

**USING THE INSTRUMENTALITY OF LAW TO ADDRESS GENDER INEQUALITY: A COMPARATIVE
APPROACH**

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USING THE INSTRUMENTALITY OF LAW TO ADDRESS GENDER INEQUALITY: A COMPARATIVE APPROACH

Gbadamosi Olaide Abass* & Ayodele Oladiran Akinsola**

ABSTRACT

Gender inequality is one of the greatest challenges of our time. It is a global phenomenon that prevents women and girls from developing their full potential and impedes sustainable development. Whatever the progress, the change is slow and inconsistent; and is yet to translate into substantive equality. There is a general consensus on women's right to equal participation in all aspects of political and public life, but the reality is that women continue to be underrepresented in multiple spheres. The paper explores the role that legal regimes can play in addressing inequalities and highlights the many ways in which law can be used to address these inequalities.

1.0 CONTEXTUAL APPROACH TO GENDER EQUALITY

At the core of the sociological analysis of gender is the distinction between biological sex and gender. Sex is a property of the biological characteristics of an organism while gender is socially constructed. This is a powerful and totally revolutionary idea: we have the potential capacity to change the social relations in which we live, including the social relations between biologically defined men and women.¹ Roles are socially distributed in human societies through this stratified system. It has become part of the culture and females have come to

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¹ Chapter 15 Gender Inequality *Final Draft*, August 2009 [accessed 6 June 2021]

accept their role of second fiddle as a normal way of life. It then begs the question; what does gender equality mean, or what is it trying to achieve?

Gender equality is a state in which one's gender does not determine one's opportunities, freedoms, or importance.² Gender inequalities are rooted in traditional discriminatory social norms and power imbalances that are perpetuated throughout the life cycle and passed from one generation to another. These norms restrict women's behaviour and the prospects of reaching their full potential at home, at work and in civic life.³

Gender equality is now a legitimate political claim at local, national and global levels. Despite greater attention to some issues such as violence against women, advances remain limited in others and reversals are frequent.⁴ Even though women have gained voices through activism and increased political representation, these advances do not necessarily translate into substantive equality, or social and economic gains. Gender inequalities in resources, opportunities and power continue to be a persistent and integral feature of the modern world and its institutions.⁵

Women in much of the world lack support for fundamental functions of a human life.⁶ Despite serious concerns to advance the cause of gender equality, progress towards its actualization is slow as a result of deeply entrenched cultural and discriminatory attitudes which have remained difficult to overcome. Gender disparities remain among the most persistent forms of

² "Gender Equality." <https://givingcompass.org/article/gender-equality> [accessed 23 July 2020]

³ Carolina Rivera, "Tracking attitudes on gender equality." Available at <http://www.hdr.undp.org/en/content/tracking-attitudes-gender-equality> [Accessed 6 April 2020]

⁴ "Gender and Development" available at [https://www.unrisd.org/unrisd/website/projects.nsf/\(httpProgrammeAreas\)/B0DA22922E5C8AD2802586BF00588DD1?OpenDocument](https://www.unrisd.org/unrisd/website/projects.nsf/(httpProgrammeAreas)/B0DA22922E5C8AD2802586BF00588DD1?OpenDocument) [accessed 7 November 2020]

⁵ Ibid.

⁶ M. C. Nussbaum, *Women and Human Development: The Capabilities Approach*, Vol. 3 Cambridge University Press. 200.

inequality across all countries.⁷ This is more evident because women constitute half of the world's population.⁸ Given that these disadvantages affect half the world's people, gender inequality is arguably one of the greatest barriers to human development.

In 1948, the Universal Declaration of Human Rights reaffirmed the equal rights of men and women. The United Nations International Women's Year Conference held in Mexico City in July 1975 recommended that a decade for women be established with the themes of equality, development and peace. Later in 1975, the UN General Assembly established the UN Decade for Women from 1976 to 1985. This action firmly puts women's issues on the international agenda. Despite these, women experience considerable disadvantage and discrimination in societies perpetuating gender-differentiated structures. Gender is a socially constructed phenomenon, while sex is biologically determined.

