

DEBATE

LEGAL EMPOWERMENT OF WOMEN AND GIRLS: PROGRESS AND CHALLENGES

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ABSTRACT: The commission on legal empowerment of the poor (2008) estimated that four billion people on the planet could not use the law to improve their lives and livelihoods. Instead, they saw the law as punitive and therefore to be avoided. Half of these people, women and girls, suffer disproportionately and in specific ways that need special attention. This paper surveys the significant progress that women and girls have made in recent decades with respect to their legal rights but then goes on to identify the great distance still to be covered. Progress has been made, for example, with the right to education with respect to having more girls in school, to living healthier lives and having greater participation in the labourforce. Nevertheless, much more remains to be done in these areas but more so in having more voice and power in the political affairs of their countries, in control over income and assets, in vulnerability to violence at home and in their capacity to deal with shocks and stresses due to natural disasters and conflict. The paper will describe the benefits women were expected to gain from the Convention on the Elimination of all forms of Discriminations Against Women (CEDAW) and what has happened in practice. Finally, an agenda for action on legal empowerment of women and girls is presented.

KEYWORDS: legal empowerment, women, girls, voice, power.

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RESUMEN: La Comisión para el Empoderamiento Legal de los Pobres (2008) estima que cuatro mil millones de personas en el planeta no podían utilizar la ley para mejorar sus vidas y medios de subsistencia. En lugar de ello, vieron la ley como punitiva y trataron de evitarla. La mitad de estas personas, mujeres y niñas, sufren de manera desproporcionada y de formas específicas que requieren atención especial. En este trabajo se examina el progreso significativo que mujeres y niñas han realizado en las últimas décadas con respecto a sus derechos legales, pero luego pasa a identificar el largo trecho que queda por transcurrir. Se ha avanzado, por ejemplo, en el derecho a la educación en relación con la presencia de más niñas en la escuela, una vida más saludable y mayor participación en la fuerza laboral. Sin embargo, queda mucho por hacer en estas áreas, más aún en tener voz y poder en los asuntos políticos de sus países, en el control de ingresos y bienes, en la vulnerabilidad ante la violencia en el hogar y en la capacidad para hacer frente a crisis y tensiones derivadas de desastres naturales y conflictos. En el texto se describen los beneficios que se espera puedan ganar las mujeres en la Convención sobre la Eliminación de todas las Formas de Discriminación contra la Mujer (CETFD CM) y lo que ha sucedido en la práctica. Por último, se presenta un programa de acción de empoderamiento legal para las mujeres y niñas.

PALABRAS CLAVE: empoderamiento legal, mujeres, niñas, voz, poder.

The Commission on Legal Empowerment of the Poor in its report entitled: *Making the Law Work for Everyone* (UNDP, 2008) estimated that 4 billion people on the planet could not use the law to improve their livelihoods because of deficits in their agency as well as the opportunity structures they encounter. They are poor, marginalised or excluded. Most make their living in the informal sector and many even live in slums. Legal Empowerment was defined as both a process and an end in which the results are both greater protections and opportunities. The process involves legal identity, greater voice (capacity to articulate), mobilization for group action, contestation, and finally confirmation of economic, social and cultural gains in law. The focus is on access to justice and the rule of law, property rights, labour rights and business rights.

In this paper special attention is given to half of this disadvantaged group —women and girls— because they have been historically disenfranchised relative to their male counterparts and continue to face greater obstacles, but most importantly because of the skewed power differentials they still face. They lack power in decision-making from home to parliament; they lack control over the assets on which their livelihoods depend and very often over the use of their own bodies. This paper, however, is not so much on the fight for gender equality as it is in exploring how the law might be instrumental in helping women to achieve their full potential as they choose to define it. This of course requires an examination of how the law continues to fail them as well as the broader discussion of their human rights deprivations with special emphasis on economic, social and cultural rights (ESCR).

The paper begins with a quote on the emancipation of women, reviews the historical struggle for women's rights, the significant successes achieved in the socio-economic conditions of women and girls many of which are based on the realization of ESCR and the challenges which still lie ahead. It then discusses the international women's rights framework, followed by specific strategies for accelerating the realization of ESCR.

This quote from Emma Goldman (1910) sets the tone:

Emancipation should make it possible for woman to be human in the truest sense. Everything within her that craves assertion and activity should reach its fullest expression; all artificial barriers should be broken, and the road towards greater freedom cleared of every trace of centuries of submission and slavery. [...] those that do reach that enticing equality generally do so at the expense of their physical and psychical well-being. As to the great mass of working girls and women, how much independence is gained if the narrowness and lack of freedom of the home is exchanged for the narrowness and lack of freedom of the factory, sweat-shop, department store, or office? In addition is the burden which is laid on many women of looking after a «home, sweet home» — cold, dreary, disorderly, uninviting— after a day's hard work. Glorious independence!

The movement for woman's emancipation has so far made but the first step in that direction. It is to be hoped that it will gather strength to make another. The right to vote, or equal civil rights, may be good demands, but true emancipation begins neither at the polls nor in courts. It begins in woman's soul. History tells us that every oppressed class gained true liberation from its masters through its own efforts. It is necessary that woman learn that lesson, that she realize that her freedom will reach as far as her power to achieve her freedom reaches.

Pettiness separates; breadth unites. Let us be broad and big. Let us not overlook vital things because of the bulk of trifles confronting us. A true conception of the relation of the sexes will not admit of conqueror and conquered; it knows of but one great thing: to give of one's self boundlessly, in order to find one's self richer, deeper, better. That alone can fill the emptiness, and transform the tragedy of woman's emancipation into joy, limitless joy.

While addressing the requirements of women's self-empowerment, Goldman importantly points to the underlying *emancipation needed by both men and women*, especially those marginalized, but many in the mainstream as well. If legal empowerment of the poor is going to happen, if we are together as a society, going solve the poverty problem and

rise to the full potential of the human being in a flourishing society, then we do well to take these observations seriously.

