Women, Legal Reform and Development in Sub-Saharan Africa

Introduction

Many Sub-Saharan African (SSA) countries have constitutions and/or established laws that provide for equal rights to men and women. Twenty-five countries in the region have ratified or acceded to the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), a comprehensive treaty which requires parties to take corrective and affirmative actions to improve the status of women. However, the translation of legal principles into statutory law and the administration and enforcement of laws to redress systemic or functional gender discrimination can be highly problematic. The operation of a law may be hampered because it is poorly constructed, is inherently discriminatory against women, does not reflect the needs and capacities of women, contravenes a custom or practice to which society assigns a higher priority than the formal law, or is simply ignored by those responsible for applying it. In many instances, women do not know their legal rights, nor have the effective means of asserting them. Institutional legal arrangements may not, therefore, create equal opportunities for men and women to participate in their societies and economies.

The history of the evolution of legal institutions and economic development in SSA demonstrates the importance of legal norms and structures as these affect economic empowerment, particularly that of women. Women head about 40 percent of African households. They supply an average of 70 percent of the labor for food production, 50 percent of labor in domestic food storage, as well as 60 percent in food marketing and 100 percent in on-farm food processing.

In spite of this, in many societies of SSA, a wide range of laws, and regulatory practices still prohibit and/or impede women to a greater extent than men in obtaining credit, productive inputs, education, training, information, and medical care needed to perform their economic roles. The distortions in
resource allocations which result from this discrimination carry high development costs -- too high to remain invisible in current and future development strategies.

The World Bank is still at an early stage of examining how to address gender-responsive legal reform. The first ever WID Program Progress Report which was presented to the Bank's Board in February 1990, proposed various categories of actions including "country-by-country assessment of specific legal and regulatory problems."

Legal issues have been raised in several country Women in Development assessments undertaken since July 1989. These Assessments were carried out in Cameroon, the Central African Republic, Cote d'Ivoire, Ethiopia, Guinea-Bissau, Mauritania, Mali, Nigeria, Senegal, Tanzania, Togo, Uganda, Zaire and Zimbabwe. Following up these results, the program "Legal Reform Issues for the Women in Africa" was initiated in July 1991 by the newly established Africa Gender Team of the World Bank. Its objective is to develop a sound understanding of the causes and significance of legal constraints to the economic empowerment of women. In this first phase, an overview of the issues in the region was elaborated in a series of three papers: \textit{Law as an Institutional Barrier to the Economic Empowerment of Women}; \textit{Gender, the Evolution of Legal Institutions and Economic Development in Sub-Saharan Africa} and \textit{Women-in-Development: The Legal Issues in Sub-Saharan Africa today}.

The first challenge was to construct a conceptual framework for an integrated analysis of law, gender and economics. It is agreed that gender bias in its various forms is often hard to detect because it is so embedded in institutions. In many cases, gender-based economic inefficiencies are concealed within the basic legal principles and conventions adopted by society (so called "gender neutral statutes.") Corrective action requires a reorientation in how these principles and conventions have been applied historically. The discussion suggests that this reorientation process may begin by inquiring how laws (or lack of laws) affect gender-equity in access, control and exploitation of economic resources and opportunities.

The next challenge was to apply this framework to pre-colonial and colonial Sub-Saharan Africa to develop an understanding of the origin and rationale for gender biases in extant laws. The analysis:

- Underscores the diversity in traditional African institutions, and hence the variance in women's rights from one society to another;
- Points out that pre-colonial Sub-Sahara was characterized by dynamic societies whose customs changed and evolved to respond to changing economic, social and political circumstances; and
- Demonstrates that the development of "customary" law during the colonial period did not always reflect custom.

Application of the framework revealed major gender-based legal constraints to improving the economic capacity of Sub-Saharan women in the areas of physical, human and financial resources, dispute settlement and authority.