The meaning of "gender" varies from society and changes over time.⁹ Women are not a homogeneous group and their lives vary depending on the place in which they live as well as their age, social class, ethnic origin, and religion. In all societies, the common denominator of gender is female subordination, although relations of power between men and women may be experienced and expressed in different societies and at different times.

All too often, women and girls are discriminated against in health, in education, at home and in the labour market—with negative repercussions for their freedoms.¹⁰ The Human Development Report's Gender Inequality Index—a

⁷ UNDP (United Nations Development Programme) 2018a. *Human Development Indices and Indicators: Statistical Update 2018*. New York.

⁸ Ibid.

⁹ United Nations Development Programme (2001). *Human Development Report 2001*, 290 pp. New York: UNDP. [This report provides human development indicators, which include the human development and gender development index as alternative means to economic indicators as a measure of human and social development.

¹⁰ Human Development Report, Beyond income, beyond averages, beyond today:

measure of women's empowerment in health, education and economic status—shows that overall progress in gender inequality has been slowing in recent years.¹¹ This is evident in the Gender Inequality Index and its components—reflecting gaps in reproductive health, empowerment and the labour market.¹² No place in the world has gender equality.¹³

In Sub-Saharan Africa, 1 in every 180 women giving birth dies (more than 20 times the rate in developed countries), and adult women are less educated, have less access to labour markets than men in most regions and lack access to political power.¹⁴

Gender inequality remains one of the greatest barriers to human development.¹⁵ The average Human Development Index (HDI)¹⁶ for women is 6 percent lower than that of men, with countries in the low development category suffering the widest gaps.¹⁷ The disadvantages facing women and girls are a major source of inequality and one of the greatest barriers to human development progress.¹⁸

Gender inequality is an affront to human dignity, a challenge to the rule of law and an obstacle to development. Denying women their rightful place in society

Inequalities in human development in the 21st century. 2019. United Nations Development Programme, New York.

¹¹ UNDP (United Nations Development Programme). *Human Development Indices and Indicators: Statistical Update 2018*. New York.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ 'Gender Equality, Human Development Reports.' Available at www.hdr.undp.org [accessed 11 March 2020]

¹⁶ The Human Development Index (HDI) is a composite index focusing on three basic dimensions of human development: the ability to lead a long and healthy life, measured by life expectancy at birth; the ability to acquire knowledge, measured by mean years of schooling and expected years of schooling; and the ability to achieve a decent standard of living, measured by gross national income per capita. See UNDP, *Human Development Indices and Indicators. 2018 Statistical Update*. (New York : UNDP 2018). 1

¹⁷ UNDP, *Human Development Indices and Indicators. 2018 Statistical Update*. (New York, UNDP 2018). 5

¹⁸ Ibid.

by depriving them of equal access to education, justice or livelihood means robbing societies of the talent and potential of half of their members.¹⁹

Gender equality is not only a fundamental human right, but a necessary foundation for a peaceful, prosperous and sustainable world.

According to the Gender Equality Policy and Strategy (2016-2020), achieving gender equality refers to the “equal rights, responsibilities, and opportunities of women, men, girls, and boys, and equal power to shape their own lives and contribute to society.”²⁰ Gender equality benefits women and men, girls and boys, and should be of concern to all. Achieving gender equality in and through education requires a system wide institutional change in the way policies and plans are developed to ensure no one is left behind.

These processes require attention to the structures, norms and relationships that shape education disadvantage for the people in the system. These disadvantages may manifest differently for girls, boys, women and men. Gender equality requires processes for building and sustaining equalities between girls and boys, women and men, within and beyond schooling. Gender equality also refers to the *outcome* of equal rights and equal power between women and men in line with the human rights agenda, which requires transformational political commitment to bring about.²¹

One in five women and girls, including 19 per cent of women and girls aged 15 to 49, have experienced physical and/or sexual violence by an intimate partner. Yet, over 49 countries have no laws that specifically protect women from such violence. Only 52 percent of women married or in a union freely make their own decisions about sexual relations, contraceptive use and health care.