MUCH HAS CHANGED BUT MUCH REMAINS TO BE DONE FOR WOMEN'S AND GIRLS' ESCR

The UNDP's WDR 2012 (World Bank, 2012) provides an up to date discussion of what improvements have occurred in the situation of gender equality and what still remains to be done. While it covers issues broader than the legal empowerment of poor women and girls its general findings provide a solid background for the arguments that follow in the chapter. The next few sections dealing with has improved, an historical overview of how these changes evolved in both the developed and developing worlds, and what still remains to be done are extracted from this report.

Despite the hardships many women endure in their daily lives, things have changed for the better —and at a speed that would not have been expected even two decades ago. In four major areas —women's rights, education, health, and labourforce outcomes— the gains in the second half of the 20th century were large and fast in many parts of the world. Improvements that took 100 years in wealthier countries took just 40 years in some low —and middle— income countries. Change has also been accelerating, with gender equality gains in every decade building on gains from the decade before.

Achieving equality in legal rights in today's high-income countries took considerable time. In contrast, gains under the law have occurred much faster in the developing countries, aided by a rising global consensus formal rights and guarantees of equality for women. In tandem with these gains in formal rights, low —and middle— income countries have seen unprecedented gains in outcomes for women, both in absolute terms and relative to men. More women are literate and educated than ever before, and the education gap with men has shrunk dramatically. For younger cohorts, the gender gap in primary education enrollments

has practically disappeared, and the gains in secondary and higher education have been enormous. Women are living longer and healthier lives in much of the world, in part because lower fertility has reduced their risk in childbirth. And they are participating more than ever in market work. Economic growth has driven much of the progress, through higher household incomes, better service delivery, and new labour market opportunities for women. But it has not been the only factor —the association between economic growth and better outcomes for women has been neither automatic nor uniform across countries.

Changes in one domain of gender equality have fostered change in others, influencing the next generation, reinforcing the whole process. For example, the expansion of economic opportunities for women in service industries in Bangladesh and India has boosted school enrollments for girls, which feeds into higher labourforce participation and better educational outcomes for the next generation. This is not to say that all problems have been solved or that progress was easy.

WOMEN'S RIGHTS: AN HISTORICAL PERSPECTIVE (*IBID*)

Women's circumstances in the 18th century were very different than they are today. In 1789, the French revolution asserted that men are «born and remain free and equal in rights» universally, but the *Declaration of the Rights of Man and of the Citizen* did not include women, and a year later, the National Assembly chose not to extend civil and political rights to women. The legal system in the British colonies, based on English common law, is another case. As Sir William Blackstone summarized in his *Commentaries on the Laws of England* in 1765:

By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and cover, she performs everything; and is therefore called in

our law-french a femme-couvert. For this reason, a man cannot grant anything to his wife, or enter into covenant with her: for the grant would be to suppose her separate existence.

The march toward equal property and suffrage rights has been slow and long. Only in 1857 did the British Parliament pass the Matrimonial Causes Act, allowing married women to inherit property and take court action on their own behalf. And not until 1882 did the Married Women's Property Act recognize a husband and a wife as two separate legal entities, conferring to wives the right to buy, own, and sell property separately. Suffrage was not universal until 1928, when, as a result of the Representation of the People Act, women over age 21 received the vote on equal terms as men. The story is similar in Scandinavia: Norway, for example, provided full economic rights to women in 1888 and suffrage rights in 1913.

In the United States, New York was the first state to pass, in 1848, a Married Women's Property Act. Wives' rights to earnings and property gradually spread to other states over the following half century. Political voice was longer in coming. A proposed constitutional amendment guaranteeing women's right to vote was introduced in the U.S. Senate in 1878, but it did not receive a full vote until 1887, only to be voted down. Three more decades elapsed before the 19th amendment to the constitution guaranteeing universal suffrage was ratified in 1920. The struggle against discrimination in other domains, such as labour and family law, picked up momentum in the second half of the 20th century.

In the United States, until the passage of Title VII of the Civil Rights Act of 1964, women could legally be passed over for promotions in the workplace. Married women needed the consent of their husbands to obtain a loan. And marital rape was not recognized as a criminal act (Zaher, 2002). Until the 1980s, female flight attendants were required to be single when they were hired and could be fired if they married. In Germany in the early 1950s, women could be dismissed from the civil

service when they married. And through 1977, they officially needed their husbands' permission to work. Until reunification with East Germany in 1990, children of single mothers were assigned a legal guardian (Bennhold, 2010).

Japan's Equal Employment Opportunity Act of 1985 obliged employers merely to endeavor to treat men and women equally during job recruitment, assignment, and promotion. The mandate for equal treatment came about in 1997. The first domestic violence law was passed in 2001.

Progress has been faster in low —and middle— income countries (World Bank, 2012)

Progress has been most notable for political rights, tied to a change in the concept of citizenship. National franchise movements gave shape to a more inclusive paradigm of the nation-state in the first half of the 20th century. Until then, citizenship had long been construed as «male». Extending suffrage in already established nation-states involved local social movements and social networks redefining citizenship only after a lengthy renegotiation of domestic political power. In contrast, new nations emerged into a «new world order». National and international organizations embraced a gender-neutral model of citizenship, with women fully accepted as persons capable of autonomous decisions (Ramirez, Yasemin, and Shanahan, 1997). Only three countries that became independent in the 1900s (Austria, Ireland, and Libya) extended suffrage to men before women.

But Switzerland did not break with tradition and extend the franchise to women until 1971. Among the latest countries to give women the right to vote, Bhutan changed the practice of casting one vote per household and adopted women's full suffrage in 2008. Today, only Saudi Arabia restricts the franchise to men and removing this restriction for municipal elections is under consideration. Similar progress has been made in women's rights beyond full suffrage. In the Philippines, sweep-

ing legislative changes in the 1980s and 1990s recognized gender equality across a wide array of domains. The 1987 constitution reinforced earlier constitutions by giving added emphasis to the notion of gender equality. The Comprehensive Agrarian Reform Law of 1988 assured equal rights to ownership of land. And a 1989 act amended the Labour Code to protect women from discrimination in hiring and pay.