Another key finding is that although efforts to reform laws have been made by many countries since independence, most have not eliminated the legislated and historical constraints identified earlier. An assessment of weaknesses in laws and legislative practices highlights three broad illustrative categories: substantive rule of law, the administration of the rule of law, and strategic issues. The following set of questions to be answered for each country were derived from these studies.

http://www.worldbank.org/afr/findings/english/find20.htm 10/22/01
Substantive Rule of Law Issues

Property

- Under marriage, succession and property laws, do married women have full proprietary capacity, as evidenced by their rights equal with men to acquire and hold property in their name, to occupy, manage and dispose of property, and to defend these rights against others?

- Does custom effectively abrogate the statutory rights of women to acquire and own property?

- How does the legal definition of ownership affect the property rights of women?

- Does the constitution bar sex discrimination?

Labor, Education, Health

- Is discrimination in employment and pay barred by the constitution and statutory law?

- Will historical employment and wage discrimination affect the ability of corrective legislation to promote equality in fact?

- What is the factual basis for distinctions between men and women in protective labor legislation?

- Are benefit plans and fringe benefits (including education and health) systematically biased against women given their needs and social and economic characteristics?

- Do laws (e.g. marriage) and custom restrict women's fundamental rights such as the right to travel and right to personal autonomy required to pursue business opportunities and acquire educational and health services essential to promoting their economic capacity?

Capital

- Do tax and inheritance laws distinguish between men and women with regard to right to income and wealth?

- Do laws and conventions deny women equal rights with men to contract for loans?

Administration of Law Issues

Dual Legal Systems

- Does dualism in the court system allow choice of courts (forum-shopping) to the detriment of women?

- Does lack of precise choice of law rules lead to arbitrariness and inconsistencies in judicial decisions to the detriment of women as a group?
Hierarchy of Legal Norms

- Are laws at each level of authority within the legal system sufficiently definite to minimize arbitrariness in interpretation?

- Are lower-level laws consistent with rules in higher-level laws which protect the rights of women?

Legal Scholarship

- Is there evidence that a law ostensibly based on custom reflects a spurious rather than genuine custom or is not rooted in custom?

- Do gender-based laws reflect rational principles accepted by society as a whole?

- Does lack of integration of customs and modern laws add to inconsistencies in the substance of laws and arbitrariness in interpretation?

Strategic Issues

Empowering the Key Players

- Public education. Are those individuals and organizations responsible for ensuring that the reforms are implemented (including intended beneficiaries, likely violators, judiciary and law enforcement agents) sufficiently knowledgeable to perform their roles and support the change?

- Institutional pluralism and participation. Has the process of legal reform involved the participation of key actors (including those at the grassroots level, non-governmental organizations, governmental agencies, and private enterprises) to ensure support for the reform?

- Access to the law. Has the strategy addressed barriers that intended beneficiaries will face in invoking the new law?

Empowering the Law

- Can the reform cite a higher source of law as legal authority?

- How is the new law linked to an older law? Does the rationale for the new law justify its adoption because it will promote social order either by continuing the rationale of an existing law or by replacing an existing law whose rationale is no longer valid for the society?

- What are the successful models for the reform?

- What are the positive (reward) and negative (punishment) sanctions?

- What is the best time to make the new law effective in order to reduce resistance?
Cost-effectiveness should be an integral part of the analysis on which the strategy recommendations rest.

The second operationally-focused phase currently involves a series of activities addressing women's legal status at the country level to answer the questions posed. The Bank's lending program and sector work would thus incorporate support for:

- Constitutional, statutory and regulatory reform;
- Legal literacy initiatives; and
- Country case studies and workshops to formulate specific strategies for legal reform.

The objective is to define country-specific strategic and operational approaches for legal and regulatory reform aimed at enabling women to participate as full and equal partners in economic and social development.

