

Women and Girls empowerment: Are public policies enough?

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Abstract

There are still the existence of discriminatory laws and practices which affect Women and Girls around the world. This paper tackles such issues within Africa which have an impact on Women and Girls empowerment. It discusses such policies and laws that have been established to improve the lives of Women and Girls in Africa. Have public policies been successful in promoting Women and Girls empowerment? This paper argues that there are patriarchal social structures manifested in formal and informal laws. Some public policies reforms have been successful in promoting Women and Girls empowerment. Public policies are still not enough, there is still a need for social norms to change.

Keywords

Women, Girls, Women empowerment, Public Policies, Africa, Laws

Overview

Over 2.5 billion women and girls around the world are affected by sexist laws and the lack of legal protections, often in multiple ways. (McKinsey Global Institute 2015). Discrimination in law includes different standards for women and men in choosing employment, applying for a passport, transferring nationality to a spouse or child, receiving inheritance, etcetera.

Laws can discriminate against women and girls in a direct or indirect manner. Direct discrimination takes place when the law explicitly treats women and girls less favourably than men and boys. Indirect discrimination occurs when a law appears to be neutral on its face but includes a discriminatory effect in practice on women because pre-existing inequalities are not addressed by the apparently neutral measure.

Discriminatory personal status laws hinder equality in inheritance, marriage, divorce, and parental responsibilities and authority. Further, these inadequacies often overlap with gaps in other rights. For instance, the right to be safeguarded from various forms of violence (e.g., early marriage, domestic abuse and widow inheritance), girls' right to an education and the right to food security. (Human Rights Council 2015).

In over 100 of the world's countries, women are legally restricted in what industries they can work in and what types of jobs they do, which contributes to the gender pay gap (World Economic Forum. 2018.).

Labour laws in some jurisdictions exclude women from different kinds of employment on the guise of protecting their reproductive health, while others have different scope of payment for men and women who undertake identical tasks. (World Bank Group 2018).

104 countries have laws which prevent women from working in some kinds of jobs. 59 countries don't have any laws on sexual harassment within the workplace. In 18 countries, there are legal laws that allow husbands to prevent their wives from working. Nearly 40 per cent of Nations have a minimum of one constraint on women's property rights as measured by the World Bank's using property indicator. In 36 of 189 countries analysed by the World Bank, widows are not granted identical inheritance rights as widowers. Further, 39 countries

prevent female children from inheriting the same kind of assets as sons. 65 countries restrict women from working in mining. Women also face job restrictions in industries like manufacturing (47 countries), construction (37 countries), energy (29 countries), agriculture (27 countries), water (26 countries) and transportation (21 countries) (World Bank Group, 2018).

There is a close relationship between women's legalized status and her ability to participate within the economy. In the Democratic Republic of Congo, where women must get their husband's agreement to begin a trade, women run only 18% of small businesses. In Rwanda, where such regulations do not exist, 41% of small businesses are managed by women (Kabeer 2012). This finding clearly speaks to the intensity of discriminatory laws that impedes women's economic empowerment.

Ninety percent of the countries analysed within the World Bank Women, Business, and the Law Report had a minimum of one type of law operating that had an adverse effect on women's economic empowerment (Vogelstein et al. 2018).

Biased legislation contributes to women and girls' risk of conflict-related violence and human rights violations, while inequalities prevent women's abilities to take part in conflict prevention initiatives and mitigation. The linkages between discriminatory laws and the women, peace and security agenda are clearly spelled out in the Global Study on the implementation of United Nations Security Council resolution 1325, which notes that the quantity of female-headed households tends to rise sharply during and after conflict. Where women heads of household are prevented from acquiring properties, obtaining land rights or giving nationality to their children, they and their dependents might be refused access to primary services like education and health care and face increased risk of sexual exploitation and abuse. (Radhika, 2015).

Only 21 percent of Women were government ministers, with just 14 Nations achieving 50 per cent or more women in their cabinets. (UN Women and Inter-Parliamentary Union 2020).

