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# Gender, poverty and access to justice in Sub- Saharan Africa



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Policy note no 2:2019

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NAI Policy Note No 2:2019

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

ISSN 1654-6695

ISBN 978-91-7106-846-0

# Gender, poverty and access to justice in Sub-Saharan Africa

About half of the people of Sub-Saharan Africa live below the poverty line, and 80 per cent of them are women. Their access to justice is guaranteed by international and domestic laws. But these laws mean little or nothing to women who are at risk of discrimination because they are poor and illiterate. This policy note offers recommendations on how to secure access to justice for the poor and the marginalised.

David Lawson, Adam Dubin and Lea Mwambene (with thanks to Bisrat Woldemichael, for his research assistance)

The majority of people in Sub-Saharan Africa share experiences of economic deficiencies, discrimination, prejudicial gender roles and customs which impact on their right to access justice. By 2030, the World Bank estimates that 9 in 10 of the extremely poor will live in Sub-Saharan Africa. Despite a broad framework of treaties which oblige states to fulfil socio-economic and women's rights, without access to justice, the fulfilment of those rights will remain

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

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



Bangul, Central African Republic, October 2017. MINUSCA Police Officer Gladys Ngwepekeum Nkeh conducts class on gender violence.

UN Photo Eskinder Debebe



## In countries such as Nigeria, Kenya and Uganda, widows lose their right to property once they remarry

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

### International and regional obligation

At the international and regional level, “access to justice” – in terms of the “ability of people to seek and obtain a remedy through formal and informal institutions of justice” – is provided for in numerous AU and UN instruments. For example:

- UDHR, Universal Declaration of Human Rights (UN, 1948)
- ICCPR, International Covenant on Civil and Political Rights (UN 1966)
- ICESCR, International Covenant on Economic, Social and Cultural Rights (UN 1966)
- ACHPR, African Commission on Human and Peoples' Rights (AU 1986)
- CRC, Convention on the Rights of the Child (UN 1989)

There are also instruments that provide a legal obligation specifically on women's access to justice:

- CEDAW, Convention on the Elimination of all Forms of Discrimination Against Women (UN 1979)
- DEVAW, Declaration on the Elimination of Violence Against Women (UN 1993)
- The Beijing Platform (UN 1995)
- The Maputo Protocol (AU 1995)

These instruments oblige States Parties to establish legal protection of the rights of women on an equal basis with men. They also oblige States Parties to take appropriate measures to modify or abolish existing laws and customs that constitute discrimination against women. Furthermore, States Parties are to repeal all national laws that constitute discrimination against women. More importantly, and with a direct bearing on women's access to justice, States Parties must take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitise them to the needs of women.

### Considerations in policy and budgeting

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

Most proceedings are subject to considerable delays at all stages due to, for example, a large volume of cases but a very limited number of courts; the geographical distance to the nearest court; the language that is used in the court system; unfamiliar and complicated procedures in the formal court system; and – from the perspective of most citizens, particularly women, whose illiteracy levels are quite high in the region – unfamiliar laws used in the formal court system.

At the substantive level, there are various areas in which women are marginalised from justice processes (including traditional justice systems), including property rights, marriage (family) laws, violence and gender-based violence. For example, in countries such as Nigeria, Kenya and Uganda, widows lose their right to property once they remarry. In these areas, women continue to be marginalised due to the failure of many countries to im-

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

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

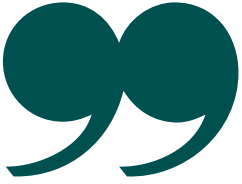


**Great variations**  
Numbers vary a lot from one country to another. In Ethiopia and Madagascar, levels of respondents reporting of violence and of turning to authorities are much higher than elsewhere in Sub-Saharan Africa.

Source: The WJP report Global Insights on Access to Justice. The World Justice Project (WJP) is an international civil society organisation working to "advance the rule of law around the world".

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





## Recent reforms have brought the potential for new opportunities in accessing justice

plement equitable laws and policies, as well as to the fact that some States Parties have yet to harmonise their laws and policies with international and regional instruments.