¹⁹ ‘Gender Equality’ available at <https://www.idlo.int/what-we-do/women-and-girls/gender-equality> [accessed 13 March 2020]

²⁰ Gender Equality Policy and Strategy 2016–2020 available at www.edu-links.org [accessed 6 June 2021]

²¹ Ibid.

While women have made important inroads into political office across the world, their representation in national parliaments at 23.7 per cent is still far from parity.²² The global average of women in the national parliament is 25.5 percent.²³

Gender equality is necessary to ensure fairness and justice in the distribution of benefits and responsibilities between women and men.²⁴ While in many countries, the problem lies in the lack of adequate legislation, in others the principal problem is not as much the lack of a legal framework, but the fact is that most women do not know their legal rights. This lack of knowledge enables the abusers to lead the victims (explicitly or implicitly) to believe that their abuse is within their rights.

Women and girls, especially in developing countries continue to face disadvantages in the political, social, and economic spheres. In many countries, women account for the majority of the poor, vulnerable and marginalized citizens who face discriminatory laws and lack awareness of their rights coupled with lack of resources and opportunities to access their rights.

1.2 Gender Equality as a Sustainable Development Goal

Gender Equality is so essential to advancing human progress. According to Sustainable Development Goal (SDG) No.5: “Advancing gender equality is critical to all areas of a healthy society, from reducing poverty to promoting the health, education, protection and the well-being of girls and boys.”²⁵

The importance of gender equality is underscored by its inclusion as Goal No. 5 in the list of seventeen Sustainable Development Goals designed to end

²² Facts and figures: Women’s leadership and political participation, available at www.unwomen.org [accessed 6 June 2021]

²³ The global average of women in parliament has now reached 25.5 per cent. See <https://news.un.org/en/story/2021/03/1086582> [accessed 6 June 2021]

²⁴ “Gender and Health Collaborative Curriculum Project.” www.genderandhealth.ca. [accessed 22 December 2020]

²⁵ “Gender Equality.” Available at <https://givingcompass.org/article/gender-equality/> [accessed 23 July 2020]

poverty, protect the planet and ensure prosperity for all as part of a [new sustainable development agenda](#).²⁶ SDG Goal 5 thus strives to achieve gender equality and empower all women and girls.

To accomplish this, economies must focus their efforts on tackling the systemic barriers restricting women's rights and opportunities. The objective of Target 5.1 is to end all forms of discrimination against women and girls everywhere.²⁷ Indicator 5.1.1 is crucial to accelerating legal reform in these areas by tracking the removal of discriminatory provisions as well as the adoption of laws and implementation mechanisms that promote gender equality.²⁸

This landmark Sustainable Development Agenda ratified by the international community explicitly recognizes that legal equality for women is a precondition to progress on a range of critical priorities, from economic development to health and education to peace and stability. To achieve this vision, every nation must do more to ensure that women are equal to men under the law.²⁹ A better world for women and girls is a better world for all. When more women work, economies grow. When women have control of their household income, children benefit from the changes in spending. When women are included in peace processes, there is a higher likelihood the agreement will last longer.³⁰

Unless progress on gender equality is accelerated, the global community will not only fail to achieve SDG 5, it will also forgo the catalytic effect that gender equality can have for the achievement of the 2030 Agenda more broadly.³¹

²⁶ "Goal 5 : Sustainable Development Knowledge Platform."

<https://Sustainabledevelopment.UN.Org/Sdg5> [Accessed 23 July 2020]

²⁷ "Women, Business and The Law. "International Bank For Reconstruction and Development / The World Bank. (Washington : World Bank 2018). 24.

²⁸ Ibid.

²⁹ "Making Laws, Breaking Silence." Case Studies from the field grows out of a High Level Roundtable convened by Penn Law, UN Women, UNESCO, UN SDG Fund and IDLO. March 2017.

