where IDLO is focused on enhancing the efficiency, transparency and accountability of Criminal Court E, the specialized court designated to deal exclusively with sexual offenses and improving access to justice and protection mechanisms for survivors of GBV. **Tunisia**, where IDLO is supporting the development of a legislative reform agenda on gender-based violence, the adoption of protocol or guidelines for women's shelters as well as building capacity of the Ministry of Women, Family and Childhood, other state actors and women's organizations on legal drafting.

(b) Enhancing women's access to justice institutions, whether formal and informal institutions. Examples include: **Afghanistan**, where IDLO is working to increase the effectiveness of the Elimination of Violence against Women units in the Attorney-General's Office; increase capacity and sustainability of women protection centers (shelters) to respond to women's needs; and strengthen the delivery of legal aid in the country. **Honduras**, where IDLO's program focuses on increasing legal awareness on domestic and intra-familial violence. Among the outputs of the program is the adoption of a comprehensive model to help provide direct legal and other support services to survivors of domestic and other forms of violence. **Mongolia**, where IDLO is working to combat domestic violence through improved mechanisms, coordination and capacities of justice sectors and other relevant actors to enhance sectoral and cross-sectoral responses.

(c) Increasing women's empowerment in sustainable development and economic opportunities. For example: In **Uganda** and **Tanzania**, IDLO is implementing a project aimed at strengthening capacity of adolescent girls, young women and their communities to hold service providers accountable for the delivery of quality HIV-related services through legal empowerment and social

¹⁰ While IDLO's strongest gender work stream (work related to GBV) continues to gain momentum, new gender work streams are opening up, for example, in the area of commercial/business law (Egypt and Jordan), land rights (Burundi), and health (Uganda and Tanzania).

¹¹ Alongside increased gender programming, IDLO enhanced its policy advocacy work by organizing, convening and participating in policy dialogues at national, regional and global levels, including in the Commission on the Status of Women, UN Human Rights Council, Committee on the Elimination of Discrimination against Women, Assembly of State Parties to the Rome Statute of the International Criminal Court, Committee on World Food Security, among others. IDLO is a vocal champion of SDG 5.

accountability. In **Burundi**, IDLO is implementing a pilot project assessing the impact of land tenure registration of women's land rights and engaging in a series of local capacity development, legal awareness and community dialogue activities to strengthen women's land rights, including ensuring consensus for the preservation of women's customary land rights. In **Egypt** and **Jordan**, IDLO is helping create an enabling legal environment for women entrepreneurs through a baseline assessment to identify various challenges that prevent their access to justice and a series of policy workshops to determine areas for priority support and action.

For this program, IDLO will also build on its policy and research work, including IDLO's study on *Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment* which canvasses the impact of legal empowerment interventions targeting women's access to justice in nine countries: Afghanistan, Morocco, Tanzania, Mozambique, Namibia, Papua New Guinea, the Solomon Islands, India and Rwanda as well as its most recent gender publication on *Women, Food, Land: Exploring Rule of Law Linkages*, which lays out a series of recommendations for strengthening gender and rule of law synergies within sustainable development programs on land rights and food security, among others.

VI. BUDGET

The International Development Law Organization is requesting three-year flexible funding to accelerate its delivery of programs that strengthen women's' access to justice. Specifically, IDLO will undertake mutually-reinforcing actions that enable women and girls to claim their rights, strengthen national and local capacities and policy frameworks, and enhance the evidence to inform future policy and decision-making.