The Beijing Declaration and Platform for Action reflects an agreement to guarantee equality and non-discrimination under the law, and more specifically to "repeal laws that discriminate on the premise of sex and eliminate gender bias within the administration of justice" (United Nations Fourth World Conference on Women, 1995). It emphasizes the duty of all States to implement the Platform for Action through national laws to alter discriminatory social norms and gender stereotypes, and move more effectively towards gender equality, women's empowerment and therefore realization of women's and girls' human rights.

Gender discriminatory laws are a violation of human rights and a barrier to efforts geared towards addressing gender inequality. CEDAW enjoins States parties to condemn discrimination against women in every form and to pursue a policy of eliminating discrimination against women.

The human rights system has actively advocated and recommended the revoke of discriminatory laws. Examples include the Human Rights Council's recent resolution on "the elimination of all kinds of discrimination against women and girls. (Human Rights Council. 2018).

Legal reform is just a way to achieve gender equality within the global economy...promoting gender equality in policies will not essentially improve the situations of women in practice

(Vogelstein et al. 2018). Genuine progress requires enforcement, which presents its own challenges.” Peace (2013) echoes, “this gap in legal enforcement demonstrates that getting...legislation is merely half the struggle; where progressive policies are introduced the question becomes how state agents can translate and deliver...policies in ways that always protect and empower women.”

Judges, lawyers and prosecutors play a crucial role in addressing these circumstances and guaranteeing that impunity for discriminatory acts is not permitted, that such acts are duly probed and punished, and that the victims have essential remedies at their disposal.

There is clear evidence that even those States whose constitutions guarantee equality before the law (the majority) have laws that discriminate against women. Bias provisions were found in laws stating a reduce age of marriage for girls than boys and, in some cases, approving child marriage, male authority with regards to choices concerning the child which was frequently linked to conjugal authority over the wife, bias in citizenship and nationality laws, distinct grounds for divorce and bias property division on divorce and death. Even procedural laws were sometimes found to be biased giving favourable privilege to male witnesses above the female ones. (Fareda 2008)

The principle of non-discrimination is usually not respected, frequently in the area of women’s rights (Otto 2002). The clearest manifestation of this is in the existence of laws that directly discriminate against women, despite clear international legal obligations requiring States to abolish, amend or repeal laws that discriminate against women on the premise of sex (CEDAW. art. 2)

Legal reforms built on less oppressive cultural foundations are more likely to lead to progress for women. Secondly, it is noticed that even within an adverse background situation, legal reforms are bound to be effective if strong accountability and enforcement structures are put in place. Thirdly, certain background conditional considerations seem to be more important in promoting the success of legal reform than others. (Anna et al 2020).

Factors Affecting the Effectiveness of Public Policies for Women and Girls Empowerment

The UN Secretary-General’s High-Level Panel on Women’s Economic Empowerment recognises adverse social norms as a top constraint to women’s economic empowerment, which also contributes to the other three main constraints: biased laws, limited access to assets and unpaid care work (UNHLP, 2016)

Bartlett and Kennedy (2018) postulate that because legal reform does not adequately change social systems and beliefs, it is not a powerful tool for making real change. Quast (2008) provides a considerable list of what she perceives as barriers to effective legal reform. She notes, Competing legal structures among various systems: traditional, formal and faith systems; Elimination of specific segments of society from the reform process; lack of essential resources, which are needed for judicial actors to implement their jobs effectively...lack of, or dilapidated infrastructure...lack of independence of the judiciary resulting from little or no separation of powers...corruption among judicial actors, including police, judges, prosecutors, court administrators and juries...cultural attitudes and practices, which end in violations of human rights...slow pace of progress.

Brysk (2018) goes further and provides a reasonably comprehensive framework during which she explains that the effectiveness of a law to generate change for women depends on three factors: access, meaning women's capacity to file complaints and get justice; architecture, meaning the structure of the law and the legal system; and accountability, meaning the government's willingness or power to implement the law.