³⁰ "Why is gender equality an important topic at UNGA 73?" available at <http://www.unwomen.org/en/news/stories/2018/9/> feature-gender-equality-at-unga-73 [accessed 3 November 2020]

³¹ *Turning Promises into Action: Gender Equality in the 2030 Agenda for Sustainable Development*. (New York : UN Women. 2018). 74.

Achieving gender equality and women's empowerment is integral to each of the 17 goals. Only by ensuring the rights of women and girls across all the goals will we get to justice and inclusion, economies that work for all, and sustaining our shared environment now and for future generations.³²

Realizing gender equality and the empowerment of women and girls will make a crucial contribution to progress across all the Goals and targets.³³ The achievement of full human potential and of sustainable development is not possible if one half of humanity continues to be denied its full human rights and opportunities. Women and girls must enjoy equal access to quality education, economic resources and political participation as well as equal opportunities with men and boys for employment, leadership and decision making at all levels.

1.3 Root causes of Gender inequality

The root causes of gender inequality include the low and the subordinate status of women in society, unequal power relations, harmful, religious and cultural practices against women, desire to control women's sexuality and bodies, lack of access to justice, lack of information and means to enforce women's rights and poverty.

³² "Women and the Sustainable Development Goals (SDGs)" available at <http://www.unwomen.org/en/news/in-focus/women-and-the-sdgs>. [accessed 12 February 2021.]

³³ "How Changing Social Norms is Crucial in Achieving Gender Equality." UNFPA New York. June 2020.

1.4 Principles of gender equality

Men and women are equal in all aspects of social and family life.

1. Men and women are not discriminated in terms of gender.
2. Policies on motherhood protection and support are not regarded as gender-based discrimination.
3. Gender equality issues are ensured to be integrated in the process of law formulation and enforcement.
4. Exercising gender equality is the duty of agencies, organizations, families and individuals.³⁴

1.5 Goals of Gender equality

The goals of gender equality are:

1. To eliminate gender-based discrimination,
2. To create equal opportunities for men and women in socio-economic development and human resource development,
3. To strive, to reach genuine equity between men and women,
4. To establish and strengthen cooperative and supportive relations between men and women in all aspects of social and family life.
5. To ensure equal treatment for men and women and to combat any form of discrimination on the grounds of gender.³⁵

2.0 CHALLENGES FACED BY WOMEN ASPIRING FOR INCREASED POLITICAL PARTICIPATION AND GENDER EQUALITY

The equal participation of women and their access to positions of political leadership and decision-making at all levels are fundamental to achieving gender equality, as enshrined in the Convention on the Elimination of All Forms of Discrimination against Women (article 2) of 1979 and reaffirmed in Goal 5 of the Sustainable Development Goals. Globally, the degree of political

³⁴ Socialist Republic of Vietnam Law No: 73/2006/Qh11, article 6.

³⁵ Ibid, article 4.

participation by women has improved in the past decades.³⁶

Women remain significantly underrepresented, however, at all levels of political decision-making. As at 1 January 2017, only 7.2 per cent of heads of State, 5.7 per cent of heads of government and 23.3 per cent of members of parliament were women.³⁷ To address the imbalance in terms of women's political participation, numerous States have adopted temporary special measures, such as quotas and parity measures, in line with article 4, paragraph 1, of the Convention and general recommendation No. 25 (2004) on temporary special measures of the Committee on the Elimination of Discrimination against Women.³⁸

Women generally do not enjoy equal access to social services, public goods, and resources; and are discriminated against when it comes to sharing the benefits derived from societal development. Under current conditions of gender inequality, women and girls, along with sexual minorities (lesbian, gay, bisexual, transgender, queer, and/or intersex people) and other marginalized groups are commonly and significantly disadvantaged.³⁹

Women suffer disadvantages in a number of areas compared to men due to discriminatory traditional and socio-cultural practices. According to the World Bank, it is estimated that 90 per cent of the countries around the world still have at least one discriminatory law in their legal frameworks.⁴⁰ These range

³⁶ United Nations General Assembly. Report of the Special Rapporteur on violence against women, its causes and consequences on violence against women in politics. Seventy-third session. Item 29 of the provisional agenda. Advancement of women. Violence against Women in politics 6 August 2018.