Similarly, in 2004, Morocco overhauled its family code to promote greater equality between women and men in multiple spheres. The ratification of CEDAW and other international treaties established a comprehensive framework to promote equality for women. These treaties spurred further progress toward securing formal rights in other domains of women's lives, in large part by facilitating new legislation or promoting the repeal of discriminatory legal provisions. In 2005, the Kenyan Court of Appeal held that there was no reasonable basis for drawing a distinction between sons and daughters in determining inheritance. In 2001, the Tanzanian High Court held that a widow is entitled to administer the estate on behalf of her children. In both cases, principles of equality and nondiscrimination prevailed.

SUCCESS IN MANY AREAS

The march for women's rights has gone hand in hand with better outcomes for many women both in absolute terms and relative to men. During the past quarter century, sustained growth in many countries has reduced disparities on some dimensions of gender equality. And the pace of change in these outcomes has been much faster in today's low—and middle— income countries than it was in high-income countries. That can be seen in indicators as varied as fertility, female education and literacy, and female labour-force participation.

In most countries where broad-based income growth has combined with better institutions for service delivery and more economic opportunities for women, the improvements in these indicators have been

dramatic —and in some cases at rates never before witnessed. Moreover, they occurred along some dimensions even in the face of social turmoil or significant institutional challenges. One of the most dramatic cases cited in the WDR 2012 (World Bank, 2012) is that of Iran:

Human development outcomes among Iranian women have consistently improved along some key dimensions in the aftermath of the Islamic revolution:

- ✦ From 1979 to 2009, the Islamic Republic of Iran saw the world's fastest decline in fertility.
- ✦ from 6.9 children to 1.8 (below replacement).
- ✦ The female-to-male ratio in primary school is the world's highest, with 1.2 girls enrolled for every boy. The number of women in secondary school as a percentage of the eligible age group more than doubled from 30 percent to 81 percent, and in 2009, more than half of all Iranian university students, 68 percent of the students in science, and 28 percent in engineering were women.
- ✦ Women make up 30 percent of the Iranian labourforce today, with the percentage of economically active women having increased from 20 percent in 1986 to 31 percent in 2008.

Each of these three societies has faced some circumstances commonly viewed as constraining gender equality. Yet in all of them, income growth, better institutions for service delivery, and new market opportunities for women have contributed to greater gender equality in health, education, and labour market outcomes even as women in these countries continue to face significant challenges in other aspects of their lives.

More girls in school (ibid.)

More women are literate than ever before. Between 1950 and 2010, the average schooling for among young cohorts. In the United States, it took 40 years, from 1870 to 1910, for the share of 6–12-year-old girls in

school to increase from 57 percent to 88 percent. Morocco did the same in 11 years from 1997 to 2008.

Tertiary enrollment growth is stronger for women than for men across the world. The number of male tertiary students globally more than quadrupled, from 17.7 million to 77.8 million between 1970 and 2008, but the number of female tertiary students rose more than sevenfold, from 10.8 million to 80.9 million, overtaking men.

Healthier lives (ibid.)

The second half of the 20th century also saw large improvements in men's and women's health. Life expectancy at birth most clearly reflects improvements in health in populations across the world. The average number of years women could expect to live rose from 54 (51 for men) in 1960 to 71 (67 for men) in 2008. This period also saw the world's fastest ever decline in fertility —from an average of about 5 births per woman in 1960 to 2.5 in 2008, lowering the number of deaths associated with maternal mortality.

More women participate in the labour market

Female labourforce participation has grown since 1960, dramatically in some regions. Expanding economic opportunities have drawn large numbers of new female workers into the market. Between 1980 and 2008, the global rate of female labourforce participation increased from 50.2 to 51.8 percent while the male rate fell slightly from 82.0 to 77.7 percent. So the gender gap narrowed from 32 percentage points in 1980 to 26 percentage points in 2008 (ILO, 2010). Around the world, for very poor countries, female labourforce participation is high, reflecting a large labour-intensive agricultural sector and significant numbers of poor households (Mammen and Paxson, 2000).

In this situation, women are willing to enter the labourforce even at fairly low wages because unearned incomes are also low. As per capita incomes rise, unearned income rises (through higher male wages and

earnings), and these higher incomes are typically associated with women withdrawing from the labour market. Social barriers against women entering the paid labourforce also regain prominence, and their participation rates fall.

New labour market opportunities can spur investments in education and health for girls

How much parents invest in their children's education is partly determined by the returns to that education. Early studies showed that new agricultural technologies that favored women's production increased girls' enrollment (Foster and Rosensweig, 1999). A new generation of studies extends these insights in a globalizing economy. For instance, the rise of outsourcing in India offers new opportunities for women in the wage sector and increases parental investments in girls' education (Oster and Millet, 2010).

Evidence of greater returns was enough to stimulate greater human capital accumulation. It has often been posited that cultural and social norms (or «informal institutions») «hold back» human capital investments. So, many policy efforts try to change the status quo by trying to nudge norms. The results of the WDR 2012 present an alternative route—expand economic opportunities, and human capital investments in girls will increase. Markets can affect private household decisions, even with slow-moving social norms.

Recent findings suggest that women's rights and agency play a role seeing that those public investments are made. In a world where women care about different things from men (and women do appear to care for children more than men do), it may be that when women have more voice, they can drive institutional investments in a way that favors children. So, when women have more rights in the political arena, does the nature of public investment change? Yes.

MUCH REMAINS TO BE DONE

Things have changed for the better, but not for all women and not in all domains of gender equality. Progress has been slow and limited for women in very poor countries, for those who are poor, even amid greater wealth, and for those who face other forms of exclusion because of their caste, disability, location, ethnicity, or sexual orientation. Whether for comparisons between men and women in the same country, or absolute comparisons of women across countries, the progress in some domains is tempered by the sobering realities that many women face in others (World Bank, 2012).

