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# Ensuring African Women's Access to Justice

Engendering Rights for Poverty  
Reduction in Sub-Saharan Africa



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Policy note no 2:2019

Ensuring African Women's Access to Justice : Engendering Rights for Poverty Reduction in Sub-Saharan Africa.  
NAI Policy Note No 2:2019

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Liberia, April 2012. Female construction workers at the Gbarnga Peace Hub, one of five facilities being built with help from the UN Peacebuilding Support Office to increase access access to justice in Liberia. Photo: Emmanuel Tobey, UN Photo.

ISSN 1654-6695

ISBN 978-91-7106-846-0

# Ensuring African Women’s Access to Justice

## Engendering Rights for Poverty Reduction in Sub-Saharan Africa

About half of the people of Sub-Saharan Africa live below the poverty line, and 80 per cent of them are women. Their access to justice is guaranteed by international and domestic laws. But these laws mean little or nothing without government support and adequate funding. This policy note offers recommendations on how to secure access to justice.

David Lawson, Adam Dubin and Lea Mwambene (with Bisrat Woldemichael)

**T**he majority of people in Sub-Saharan Africa share experiences of economic deficiencies, discrimination, prejudicial gender roles and customs which impact on their right to access justice. By 2030, the World Bank estimates that 9 in 10 of the extremely poor will live in Sub-Saharan Africa. Despite a broad framework of treaties which oblige states to fulfil socio-economic and women’s rights, without access to justice, the fulfilment of those rights will remain

elusive. Indeed, from the Millennium Development Goals to the Sustainable Development Goals, access to justice is fundamental to the full realisation and achievement of socio-economic progress and is crucial to providing, in the words of Nobel Laureate Amartya Sen, “the freedoms to develop”.

Most countries in the region have responded to the challenge of providing justice to women by enacting or reforming laws and policies. But, as is generally obser-



ved, rights-based strategies mean little or nothing to women who are prevented from accessing justice by a myriad of factors, including illiteracy, poverty, discrimination and marginalisation. Given the inadequate position of women in accessing resources, information and the power to influence change, one cannot assume that gender-neutral policies and programmes will benefit women equitably. Therefore, in order to alleviate the gender disparities in access to justice, attention and resources need to be allocated to resolving this marginalisation and to improving women's ability to access justice mechanisms.

### **International and regional obligation**

At the international and regional level, "access to justice" – in terms of the "ability of people to seek and obtain a remedy through formal and informal institutions of justice" – is provided for in AU and other regional instruments, and is also part of international customary law. For example:

- The Banjul Charter, African Charter on Human and People's Rights (1986)
- ACRWC, African Charter on the Rights and Welfare of the Child (1990)
- The Maputo Protocol (1995)

There are also a number of important UN instruments that also provide an obligation on the state to provide access to justice, some more general, and some specifically for women and girls:

- UDHR, Universal Declaration of Human Rights (1948)
- ICCPR, International Covenant on Civil and Political Rights (1966)
- ICESCR, International Covenant on Economic, Social and Cultural Rights (1966)
- CEDAW, Convention on the Elimination of all Forms of Discrimination Against Women (1979)
- CRC, Convention on the Rights of the Child (1989)
- DEVAW, Declaration on the Elimination of Violence Against Women (1993)
- The Beijing Platform (1995)

These instruments oblige States Parties to establish legal protection of the rights of women on an equal basis with men. They also oblige States Parties to take appropriate measures to modify or abolish existing laws and customs that constitute discrimination against women. Furthermore, States Parties are to repeal all national laws that constitute discrimination against women. More importantly, and with a direct bearing on women's access to

justice, States Parties must take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitise them to the needs of women.

### **Considerations in policy and budgeting**

As widely noted, the "right to access justice" is different from other rights. It is dependent on, and intersectional with, other rights, especially socio-economic rights linked to the reduction of poverty, gender inequality and other deprivations. While most countries of Sub-Saharan Africa provide that everyone should have the "right to access justice", in practice women are often denied for a number of reasons, including on both procedural and substantive grounds.

Most proceedings are subject to considerable delays at all stages due to, for example, a large volume of cases but a very limited number of courts; the geographical distance to the nearest court; the language that is used in the court system; unfamiliar and complicated procedures in the formal court system; and – from the perspective of most citizens, particularly women, whose illiteracy levels are quite high in the region – unfamiliar laws used in the formal court system. Traditional values, mores and stereotypes is also a major factor blocking access to justice and underlying many of the justice challenges faced by women and girls.

At the substantive level, there are various areas in which women are marginalised from justice processes (including traditional justice systems), including property rights, marriage (family) laws, violence and gender-based violence. For example, in countries such as Nigeria, Kenya and Uganda, widows lose their right to property once they remarry. In these areas, women continue to be marginalised due to the failure of many countries to implement equitable laws and policies, as well as to the fact that some States Parties have yet to harmonise their laws and policies with international and regional instruments.

Therefore, an essential component in realising the "right to access justice" for women is adequate budgeting, which would ensure that policies and programmes are adequately developed. Put differently, adequate budgeting signals that there is an increasing conceptual shift away from the blank implementation of rights and towards a focus on budgeting and resource-allocation transparency for human rights protection. For example, General Comment 19 of the Convention on the Rights of the Child (CRC) specifically focuses on transparent and adequate public budgeting for the protection of children. This includes budgeting for access

# ACCESS TO JUSTICE IN 45 COUNTRIES – SIX OF WHICH ARE IN SUB-SAHARAN AFRICA

The WJP report Global Insights on Access to Justice is based on a general population poll in 45 countries, 6 of which are in Sub-Saharan Africa – Burkina Faso (1,029), Cote d'Ivoire (1,011), Ethiopia (1,037), Madagascar (1,000), Malawi (1,039) and Senegal (1,012).\*

\* Figures in brackets indicate the number of people, adults ages 18+, who were in the surveys for each country. The surveys were conducted in the three largest cities of each country, in the fall of 2017, using a probability sample.