³⁷ IPU and UN-Women, "Women in politics: 2017". Available at <https://www.unwomen.org/en/digital-library/publications/2017/4/women-in-politics-2017-map> [Accessed 4 January 2022]

³⁸ United Nations General Assembly. Report of the Special Rapporteur on violence against women, its causes and consequences on violence against women in politics. Seventy-third session. Item 29 of the provisional agenda. Advancement of women. Violence against Women in politics. 6 August 2018.

³⁹ A. Glinski et al, 'Gender Equity and Male Engagement: It only works when everyone plays.' (ICRW, Washington, D.C. 2018) 10.

⁴⁰ 'World Bank, Women, Business and the Law.' available at:

from laws that prevent perpetrators of rape from being prosecuted if they are married or subsequently marry the victim, to the lack of enforcement of laws banning child marriage or female genital mutilation.⁴¹

According to UN Women Reports, gender-discriminatory laws are often rooted in discriminatory social norms, which remain pervasive and are difficult to change.⁴²

Inequalities between women and men during adulthood remain glaringly wide.⁴³ For example, the labour force participation rate is 54 percent higher for men than for women – a proportion that has not changed since 1990. Also, 2.7 times more men than women are in senior political and business roles; and 3.5 times more men are in parliament. At the same time, a disproportionate burden is placed on women to provide unpaid care in the home – women provide 3.1 times the care work of men.⁴⁴

Inequalities for girls and women can follow them through life, entailing deprivation of access to health care, proper nutrition, education and job opportunities.⁴⁵ For Africa, gender inequality slows down the process of poverty alleviation, both through the loss of potential growth that could have come from women who are excluded from the growth process; and by excluding women from education and health care, hindering their rise out of poverty.

Despite many successes for African women and girls in the past decades, women still constitute the majority of the continent's poor, are more likely to

<http://Live.Worldbank.Org/Women-Business-and-The-Law-2016> [Accessed 4 January 2022]

⁴¹ Ibid.

⁴² “UN Women Launches Initiative For Reforming Gender-Discriminatory Laws.” available At <https://www.unwomen.org/en/news/stories/2017/2/press-release-un-women-launches-initiative-for-reforming-gender-discriminatory-laws> [Accessed 4 January 2022]

⁴³ “Gender Equality, Human Rights And Social Change,” United Nations Development Programme, *Human Development Reports*. <http://hdr.undp.Org/En/Content/Closing-Gender-Gaps-Throughout-Life-Course>. [accessed 29 March 2021]

⁴⁴ Ibid.

⁴⁵ “Thematic Research Area”, <http://Nai.Uu.Se/Research/Thematic-Research-Areas> [accessed 29 March 2018.]

drop out of school than boys and are less likely to be employed in the formal sector. Furthermore, maternal mortality rates remain high in many African countries and many women are victims of domestic violence.⁴⁶

In the vast majority of countries around the world, gender-based discrimination is still embedded in their laws. From family codes limiting women's inheritance rights to labour laws restricting their eligibility for certain kinds of employment, discriminatory provisions remain an ingrained part of most countries' legal frameworks.⁴⁷ Beyond that, progressive laws enabling women to participate fully and equally in society, through policies that legally mandate parental leave or criminalize domestic violence, for example, remain limited.⁴⁸

Gender inequality is an affront to human dignity, a challenge to the rule of law and an obstacle to sustainable development. Increasingly gender equality, rooted in human rights, is recognized both as a key development goal on its own and as a vital means to helping accelerate sustainable development.⁴⁹

While there has been some progress towards better gender equality, there is much more to be done in abolishing gender discrimination by developing and supporting implementation of gender equality laws. The disadvantages facing women and girls are a major source of inequality. All too often, women and girls are discriminated against in health, education, political representation, labour market, and others - with negative consequences for development of their capabilities and their freedom of choice.⁵⁰

⁴⁶ Ibid.