Across and within countries, gender gaps widen at lower incomes, and, in the poorest economies, gender gaps are larger. The benefits of economic growth have not accrued equally to all men and all women for some parts of society. Household poverty can mute the impact of national development, and the differences are often compounded by other means of social exclusion, such as geography and ethnicity.

Improvements in some domains of gender equality —such as those related to occupational differences or participation in policy-making—are bound by constraints that do not shift with economic growth and development. Gender disparities endure even in high-income economies despite the large gains in women’s civil and economic rights in the past century. These outcomes are the result of slow-moving institutional dynamics and deep structural factors that growth alone cannot address.

While much of the world has reduced gender gaps in health and education, conditions for women in some low-income countries have not improved much. In many South Asian and Sub-Saharan countries, girls’ enrollments in primary and secondary education have progressed little. In Eritrea, the female primary net enrollment rate rose from a very low base of 16 percent in 1990 to just 36 percent in 2008. In Afghanistan, Chad and the Central African Republic, there are fewer than 70 girls per 100 boys in primary school. The Republic of Yemen has one of the World’s largest gender disparities in net enrollment rates, and

progress has been difficult to sustain (Yukil, Keiko, Keiichi and Sakai, 2011).

In addition to household wealth, ethnicity and geography are important for understanding and addressing gender inequality. Even in countries that have grown rapidly, poor and ethnic minority women tend to benefit far less than their richer and ethnic majority counterparts. So, wide gender disparities endure. Many ethnic minorities are poorer and less urban than the general population. An estimated two-thirds of girls out of school globally belong to ethnic minorities in their countries (Lewis and Lockheed, 2007).

Other factors of exclusion, such as caste, disability, or sexual orientation, also tend to compound disadvantages in ways that affect development outcomes. And gender gaps have not narrowed in women's control over resources, women's political voice, or the incidence of domestic violence. In some cases, individual preferences, market failures, institutional constraints, and social norms continue to reinforce gender gaps despite economic progress. Income growth may also have unexpected adverse effects on gender equality through new gendered preferences. In other cases, development outcomes have not always reflected extensive formal gains in securing equal rights. Despite notable improvement in expanding legal guarantees to women and men alike, slow implementation has impeded a move into gender parity. Social norms continue to bind to varying degrees in all nations, and a chasm remains between theory and practice.

LESS VOICE AND LESS POWER

Some dimensions of gender equality where progress has been slowest fall in the domain of women's agency. Consider three aspects. First, women's ability to make decisions about earned income or family spending reflects their control over their own lives and their immediate environment. Second, trends in domestic violence capture intra household gender dynamics and

asymmetric power relations between men and women. Third, patterns in political voice can measure inclusiveness in decision-making, exercise of leadership, and access to power.

LESS CONTROL OVER RESOURCES

Many women have no say over household finances, even their own earnings. The Demographic and Health Surveys show that women in some developing countries, particularly in Sub-Saharan Africa and Asia, are not involved in household decisions about spending their personal earned income. As many as 34 percent of married women in Malawi and 28 percent of women in the Democratic Republic of Congo are not involved in decisions about spending their earnings. And 18 percent of married women in India and 14 percent in Nepal are largely silent on how their earned money is spent (UN-DESA, 2010). Husbands have more control over their wives' earning at lower incomes. In Turkey, only 2 percent of married women in the richest fifth of the population have no control over earned cash income, a proportion that swells to 28 percent in the poorest fifth. In Malawi, 13 percent of married women in the richest fifth have no control, compared with 46 percent in the poorest fifth.

Less control over resources and spending is partly a reflection of large differences between men and women in the assets they own. Assets are typically inherited, acquired at marriage, or accumulated over the lifetime through earnings and saving. Women typically earn less than men, particularly when aggregated over the life cycle. This disparity directly affects their ability to save, irrespective of male-female differences in savings behaviour.

Inheritance and property rights often apply differently to men and women so that gender disparities in access to physical capital and assets remain large and significant. Land makes up the largest share of household assets, particularly for the poorest and rural households. Women own as little as 11 percent of land in Brazil and 27 percent in Paraguay. And their

holdings are smaller than those of men. In Kenya, as little as 5 percent of registered landholders are women (Nyamu-Musembi, 2002). In Ghana, the mean size of men's landholdings was three times that of women's (Deere and Doss, 2006). In many countries, land ownership remains restricted to men only, both by tradition and by law. In most African countries and about half of Asian countries, customary and statutory laws disadvantage women in land ownership. According to customary law in some parts of Africa, women cannot acquire land titles without a husband's authorization (Katz and Chamorro, 2003). Marriage is the most common avenue for women to gain access to land. But husbands usually own it, while wives only have claim to its use. While property rights for women have slowly begun to improve in some countries, legislation has often proved insufficient to change observed practices

MORE VULNERABLE TO VIOLENCE AT HOME

Physical, sexual and psychological violence against women is endemic across the world. A flagrant violation of basic human rights and fundamental freedoms, violence can take many forms. International statistics are not always comparable, yet incontrovertible evidence shows that violence against women is a global concern.

LESS LIKELY TO HOLD POLITICAL OFFICE

Few nations have legal restrictions for women to run for public office, yet the number of women holding parliamentary seats is very low, and progress in the last 15 years has been slow. In 1995, women accounted for about 10 percent of members of the lower or single houses of national parliaments, and in 2009, 17 percent.

DIFFERENT RESPONSES TO SHOCKS AND STRESSES

Whether the source is financial, political, or natural, shocks and hazards can affect men and women differently, a function of their distinct social roles and status. First, market failures, institutional constraints, and social norms can amplify or mute gender differences in the impact of shocks. Second, those failures, constraints, and norms can amplify or mute gender differences in the vulnerability to shocks. The mechanisms that produce these outcomes are multiple.