**Operational Significance**

It is in its involvement with legislative reform and capacity building of the judiciary that the World Bank can introduce into the dialogue a consideration of the relevant gender issues and how they are perceived by the people involved in legal reform. For example, the second Privatization and Industrial Reform Adjustment credit for Zambia has as one of its conditionalities a requirement that a study be undertaken on the proposed land reform. Here, the Bank can make suggestions as to particular areas of interest such as the differential impact on men and women of such a reform process. The Bank may also encourage the borrowing country to take certain gender issues into consideration when planning law reform. Thus, in a proposed Public Sector Reform and Capacity Building project in Cape Verde, the Bank had the opportunity to suggest that any revisions made in the commercial and labor legislation should ensure that the provisions are accessible to both women and men, i.e. the autonomy to make contractual agreements. In assisting in the training of judges and other development lawyers, the contents of the syllabus may include training in gender issues. In Zambia, both the Financial and Legal Management project and the project in Cape Verde referred to earlier have training components for judges. The latter components could ensure a curriculum which is gender-responsive.

Working within the preparatory and implementation process of lending operations provides a framework and specific instruments with potential for effecting gender responsive legal reform. Providing technical backstopping, together with the identification of the financial resources needed to support the formulation of a country-specific strategy and program of gender-responsive legal reform is another pro-active approach. The combined support of the concerned Country Department, the Swedish International Development Authority and the Africa Gender Team for the Case Study "Legal Constraints to the Economic Empowerment of Ugandan Women", currently being developed by a team of Ugandan experts, in collaboration with Economic Planning is a case in point. Uganda's already established initiatives on Constitutional Reform, statutory test cases and grassroots legal literacy programs will provide the substantive material for formulating the issues and next steps under each of the categories noted previously. Resources from the Africa Gender Team's Country Operation Support Fund (COSF), at the request of the Association des Juristes Maliennes, which provided for a national workshop in May 1993 to identify the range of gender responsive legal reform issues was a
first step in the formulation of a related country strategy for Mali. A similar combination of COSF resources and technical participation from the Africa Gender Team in the seminar organized by the Government of Cameroon and the Justice Department of Canada in July 1993 provided for 30 participants from 22 Francophone and Anglophone countries of SSA to learn from their shared experiences with the establishment and maintenance of Legal Literary programs.

Such programs are a key feature for any country strategy for gender-responsive legal reform, and very feasible components for support under Bank Lending Operations in the Education, Health, Agriculture, and Finance Sectors. A set of operational tools derived from this second phase of the Regional Program—Legal Reform Issues for the Women of Africa" is the series of summary information briefs on substance of law or administration of law issues. These include "Laws and the Impoverishment of Women", "Human Rights, Women's Rights and International Law", "Network of Legal Clinics for Women in Francophone Africa", and "Women and Legal Reform: The Role of the World Bank." These are designed to share the findings and recommended operational approaches as broadly as possible with SSA country-based legal associations, NGOs and Task Managers.

**Conclusion**

In spite of the diversity of countries in Sub-Saharan Africa, experience identifies a number of fundamental issues related to the formulation or implementation of successful strategies. These include:

- Understanding the country-specific historic context and rationale of the current law or practice identified for reform and recommending changes in a way that minimizes or at least addresses the sense of social and cultural damage.

- Recognition of the importance of developing legal literacy programs for public education. (The message may need to be presented differently to men and women.)

Recognition of the value of non-governmental organizations in playing an advocacy role for women in civil and state society.

These issues need to be refined and further developed through intra-regional dialogue and exchange of information which the Africa Gender Team, in collaboration with the Legal Division for Africa, is supporting through collaborative workshops with the pioneering key regional networks and associations of lawyers such as Women and Law in Southern Africa (WILSA) and Women in Law and Development in Africa (WILDAF) and la Federation des Juristes Africaines.

Legal constraints faced by both men and women pose obstacles in carrying out economic and social roles as well as inhibit poverty-reduction efforts. Beginning to understand the additional burden of constraints faced by women due to legal, regulatory and customary practices, can provide insights as to how to better design and implement more effective Bank projects across various sectors. More important, this understanding can help to release the suppressed economic potential of women and shape a more equitable development process.

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