Women victims of violence experience many challenges in getting justice. Studies have attributed the existence of the barriers to law and to society's construction of women and of women's issues. There is a necessity to view beyond legal measures and into the interplay of politics, economics, and culture in women's access to justice in cases of violence. Focusing on established laws that protect women, the management of legal aid and counsel and the style of adjudication and enforcement as a frame for approach to justice for women who are victims of violence would be restricted. It might fail to deal with the subordinated and subjugated identities of women in law and in society. It would fail to account the structural inequalities between men and women, the historic and systemic deprived position of women, the custom of impunity in cases of violence against Women, and also the prevailing gender bias and system of patriarchy that go on in the judicial system and in society (OHCHR n.d.).

The African System

The African Charter on Human and Peoples' Rights, 1981, contains a non-discrimination provision covering sex, (Article 2) an equal protection before the law provision (Article 3) and most significantly, the mandate that the State shall guarantee "the abolishment of bias against women (Article 18{3}).

The disbandment of the Organization of African Unity led to the constitution of the African Union. Its founding document, the Constitutive Act 2000 additionally pledged to uphold human rights, also evidences a commitment to gender equality.

The African Union endorsed the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 2003 (African Women's Protocol). On 25th November 2005, the Protocol came into force.

Like CEDAW and other African human rights instruments, the Protocol has both civil and political and economic, social and cultural rights. (Fareda 2008)

The African protocol simultaneously with CEDAW, the foremost State obligation requires States to ensure that their constitutions prohibit discrimination against women. Moreover, Nations are under a commitment to "authorize and effectively implement suitable legislative or regulatory measures, as well as those proscribing and ending every kind of discrimination.

Article 9 of the African Protocol on participation in political and decision-making processes also calls on States to require "specific positive action...through affirmative action, legislation and other measures" to guarantee that women can participate without discrimination in elections and public life.

The Protocol is not without its problems. Top among these is the shifting standard of egalitarian. The definition of discrimination is evident. It suggests equality between men and women. It is reinforced by article 8 which provides that "men and women are equal before

the law and shall have lawful rights to equal protection and be beneficiaries of the law”. Nations are required to strive for equality of opportunities. However, this understanding of equality is not found throughout the Protocol. If anything, there appears to be a lowering of standards where women’s right to property on death or divorce is taken into account so that both articles 7 on marriage dissolution and 21 on inheritance provides for an “equitable distribution” of marriage or inheritance assets. Equitable and equal don’t mean the same thing. Equity, or fairness, is, like beauty, within the eyes of the beholder. Equality is clearly a more objective measure. (Fareda 2008).

Prior to the mid 1990s the human rights treaty bodies, aside from CEDAW, did not, in their general comments, pay much attention to the particular violations of women’s human rights. (Otto 2002).

Institutionally, the AU Commission established a Women and Gender Development Directorate within the Office of the Chairperson of the African Union Commission (Racheal 2004).

Eleven economies implemented 16 reforms in seven areas in Sub-Saharan Africa. The Democratic Republic of Congo introduced social indemnity maternity benefits and equalized retirement ages. In Côte d'Ivoire, spouses now have equal rights to ownership and manage property. Mali enacted reforms on non-discrimination in employment. São Tomé and Príncipe adopted a new labour code to fulfill job market demands and produce laws in compliance with international standards. South Sudan endorsed its first labour law since getting independence. (World bank 2020)

Marriage

Nkoyo identified the conflict of rules by the existence of plural legal procedures as problematic. Nkoyo Wrote about Nigeria, she recognized how the least age for marital union for males and females is put at 18 in the Child Rights Act, 2003, but that child as affirmed in the Children and Young Persons Act is defined as one under 14, while a youth under the same act is between 14 and 17. She further notes that the Immigration Act defines a child as one under the age of 16 while the Matrimonial Causes Act identifies an adult as anyone over the age of 21. (Nkoyo 2006).

Linked to early union is the assumption of “paternal preference or authority” in many legal systems. The father was at advantage in making decisions as regards to a child in areas which includes the name of a child, birth registration, custody, passport application or granting access to travel, marriage approval and citizenship. This can be frequently connected to the establishment of the father as being the head of the family and take no notice of the actual circumstances that exist in numerous Nations; the great burden borne by women in child care. (WLUML 2006).