Women, for example, appear more vulnerable in the face of natural disasters, with the impacts strongly linked to poverty. A recent study of 141 countries found that more women than men die from natural hazards (World Bank, 2012). Where the socioeconomic status of women is high, men and women die in roughly equal numbers during and after natural hazards, whereas more women than men die (or die at a younger age) where the socioeconomic status of women is low. Women and children are more likely to die than men during disasters. The largest numbers of fatalities during the Asian Tsunami were women and children under age 15. By contrast, 54 percent of those who died in Nicaragua as a direct result from Hurricane Mitch in 1998 were male.

INTERNATIONAL COMMITMENTS GOING FORWARD

The 2010 MDG Summit concluded with a global action plan to achieve the eight MDGs by 2015. It also adopted a resolution calling for action to ensure gender parity in education and health, economic opportunities, and decision making at all levels through gender mainstreaming in the formulation and implementation of development policies. The resolution and the action plan reflect the belief of the international development community that gender equality and women's empowerment are development objectives in their own right (MDG 3), as well as critical channels for the achievement of the other MDGs. Gender equality and women's empowerment help to pro-

mote universal primary education (MDG 2), reduce under-five mortality (MDG 4), improve maternal mortality (MDG 5), and reduce the likelihood of contracting HIV/AIDS (MDG 6). The 2010 resolution also stresses that achieving the MDGs will require coordinated interventions that target women and other vulnerable groups across sectors:

- Taking action to improve the number and active participation of women in all political and economic decision-making processes, including investing in women's leadership in local decision-making structures and creating an even playing field for men and women in political and government institutions.
- Expanding access to financial services for the poor, especially women.
- Investing in infrastructure and labour-saving technologies, especially in rural areas, that benefit women and girls by reducing their domestic burdens.
- Promoting and protecting women's equal access to housing, property, and land, including rights to inheritance.

These are all specific areas of legal empowerment and we will discuss them as well as related areas in terms of action options later in this chapter. But first let's take stock of international legal instruments relevant to the legal empowerment of poor women and girls.

INTERNATIONAL LEGAL INSTRUMENTS

Among the most important international instruments geared to the protection of the rights of women and girls are the Vienna Declaration, the Beijing Platform and Beijing +10 review, and CEDAW. Among these CEDAW is by far the most important and some of its salient features will be summarized.

Vienna Declaration at the 1993 UN World Conference on Human Rights confirmed that: the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and

cultural life...and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

Beijing Platform for Action 1995 was signed by 189 governments who thereby committed *themselves to include a gender perspective in all policies and programmes*. They agreed to take action on 12 Critical Areas of Concern, including women and poverty, women and health, education and training of women, women and the economy, women and armed conflict, and violence against women.

Beijing+10 (2005): Beijing Platform for Action reaffirmed by the UN at the Beijing+10 Review.

CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women.

Preamble to CEDAW: Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries.

Article 3

States shall take in all fields in particular the political, social, economic and cultural fields all appropriate measures including legislation to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

The principle of «Intersectionality» is important to bear in mind: Gender discrimination intersects with discriminations based on "caste", class, disability, sexual orientation etc.

CEDAW has to be understood from the perspective of the dynamics of human rights treaty law and its domestic application, and the prin-

principles of CEDAW. The dynamics of human rights treaty law operate on the grounds that:

- ✦ Treaty law imposes obligations that are legally binding on the State.
- ✦ States commit to reordering domestic law and policy, as it touches on matters, which is the subject of the treaty concerned, according to universal and international standards.
- ✦ States parties submit themselves to international scrutiny.

The Principles of CEDAW are based on substantive equality not only formal legal equality but also equality of results in real terms such as equality of opportunity, equality of access and equality of results. CEDAW acknowledges that:

- ✦ discrimination is socially constructed;
- ✦ laws, policies and practices can unintentionally have the »effect« of discriminating against women;
- ✦ women have been discriminated against historically and do not necessarily come in to a situation on an equal basis with men;
- ✦ women may have less access to resources, less mobility, less years of experience, etc.;
- ✦ Hence they cannot access opportunity in the way men can. In most cases men will be more eligible because of historic advantage they have.

THE CEDAW FRAMEWORK

CEDAW demands a strategic view for women's advancement, a gender sensitive rights-based approach. This requires that all interventions for women by the state will be based on:

- ✦ the principles of the universality, the interrelatedness and interdependence of rights;
- ✦ the norms of substantive equality and non discrimination;

- ♦ efforts to ensure equality in the public and private spheres be it in the areas of private enterprise or the family;
- ♦ efforts to eliminate not only individual acts of discrimination but also systemic discrimination as manifested and justified in institutional practices;
- ♦ efforts to ensure de jure and de facto rights of women;
- ♦ the principle that it is the obligation of the state to ensure that women's rights are respected, protected and fulfilled.

While CEDAW forms part of international law, and is therefore legally binding on state parties, it has not been incorporated into domestic law in many countries, and is not therefore binding on their courts. There are no direct remedies for infringement of CEDAW in these courts –it cannot be cited alone as the basis for a case against an employer or the government. But it should form part of the principles of interpretation of the courts, and should inform the thinking and analysis of the judiciary and the legislature. A challenge for the implementation of CEDAW is to ensure the incorporation of the Convention into domestic law.

But apart from the need for greater recognition of CEDAW as a legal instrument, it has great weight as a tool to demand political accountability for states' obligations under human rights agreements. One way is through participation in the hearings when governments report to the CEDAW Committee on its progress in the implementation of the Convention. Another is using CEDAW as part of a strategy to develop a culture of human rights based approaches. Using CEDAW in policy work is a way of linking issues that are identified locally into a global human rights framework by quoting the obligations that the state has undertaken.

State obligation is legally binding. Article 26 of the Vienna Convention on the Law of Treaties (1969) states: «Every treaty in force is binding upon the parties to it and must be performed by them in good faith». And article 27 states: «A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty».

