Gender and Law: 
Eastern Africa Speaks

Gender issues, particularly with respect to women's status and rights, have for a considerable period, been in the forefront of donors' dialogue on social issues with Africa. While African countries have fully acknowledged the seriousness of the issues and the urgent need for action, the dialogue has been largely donor-driven and issues and priorities been donor-set. Recognizing the need for a new approach in this important area for Africa's progress, the Bank, in collaboration with the Economic Commission for Africa, initiated a Gender and Law Program, in October 1997, at a Conference held in Addis Ababa, Ethiopia. The Program shifts responsibility for identification and implementation of themes, issues and priorities to in-country stakeholders rather than with donors.

Issues and Approaches

The delegates to the Conference, consisting of ministers, judges, academics, lawyers working for Non-Governmental Organizations and private sector lawyers, represented six African countries, namely, Ethiopia, Eritrea, Kenya, Tanzania, Uganda and Zimbabwe. The delegates presented papers on topics selected through a participatory in-country process and exchanged views, debated and discussed the legal constraints to gender-sensitive development in their respective countries. It was a unique Conference in that, consistent with the Program's basic approach, the country practitioners and policymakers set and articulated the agenda. This illustrated a definite shift in the paradigm for discussion of gender issues - the donors were the listeners and the African stakeholders the speakers.

During the Conference, each country delegation voiced its priorities for change. The issues included land-related challenges, family law, violence against women, employment and labor, and decentralized governance frameworks. Land and the division of household property are prime areas where gender-based disparities marginalize and disenfranchise women of Eastern Africa. In the effort to improve women's social and economic life, two main themes emerged: the impact of customary laws and practices and the need for effective implementation. The delegates emphasized the need to initiate action for change at grassroots, institutional and policymaking levels. They recognized the daunting nature of the tasks ahead, especially given that laws would be seeking to change behavior and attitudes.
Overview

Legal reform is being undertaken in all six countries represented at the Conference. However, the position of the majority of women continues to be defined by customary rules deeply embedded in country-specific historical, economic and social experience.

Ethiopia

The women of Ethiopia enjoy rights that are greater than those of women in any of the other countries. The Civil Code of the Empire of Ethiopia (the Code) in 1960 called for uniform legal provisions which would govern all personal matters and invalidated all customary laws in the areas regulated by the Code. As a result, the Ethiopian woman has a de jure right to an equal portion of common household property. Upon divorce, she is entitled to her own property and to half of the common property. In matters of inheritance, she is not to be discriminated against.

At another level, however, the Code codifies certain customary practices: it designates the husband as the head of the family and gives him the authority to administer household property. The husband is given the right to control and manage common property and to make all decisions regarding such property. While the Code requires that the husband act judiciously and not alienate property without the consent of the wife, strong traditional and cultural beliefs discourage women from enforcing this requirement.

Over the last 38 years, ethnic groups have for the most part continued to apply their own norms and customs. In 1995, the Constitution, while reiterating the concept of gender equality and non-discrimination on the basis of sex, legally reopened the issue of the applicability of customary law. It provided that if parties to a dispute of personal status agree to the applicability of customary law, then this law would apply. Legislation is yet to clarify whether such an agreement includes gender discriminatory customary laws.

The 1995 Constitution provides that all land belongs to the state. The former principle of land belonging to the tiller has been abrogated, creating a window through which female heads of households can now have greater access to land. In the case of married women, however, they continue to access land through their husbands.

Kenya

In Kenya, the Constitution permits the application of customary law to personal matters and to the devolution of property. The Constitution contains no provision for gender as a basis for non-discrimination and as a result, even gender-biased practices are held as valid and constitutional. Women's access to economic resources in Kenya are consequently largely defined by customary laws. Inheritance is usually along the male lineage — hence, women do not inherit family property.

An additional complication in the Kenyan situation is the growing number of cohabiting couples who found families outside of both the formal or customary legal regimes. When such unions terminate, the woman in usually left with no access to any household property nor to entitlement to maintenance from her partner or his family.

There is a need to re-examine the impact of the formalization of customary laws relating to land. The customary right of the male head of the household or the clan leader being the allocator of land has been mistakenly misunderstood to be a right of ownership. This has resulted in a reduction of access to land for women in the customary arena.

Tanzania

In Tanzania, codification has significantly modified customary practices. Customary laws are, nevertheless, held to apply to the African population unless the contrary is proved. Inconsistencies in statutory interventions leave women in Tanzania vulnerable when a marriage terminates - women are not provided with full access to household property. The Law of Marriage Act (1971), while, for example, prohibiting the alienation of the matrimonial home without the consent of the other spouse, paradoxically provides that the wife loses this right if the marriage terminates either by divorce or death. Tanzanian courts have, in order to provide the wife with some access to matrimonial assets upon divorce, used the reasoning that marriage is an economic venture.

Similar to the situation facing Kenyan women, Tanzanian women do not inherit where there are male heirs. Women's access to household property and to land under inheritance laws are therefore severely constrained, underlining the urgency of the need to revisit gender in the current ongoing revision of land tenure in this country.
Uganda

In Uganda, implementation of laws in a decentralized governmental framework is a key issue. While decentralized arrangements could provide an excellent framework for enhancing governance issues and facilitate effective implementation of laws to protect women, capacity at the decentralized levels is essential if such systems are to be effective. Also, decentralization provides opportunities to reexamine dispute settlement methods and to bring such processes closer to the disputants.

Uganda has also introduced an affirmative action program, reserving 30 percent of the seats in local councils for women. While this has brought a number of women into the political mainstream, experience demonstrates that such programs also need to be accompanied by strong capacity building efforts if they are to be effective. Stereotyped images of women and attitudes also affect the participation of women at local levels, and the Ugandan delegation stressed the need to address these issues in a decentralized framework. There is a need to gender-sensitize even women; otherwise women councilors may not themselves be effective in translating their numerical presence into an effective lobby that articulates and addresses gender concerns and needs.

Zimbabwe

Customary laws govern the bulk of personal relationships in Zimbabwe. Most marriages are not registered but are, rather, governed by customary rules. A married woman is assumed to work for her husband and all property acquired in the marriage, apart from household property such as kitchen vessels, belong to the husband. Upon termination of a marriage, division of property is dependent upon whether or not the marriage has been registered under the Matrimonial Causes Act, and most are not.

The enactment of the Maintenance Amendment Act (No. 6/97) has been an important step in requiring a husband to maintain his ex-wife and her minor children in cases of divorce, and it supersedes customary law. The Administration of Estates Act has also introduced a measure of security for women by providing that the surviving spouse and children of the deceased have the right to inherit the deceased’s property. Customary law prevented a woman from inheriting her deceased husband’s property.

Undertaking Reform

The Gender and Law Program is facilitating further exploration of the causes of women’s insubordination and marginalization in these countries. It is also enabling the African teams to carry out new approaches and test cases (best practices) for change. Support to the participating countries covers both technical and financial dimensions, with there being Bank-assisted activities already in place for Uganda and Zimbabwe.

Expected key outputs of the Program include reconciliation of statutory and customary law and international conventions, harmonization of legislation on land, increased institutional capacity and gender awareness of local stakeholders, harmonization of marriage and inheritance rights and gender-relevant Islamic rules in East Africa, reduction of violence against women, and institution of mechanisms to enhance the implementation of gender sensitive laws and regulations.

Energized by the lead which the African teams are taking in moving the Program forward, the Bank is keen to facilitate the continued growth and development of this important endeavor.

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