⁴⁷ M. O'donnell and C. Kenny, "Can Legal Reform Help Improve Gender Equality." (Centre For Global Development, Washington. 2015)

⁴⁸ Ibid.

⁴⁹ "UNICEF Gender Action Plan 2014 - 2017. United Nations Children's Fund.' Available At: https://www.unicef.org/Esaro/Unicef_Gender_Action_Plan_2014-2017. Pdf

⁵⁰ "Gender Equality, Human Development Reports www.hdr.undp.org [accessed 11 March 2021]

There are a multitude of obstacles that prevent women from having equal access to justice: taboos, prejudices, gender stereotypes, customs, poverty, lack of information, gaps in legislation and in their implementation, and sometimes even the laws themselves.⁵¹ While accessing justice may be difficult for everyone, it is even more so for women, due to gender inequality in society and the justice system.⁵² Persistent economic and social inequalities between women and men, gender bias and gender stereotypes result in unequal access to justice.⁵³

Both women and men often face similar challenges in accessing justice – such as physical distance from justice service providers, poor infrastructure, and high costs. However, women often experience additional or different “barriers”.⁵⁴ The lack of legal guarantees and the existence of unequal or gender-blind legal provisions in many parts of the world, such as in the area of labour, family, property and personal status laws hinder women’s access to justice.⁵⁵

Furthermore, women’s ability to access justice mechanisms, such as courts, legal aid clinics, and administrative bodies, can also be limited due to economic (lack of money), social and psychological (stigma, restrictions on mobility, time constraints) and educational (limited education, limited access to information and social networks) factors, among others. Even when these institutions are accessed, biases, lack of gender sensitivity and limited capacity among those that administer justice hinder women’s chances of obtaining fair outcomes.⁵⁶

⁵¹ Ibid. 12

⁵² Ibid.

⁵³ Council of Europe European Commission for the efficiency of Justice, European Judicial Systems - Efficiency and Quality of Justice.” CEPEJ Studies No. 23, edition 2016.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

Where laws exist, they are often ignored, and women who pursue legal redress are doubted, denigrated and dismissed.⁵⁷

Despite efforts at global level, and subsequent actions at regional and national levels, there remains a serious gap in implementation at national level.⁵⁸ Regardless of progress and achievements concerning gender equality, the process of change has been too slow. There are many reasons for this discrepancy between policies and commitments or obligations at global level and action on the ground. These, among others, are insufficient awareness and capacity, poor political will and low resource allocations.⁵⁹ Another important reason for the slow progress in achieving equality between women and men is the failure to adequately raise awareness of and involve men at all levels.⁶⁰

According to the results of a series of regional consultations on Gender Equality and Political Empowerment of Women conducted by International IDEA, together with the Community of Democracies and UNDP, women are facing the following challenges as they are increasingly aspiring to a more engaging participation in public life as follows:⁶¹

- 1) Women have less access to financial resources to consolidate themselves as political leaders.
- 2) Women are positioned in disadvantageous positions on internal listings within their political parties.
- 3) The assumption is that women's personal life will not allow them to engage in political processes.
- 4) There are less capacity building opportunities for women, and this

⁵⁷ A. Guterres, UN Secretary-General's Message on International Women's Day. 8 March 2018.

⁵⁸ "The role of men and boys in promoting gender equality." Presentation at the Harvard Club, New York.'

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ L. J. Consuegra, "Global and Regional efforts to enable the conditions to advance Gender Equality." International Institute for Democracy and Electoral Assistance, Stockholm. 5 March 2018.

results in women that have the full intention to participate and engage in political life, but do not have the necessary tools to succeed.

- 5) Elected women are bullied and pressured by their peers, which results in physical and psychological violence, increasing the level of desertion of incumbent women elected for public office.
- 6) Women that are in power and remain in office are often influenced by a man that exercises power through them.