States have a legal responsibility to comply. Failure to do so undermines the basis of international treaty law. «All States have a common interest in ensuring that all parties respect treaties to which they have chosen to become parties». The state entered into this obligation through the legal process of ratification and is therefore bound to ensure that the laws and practices of the country are harmonized with the principles of the treaty. Incorporating the treaty into domestic law is therefore desirable. This provides a basis for individuals to invoke the treaty in national courts and avoids problems pertaining to the translation of the treaty obligations into national law. Thus though the choice of the means of giving effect to the treaty is left to the State, there must be results and the CEDAW Committee will also review the means that has been used. It is also possible for women to petition national courts to force their governments to comply with their obligations under the treaty. The obligation of the State is towards all women within its jurisdiction and not only to those who are its citizens. The CEDAW Committee has developed jurisprudence through its Concluding Comments and through its dialogue with States Parties.

APPLICATION OF CEDAW TO LEGAL EMPOWERMENT OF RURAL WOMEN

CEDAW is one of the most widely ratified conventions in human rights history, but lacking an enforcement mechanism many consider its contributions to the actual achievement of women rights limited. One area in which its potential contributions are not well recognized is rural areas where law is functionally absent and where it has helped to inspire feminist activism (Vanegas and Pruitt, 2012). CEDAW recognizes rural women as a particularly disadvantaged group in need of additional rights. Article 14 addresses rural women exclusively and specifically, stipulating that they —like their urban counterparts— should enjoy a panoply of rights: education, health care, and an array of civil and political rights. Moreover, Article 14 enumer-

ates for rural women rights related to participation in agriculture and development more generally. It also includes the right for rural women to organize self-help groups and cooperatives for purposes of obtaining »equal access to economic opportunities through employment or self-employment,» a right not mentioned elsewhere in relation to all women. Finally, Article 14 enumerates for rural women a wider range of socioeconomic rights than CEDAW elsewhere recognizes for all women. These include rights to various types of infrastructure, including water, sanitation, electricity, transport, and housing. More specifically Article 14(2) (e) requires states to encourage and facilitate women's self help groups in rural areas. These groups have drawn on this article to get states to support their work (*Ibid.*).

The Role of NGOs

The domestic application of human rights norms requires in particular, effective enforcement mechanisms and the creation of a culture that encourages compliance with human rights principles and norms. A working premise that creates a synergy between the enforcement of rights and the culture of compliance with human rights norms is that a rights framework does not automatically confer rights; it only legitimizes the claims for rights and women have to be able to claim their rights. NGO advocacy is critical for all of this to happen as it can improve the flow of information from the international level of legal standards to the local level (including monitoring and facilitating the implementation of the Convention locally).

Women's and Girls Access to Justice and the Rule of Law

Women's capacity to access justice is hindered by structural inequalities and pressure coming from traditional stereotypes. The failure of the system to provide justice for women prevents them from filing grievances and suing or prosecuting those who violated their rights. This remains a significant human rights challenge. Many women are uninformed about the processes and the various possibilities they have to

access justice. In many countries, women suffer from a lack of education, which prevents them from reading and understanding complicated legal language. Moreover, they have very limited awareness of their rights, which undeniably excludes women from the judicial system and prevents them from defending themselves and obtaining remedies and reparations. This issue is particularly serious for migrant women: in addition to the lack of information, they also have to face cultural and language barriers if they do not speak the national language (Women's International League for Peace and Freedom, 2013).

Police officers often lack guidelines and information on women's human rights violations. They therefore don't know how to respond to violence against women, since they do not always know what constitutes a violation. There is therefore a critical need to combat this lack of education and information among police. Furthermore, women very often endure harmful gender stereotypes, especially when they try to bring complaints to the police. In cases of gender violence such as marital rape, they are usually discouraged to prosecute these violations, on the grounds that these are private issues that have to be dealt with amongst the family, not in a public trial. Women's credibility as victims and witnesses is often challenged by police officers and even judges who reproach women for their clothes and behaviors that they consider provocative (*ibid.*).

On the one hand women's behaviours such as abortion and sex work are criminalized, while on the other hand marital rape, forced marriages and honour killings are not always considered as violations in many countries and can therefore remain unpunished. It is often easier for women, especially for indigenous and rural women, to have access to traditional and informal systems of justice. Yet most of these systems are highly discriminatory and have a negative impact on women's rights. Discriminatory judicial practices are still very present in some countries (for instance in some Islamic republics) where informal systems of justice are still prevalent. That is why it is important to take such systems into account

to ensure that customary principles do not contradict the CEDAW Convention, and that they do not override the principle of equality.

Some have suggested the inclusion of customary justice actors in the formal justice system to encourage both systems to cooperate with each other, not only in order to facilitate women's access to justice but also to end discrimination against them (*ibid.*). Owing to the multiple costs that access to justice encompasses, the poorest populations often cannot afford access to justice. Women living in poverty are disproportionately impacted: many of them are dependent on their husbands and therefore cannot prosecute them in case of violations. Justice is incredibly expensive for women living in poverty, not only for criminal matters but also for civil cases, since most of the time they do not enjoy free legal aid for such procedures. Moreover, they also risk losing their job since their employers are unlikely to give them permission to leave work for attending sessions at the tribunal, not to mention some women cannot rely on anyone else for childcare.