Therefore, an essential component in realising the “right to access justice” for women is adequate budgeting, which would ensure that policies and programmes are adequately developed. Put differently, adequate budgeting signals that there is an increasing conceptual shift away from the blank implementation of rights and towards a focus on budgeting and resource-allocation transparency for human rights protection. For example, General Comment 19 of the Convention on the Rights of the Child (CRC) specifically focuses on transparent and adequate public budgeting for the protection of children. This includes budgeting for access to justice programmes to ensure that girls, specifically, have adequate access to remedy and the enforcement of rights. In addition, governments need to be able to demonstrate not only that they are funding access to justice programmes, but that the funding is adequate and meets the needs of the target populations.

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

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

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

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

There are also cases where recent reforms have brought the potential for new opportunities in accessing justice. The extensive provisions on children’s rights in the Zimbabwe Constitution of 2013 – including the right to be heard and the rights of children in conflict with the law – are commendable as far as justice for children is concerned. Furthermore, the discourse and developments in the post-2009 use of diversion as an alternative to the formal justice system for children have been encouraging with regard to access to justice for children. But at the same time, lack of resources has led to some teething troubles in implementation of the policies.

### **Policy recommendations**

- Reduce the distances and delays associated with a congested court system. This requires governments to allocate more resources to the courts and to expand the infrastructure. The policies and programmes developed should contain adequate financing for access to justice for women and girls.
- Develop access-to-justice policies that specifically fund and integrate a female-centred approach, taking into account the specific needs of females within the broader justice system.
- Place a greater focus on quantifying the impact of budget allocations on access to justice and other human rights programmes.
- Ensure greater communication between ministries, such as women’s affairs and the executive and other branches involved in developing human rights budgets.
- Make a greater investment in technology to provide access to justice to hard-to-reach populations.

# RULE OF LAW – INDEX AND RANKING

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

## Ranking

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

### Top ranked countries

- 1  Denmark 0.90
- 2  Norway 0.89
- 3  Finland 0.87

## Index score

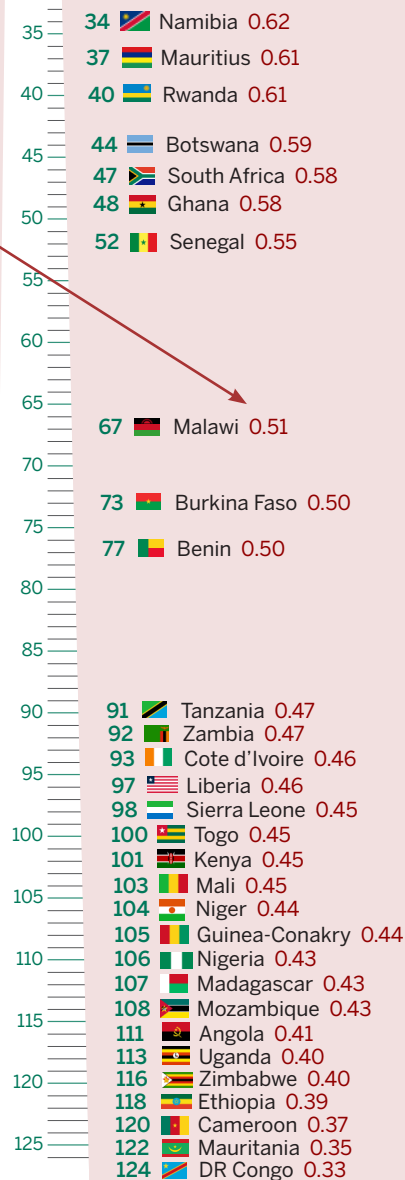
Ranging from 1 (strong rule of law) to 0 (weak rule of law)

Data is only available for 30 of the 47 SSA countries.

# +0,4%

Average improvement in rule-of-law scores for Sub-Saharan Africa since last WJP index edition (2017-18)\*

\* Based on the 18 SSA countries that had data for both editions



## Factors of the rule of law

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

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

# 0,59

world average index score



# 0,62 +7,1%

Top index score in Sub-Saharan Africa:

**Namibia**

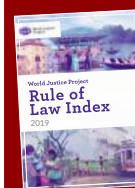
Greatest increase since 2017/18:

**Zimbabwe**

# 0,48

Sub-Saharan Africa average index score

## Source: WJP Rule of Law Index



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



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– with BISRAT WOLDEMICHAEL, intern at NAI



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The Nordic Africa Institute conducts independent, policy-relevant research, provides analysis and informs decision-making, with the aim of advancing research-based knowledge of contemporary Africa. The institute is jointly financed by the governments of Finland, Iceland and Sweden.



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