Source: The WJP report Global Insights on Access to Justice.

The World Justice Project (WJP) is an international civil society organisation working to "advance the rule of law around the world".



Infographics by Henrik Alfreidsson, the Nordic Africa Institute. Adapted from the WJP report Global Insights on Access to Justice.

to justice programmes to ensure that girls, specifically, have adequate access to remedy and the enforcement of rights. This goes beyond the standard gender responsive budgeting frameworks, adopted by many SSA countries, which focus on spending allocations and design of public programs. Governments need to recognise that gender responsive budgeting needs to go beyond considering tax based bias. In addition, governments need to be able to demonstrate not only that they are funding access to justice programmes, but that the funding is adequate and meets the needs of the target populations.

### **Policies and programmes in selected countries**

The book *Gender, Poverty and Access to Justice: Policy Implementation for Sub-Saharan Africa* (edited by David Lawson, Adam Dubin and Lea Mwambene, Routledge, 2019) provides case studies from selected Sub-Saharan countries. It explores the challenges of, the obstacles to and the successes in developing and implementing gender-focused access-to-justice policies in the region. The authors argue that international human rights standards on the obligation to ensure the rights of women to access justice have not been interpreted in a way that is responsive to African women's experiences.

For example, an evaluation of domestic violence against rural women in Nigeria records that poverty, discriminatory laws, lack of knowledge and socio-cultural issues are some of the obstacles impeding access to justice. The conclusion is that non-governmental, community-based and civil society organisations, in collaboration with the media, should embark on awareness creation and the sensitisation of rural women as to their rights, and the manner in which to access justice.

A study of conflict-related sexual violence and access to justice in the Central African Republic highlights further obstacles to women's access to justice, such as cultural stigma, lack of access to basic related services (like health), the futility of a process without guarantees, and financial barriers. It recommends multidimensional efforts, for example legal, military, judicial, political, psychosocial, economic, education and gender measures.

There are also cases where recent reforms have brought the potential for new opportunities in accessing justice. The extensive provisions on children's rights in the Zimbabwe Constitution of 2013 – including the right to be heard and the rights of children in conflict with the law – are commendable as far as justice for children is concerned. Furthermore, since 2009, when the government of Zimbabwe implemented pre-trial diversion (PTD) for children, the discourse and developments for children in conflict with the law is used as an alternative to the

formal justice system. But at the same time, lack of resources, as well as political and institutional will, have led to some teething troubles in implementation of the policies.

### **Policy recommendations**

- Reduce the distances and delays associated with a congested court system. This requires governments to allocate more resources to the courts and to expand the infrastructure, including the digitalization of court systems to streamline and track justice.
- Develop access-to-justice policies that specifically fund and integrate a female-centred approach, taking into account the specific needs of females within the broader justice system.
- Place a greater focus on quantifying the impact of budget allocations on access to justice and other human rights programmes to ensure that both efficiency and progressive expenditure is maximised.
- Ensure greater communication between ministries, such as women's affairs and the executive and other branches involved in developing human rights budgets. All programmes, from water access to education, should be streamlined with a gender focus on access to justice.
- Access to justice sections should be included in demographic or other household surveys in order to gauge access to justice deficiencies amongst specific groups and provide clear data to policy makers concerning practical and effective solutions.
- Taking into account the growing use of mobile and smart phone technology, funding should be provided for the development of access to justice phone applications that would help to facilitate better access to justice for women, especially in rural areas and in informal settlements. This may include direct mobile application access to all-female police units and the ability to file a complaint over the mobile phone, as well as to receive information about laws.
- In coordination with the African regional human rights institutions, determine how women and girls can have more direct access to the African Commission on Human and People's Rights in order to file complaints and hold states accountable for failing to protect rights in the event of a state's failure to provide a remedy. This, too, can be done through the use of technological applications.
- Take stock of the customary practices and traditions that limit access to justice and fund a strategic plan to combat them. ■

# RULE OF LAW – INDEX AND RANKING

The WJP Rule of Law Index 2019 measures how the rule of law is experienced and perceived by the general public in 126 countries and jurisdictions worldwide based on more than 120,000 household and 3,800 expert surveys.

**Ranking**  
Global rule-of-law ranking based on the index score for the 126 countries compared in the report.

**Index score**  
Ranging from 1 (strong rule of law) to 0 (weak rule of law)  
Data is only available for 30 of the 47 SSA countries.

**+0,4%**  
Average improvement in rule-of-law scores for Sub-Saharan Africa since last WJP index edition (2017-18)\*  
\* Based on the 18 SSA countries that had data for both editions



## Factors of the rule of law

The WJP Rule of Law Index is comprised of eight factors:

-  Constraints on Government Powers
-  Civil Justice
-  Regulatory Enforcement
-  Order and Security
-  Open Government
-  Fundamental Rights
-  Criminal Justice
-  Absence of Corruption

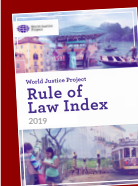
**0,59**  
world average index score



**0,62**    **+7,1%**  
Top index score in Sub-Saharan Africa: **Namibia**  
Greatest increase since 2017/18: **Zimbabwe**

**0,48**  
Sub-Saharan Africa average index score

### Source: WJP Rule of Law Index



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## About this policy note

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