Divorce Settlement

Nyamu-Musembi notes that in Kenya 95% of land is held within the name of the man which “even co-ownership of the matrimonial property is a rarity.

The concurrence of plural systems of laws means that women's rights in any Country could fluctuate depending on the legal system that guides their marriage. (Fareda Banda. 2008.)

The different matrimonial regimes give different challenges for women. In some communities, if a woman divorces her husband, she loses her capacity to be the legal custodian of family resources. Lesotho's Deeds Registry Act provides: "No immovable property shall be registered in the name of a woman married in community of property". (Lesotho Deeds Registry Act (No. 12 of 1967), as cited in Equality Now (2004), 15.)

While some legal systems allow parties to retain separate property, this could work against women. The Ethiopian Revised Family Code 2000 provides that parties have a choice of matrimonial regime on going into marriage. Parties are able to maintain their individual property separately. So, on divorce, each goes away with what they brought in. Any common property or property acquired jointly is shared. In dividing common property, it is provided that: "The utmost care shall be taken to grant each spouse things which are most useful to him." The separate property regime, although seemingly respecting the autonomy of every party, ignores the reality that usually women enter into marriage with minute assets. Their home-making role, particularly in poor societies, makes it unrealistic to think that they will be able to acquire any meaningful property during the course of the union. Operating on the principle of "take what you paid for" negates a woman's domestic contribution, for all she is able to point to are the outfits she has and perhaps some pots and pans. (Fareda 2008)

Succession and Inheritance

It is problematic that in view of women's deficit of access to resources were succession rules that are biased against females as daughters and wives. This resulted in women, especially wives, being left at the mercy of relatives of the deceased husband, prone to sexual and psychological abuse and unable to take decisions about their own lives and those of their children.

While it is important to acknowledge that a lot of States have changed their laws to get rid of discrimination against women in inheritance and succession and also to outlaw customs and practices that constitute degrading and cruel treatment of women following death of their husbands, implementation of such laws remains an issue (Fareda 2005).

CONCLUSION

Women's Rights are fundamental human rights. The year 2020 marked 25 years for the Beijing platform for action. Yet, there are discriminatory hurdles in laws hindering Women and Girls access to justice. Not all legal reforms create positive impacts for Women and Girls globally. Public policies are critical tools to promote Women and Girls empowerment around the world. There is still a long way to go in achieving equality of rights for Women and Girls. There is a need for legal reforms, strengthening gender responsive social protection and public service delivery.

Having more women in leadership positions in various forms of institutions is a critical factor in successful legal reform for women's and girls' empowerment. More women in leadership

and decision making could help in promoting importance for reform and making them actualized. More women within the judiciary can support the implementation of reforms. Countries can learn from each other on legal reform for women's and girls empowerment. Regional and global exchange on legal reform are strategies of gaining ideas and competence in putting reforms to action.

Addressing discriminatory social norms and stereotypes is challenging since actions should be taken at different levels. Changes need to occur from the individual, the family, the community, organizations and public policy.

People whose lives would be affected by a reform should be informed of the reform. Much effort should be put into sensitization campaigns to ensure that individuals know and understand the legislation that affects them.

The justice sector remains male dominated and conservative attitudes prevail; thus, certain judges might not interpret the law in favour to enhanced women's and girls rights. This can be particularly pronounced within the higher courts where there are even fewer women judges and where conservative attitudes are more common.

This paper has emphasized that Women and Girls empowerment depends not only on public policies but also on changing social norms at the level of the individual, the family, the community and organizations. What the paper does not seek to do is to deny that public policies are effective for Women and Girls empowerment. However, it should be noted that public policies alone are insufficient in promoting Women and Girls empowerment but additional steps to be taken to end inequalities faced by Women and Girls perpetuated in the name of custom, traditions, unconscious bias and social norms through behavioural change.

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