There is an obvious and critical need to secure women's access to justice; their rights are violated not only during the assault but also during the whole litigation. Therefore, it is now time to move from acknowledgement to action (*Ibid.*). But how? Set out below are the some lessons learned by the IDLO (2013) from case studies intended to understand how poor women and girls can best get access to justice and the rule of law:

1. Legal empowerment strategies can be successfully used to improve women's access to justice in both formal and informal systems. One of the key problems for the achievement of gender equality lies in the inability of many women to use existing legal standards to realize their rights. Legal empowerment strategies, through legal literacy programs, legal aid or alternative dispute resolution mechanisms, can help create a «culture of justice» among women and ensure that principles of equality and nondiscrimination are not only enshrined in law, but also translated into practice. Evidence suggests that legal empowerment approaches to enhance women's access to

justice may work well in a variety of legal settings, including informal ones. For example, the fluidity and dynamism of informal justice systems can open up opportunities for modernization and progressive reforms around women's rights. Where women are provided with a forum to discuss and (re)interpret cultural or legal rules, the system may be open to positive transformation, particularly when it is both women and men who are advocating for a reinterpretation of such rules. Legal empowerment approaches may also work in informal justice settings because the customary authority of male leaders is generally connected to their ability to reflect the values and interests of the community. Thus, while customary male leaders often benefit from the status quo and resist positive change for women, they may also have incentives to respond to community expectations. In the same way, bottom-up legal empowerment approaches targeting women can pressure community leaders to reform discriminatory practices. When women are informed of their rights and encouraged to discuss or challenge informal laws and practices, they can put pressure on customary justice systems to better protect basic rights. In turn, this can reduce power imbalances and elite capture and improve the transparency of local government decision-making.

2. Legal empowerment strategies are most effective where implemented in conjunction with "top-down" measures and through local partners. While the state legal system alone cannot cure gender injustice, it is a key avenue for the achievement of gender equality. Law has the ability to deter discriminatory practices against women with the threat of punishment, and the capacity to influence and guide the behavioral norms and social interaction between men and women. A well functioning and non-discriminatory legal system can also serve as an accountability mechanism to ensure the compliance of informal practices with basic human rights standards and to prevent power abuses, while at the same time enhancing the predictability of informal decisions. Grassroots efforts to empower women are therefore more effective when coupled with «top-down» reforms aimed to ensure that justice systems, whether formal or informal, are in line with international laws and standards pertaining to gender equality. The presence of supportive constitutions and national laws plays a critical role in ensuring the effectiveness of legal empowerment interventions. Moreover, legal em-

powerment projects are most likely to have an impact on women's access to justice and gender inequality if they creatively draw on local knowledge and practices. This contributes to the legitimacy of the reforms and ensures their eventual sustainability.

3. Barriers to women's access to justice are multidimensional and go beyond legal aspects. Political, social, cultural, economic and psychological barriers that obstruct women's access to justice and legal empowerment are found at every stage of the «justice chain». The case studies clearly indicate that the disempowerment of women is not simply due to lack of knowledge of laws and legal procedures, but rather due to a host of economic, social and cultural practices that perpetuate inequality in the community and the society at large. Programs which encourage women to object to discriminatory practices are unlikely to provide meaningful relief unless the broader economic, social and security context is addressed. Research indicates that legal empowerment projects targeting women work best when combined with activities addressing a rule of law culture, women's economic autonomy and discriminatory attitudes within the community. To this extent, while legal empowerment is not the panacea to the wider problems of inequality, discrimination and the poverty of women, it can make a positive contribution, which, if properly integrated with other initiatives, will place women on a better trajectory towards effectively addressing discriminatory practices.
4. Legal empowerment programs designed to address women's access to justice need to be context-specific. Women's experiences in the justice system are diverse. There are no readymade formulas as to how women can be empowered to assert their rights and act as agents of sustainable social change. Rather, a number of questions should be asked: what is the best entry point for women to be empowered to use the legal system to advance their rights? What is the forum in which women's core concerns are dealt with? Is that system open to reform or would legal empowerment have limited results in that context, due to deeply entrenched gender stereotypes, vested interests in the status quo and power inequities? Each intervention should carefully examine where the opportunities are in a given context, whether that be in the formal or informal justice system and whether that be in targeting procedural or substantive aspects. Ultimately,

projects designed to be pragmatic, realistic and reflective of the local context demonstrate a higher rate of success.

The policy implications were summarized by IDLO (*ibid.*) as follows:

1. Consider legal empowerment approaches as part of the solution to advance women's access to justice. Invest more resources to identify and design effective, context-specific strategies to promote gender equality.
2. Explore the interface of informal and formal justice settings. Empowerment strategies need to be complemented with efforts to address discriminatory laws and obstacles to the use of the formal legal sector.
3. Engage with informal justice systems, despite the challenges of program design. Informal justice systems should not be pivoted against formal justice systems in a zero sum game.
4. Engage with civil society and support local ownership to ensure the legitimacy and sustainability of measures targeting women's access to justice.
5. Adopt a multi-disciplinary approach to women's access to justice. Investigate the potential of partnerships with non-legal service providers, in particular those working in the areas of women's economic empowerment and income generation, protection from violence and food security. Best practices include legal aid providers teaming up with non-legal service providers, such as combining with domestic violence counseling in women's shelters, or bundling legal aid delivery with existing services frequently accessed by women, such as midwifery services or microcredit schemes.

Property Rights of Women and Girls

Women's equal rights to access, own and control land, adequate housing and property are firmly recognized under international law (UN Habitat, 2002). However, at country level, the persistence of discriminatory laws, policies, patriarchal customs, traditions and attitudes in various countries are still blocking women from enjoying their rights. Even where statutory national laws recognize women's rights to land, housing and property, »traditional«

values prevail amongst judges, police officers, local councilors and land officials. They often interpret statutory laws in what at present are understood to be »customary ways«, as a result of which women are deprived of the rights they should enjoy under statutory law.

The UN Special Rapporteur on Adequate Housing confirms the dire situation of millions of women across the world: «In almost all countries, whether "developed" or "developing", legal security of tenure for women is almost entirely dependent on the men they are associated with. Women headed households and women in general are far less secure than men. Very few women own land. A separated or divorced woman with no land and a family to care for often ends up in an urban slum, where her security of tenure is at best questionable» (UN Special Rapporteur on Adequate Housing, 2002).

Women who are potentially able to meet their subsistence needs on their own may threaten to leave the household if they are not given a large share of the surplus (Braunstein and Folbre, 2001). However, due to patriarchal property rights, husbands control over the allocation of "wives" labour time, husbands can make decisions that reduce the value of their wives' alternatives to marriage. Both the right to manage land and control the income from production, encompassing secure rights to land access, have much deeper implications than mere access. For many women, access to land and property are essential to the production of food as well as sustainable livelihoods, but are dependent on natal and marital affiliations. In many countries, women can lose rights to land when there is a change in marital status, including marriage, divorce, or even death of a spouse (Giovarelli and Wamalwa, 2011).

Because of the worldwide prevalence of patrilineal inheritance customs, both productive resources and property such as household goods have ended up in the hands of men and not women. When only men have rights of inheritance or family succession, women have little opportunity to improve their status or living conditions within the family and community. Consequently, they are rendered dependent on male relatives for survival and have little say over how property is used to generate

income or to support families. Additionally, within patrilineal communities, there is a strong resistance by men towards endowing women, especially daughters, with rights to land access.¹

While there are a growing number of contemporary laws, as framed by the modern State, which give inheritance rights to daughters when they are recognized as individuals among the communities, the process of marriage and the traditionally patrilineal customs have remained largely unchanged. Thus, there remains a mismatch between marriage practices and inheritance laws, with the strength and biases of the marriage practice often overriding inheritance laws. This is also evidenced in the process of dowry practices. In many cultures, a daughter's dowry is viewed by her family as her direct portion of her inheritance, even though it may be typically absorbed by the new husband and his family. Thus, while in some communities women do have the formal rights to inherit lands, the social representation of inheritance in the form of dowries and the strength of the practice of marriage trump given laws.

In communal land tenure systems, women had significant indirect access and rights to use communal resources through their roles as household managers. They were further excluded when land tenure was individualized and invariably adjudicated and registered in the name of »heads of households« or men. Without legal protection, women are at risk of suddenly becoming landless, as has happened in the many cases where the husband sells the family land (*ibid.*).

Levels of education, often times products of restrictions on women's interaction with institutions which are primarily composed of men, create a mystique and illusion about legal actions. Additionally, ideologies about the conduct that a woman displays, normally taking the form of docility, can bring shame to the idea of challenging persisting gender inequalities in law, policy and land rights (McCreery, 1976).

The situation is further complicated by the fact that property rights have a degree of fluidity and dynamism not generally seen in other areas

¹En: wikipedia.org/wiki/womens_property_rights

of the law. Laws affecting women's property rights can run the gamut of the legal spectrum. From family codes to land titling regulations, constitutions to personal status codes, and civil codes to gender equality laws, women's property rights are affected by a multiplicity of overlapping laws — some of them contradictory. Thus women's ability to acquire, possess, manage and transfer property can be protected or undermined by any number of legal provisions (World Bank, 2010).

Women's property rights are also affected by the intersection of statutory and customary law, which can create confusion about what property rights women possess. The disharmony in the formal legal system, coupled with the mix of legal frameworks, can lead to inequitable outcomes for women.

Research has found strong links between property rights, access to finance and business productivity. In particular, women's access to land has been linked to gains in family welfare and children's health. Property rights are even more essential in low income economies, where women are more likely to work in family businesses and their income is more likely to be determined by how much property they own. Though it is difficult to measure the global gender asset gap, several studies document significant regional and local gender asset gaps in property ownership (*ibid.*).

Labour Rights of Women

The ILO standards which seek to protect labour rights of women include:

- Convention 100. Equal Remuneration Convention, which guarantees equal remuneration for men and women workers for work of equal value (1951).
- Convention 111. Discrimination of Employment and Occupation, which states that governments should «uphold equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof» (1960).

- ✦ Convention 183. Maternity Protection Convention, which protects women from safety risks during pregnancy and guarantees paid maternity leave (1919, 1952).
- ✦ Convention 189. Domestic Workers Protection Convention, intended to end abuses to migrant domestic workers (2011).

However while increased access to employment has provided new economic and social opportunities for poor women, the jobs they occupy remain unregulated and unstable. Women workers are systematically denied their rights to regular pay and regular working hours; equal pay for equal work; permanent contracts; safe and non-hazardous work environments; and freedom of association. Sexual harassment in the workplace, and workplace-related sexual violence, is a particularly egregious and widespread form of discrimination against women. Forced sexual relations and pregnancy tests, which become a pre-condition for employment, significantly reduce a woman's ability to demand a living wage and break out of poverty. Working mothers face everyday barriers as they try to support their families. Organizing against abuse is also particularly difficult for women, because of the highly gendered nature of subcontracting and other forms of flexible work.²

In a recent call for papers on the on the subject of »Women's Empowerment, Gender Equality and Labour Rights: Transforming the Terrain« the Solidarity Center summarized the search for solutions as follows: «In a global context of economic crisis, uncertainty and political change, women workers are uniting in different ways and under different banners to fight for and widen their labour rights and to claim a role in their nations' social, economic and political structures. They are bringing demands for inclusiveness, new ways of building power and often their own experience of discrimination and exclusion into a hard-nosed and, at times, deeply conflicted battle to actualize a broad agenda

² International Labour Rights Forum. Rights for Working Women. www.labourrights.com/labour-rights-for-women

of economic and labour rights. As such, women workers are helping to define a new economic citizenship —one that integrates political and union activism, labour rights, social and economic justice, and gender equality. Rooted in the rank and file, these efforts offer practical insights into how women can exercise their rights and shape the meaning of participatory democracy and just economies» (The Solidarity Centre, 2013).

CONCLUSION

This paper has surveyed the significant progress made towards the legal empowerment of poor women and girls but squarely identifies the tremendous challenges they still face. The successes show up in areas ranging from increased attendance of girls in schools to women's inheritance rights in some countries. But the obstacles are spread the gamut from traditional cultural norms and practices which are used as excuse to violate the fundamental human rights of poor women and girls, lack of access to institutions of formal law while facing prejudices in customary law, discriminatory laws, lack of awareness of their rights to marriage practices which subordinate them and to men who still think of their wives as their property. Approaches which can help the empowerment of this half of the human population include international instruments, programmatic approaches policy shifts and feminist activism.

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