While the world has achieved progress towards gender equality and women's empowerment under the Millennium Development Goals (including equal access to primary education between girls and boys), women and girls continue to suffer discrimination and violence in every part of the world.⁶²

Gender equality is not only a fundamental human right, but a necessary foundation for a peaceful, prosperous and sustainable world.⁶³ Providing women and girls with equal access to education, health care, decent work, and representation in political and economic decision-making processes will fuel sustainable economies and benefit societies and humanity at large.⁶⁴

Discrimination against women and girls - including gender-based violence, economic discrimination, reproductive health inequities, and harmful traditional practices - remains the most pervasive and persistent form of inequality.⁶⁵ The legal and cultural exclusion of women from governance throughout history means that affirmative steps are necessary to ensure this representation is achieved.⁶⁶

⁶² "Gender Equality Goal 5: Achieve Gender Equality and empower all Women and Girls." www.un.org. [Accessed 8 March 2018] See also the Declaration on Gender Equality in Africa (2004).

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ "Gender Equality – A Cornerstone of Development," available at <http://www.unfpa.org/Gender/> [accessed 2 May 2018]

⁶⁶ *Legal Tools for the Establishment of Gender Equality*. (New York: Global Justice Centre, 2007).

3.0 THE ROLE OF LAW IN ADVANCING GENDER EQUALITY

Law is pervasive and affects many aspects of people's lives - women and men alike. Law and justice impact people's capacity to accumulate endowments, enjoy returns to such endowments, access rights and resources, and act as free, autonomous agents in society.⁶⁷ Inequalities in endowments, access to resources and rights, social (and household) status, voice and agency are perpetuated, codified, contested and redressed through norms and the institutions established or resulting from such norms, be they social or legal. Although these inequalities can affect both women and men, women are lagging behind men in many fields.⁶⁸

Laws are therefore needed to challenge and change the deeply rooted gender-based discrimination against women. Law has the power to advance equality: by protecting against abuse, and giving people a chance to shape their own lives.⁶⁹ With effective implementation and enforcement, good laws can pave way for gender equality.

Due to the central role that law and justice institutions play in fostering or hindering gender equality, any approach to justice reform needs to take into consideration how gender comes into play. That is, how differences in women and men's social, economic and legal endowments affect the way they experience law and justice, and how their everyday experience of law and justice simultaneously shapes patterns of social, economic and legal endowments.⁷⁰

Gender equality laws help to address some of the challenges women face in marriage, the workplace, and in inheritance matters (especially in the case of

⁶⁷ M. Nussbaum "Women and equality: the capabilities approach", *International Labour Review*, Volume 138, Number 3, 1999 , 227-245

⁶⁸ R. A. Chiongson et al, "The Role of Law and Justice in Achieving Gender Equality." Background paper prepared for the World Bank World Development Report 2012.

⁶⁹ "Legal Empowerment Experiences." Latin America. www.namati.org [accessed 20 December 2020] 3.

⁷⁰ R. A. Chiongson et al op cit. 58.

the death of the patriarch, which put widows at the mercy of husband's family) including religious dogmas, cultural taboos and traditions regarding the unfair treatment of women and girls. Effective gender equality legislation is crucial in guaranteeing the equal rights and opportunities of women and men in all spheres of life as well as in preventing systemic discrimination against women.⁷¹ Gender equality laws should ensure that women's and men's rights and interests are equally taken into account when designing policies that affect both of them.⁷²

The Law on Gender Equality guarantees gender equality to everyone in all spheres of society, including, but not limited to, education, economy, employment and labour, social and health protection, sport, culture, public life and the media.⁷³ The impact of laws on women's lives can be illustrated by the following examples:

- 1) Denying women the right to acquire, manage and dispose of assets in their own name limits their economic opportunities, productivity and bargaining power in the household. ⁷⁴
- 2) An inability to use land as collateral limits women's access to credit, which in turn translates into a limited ability to take advantage of economic opportunities, such as setting up micro enterprises or investing in the land to make it more productive.⁷⁵
- 3) In some cases, women are forbidden from travelling, driving and from enrolment in schools. ⁷⁶

In some jurisdictions, the votes of women are hardly ever reckoned with as such jurisdictions treat them as mere observers and not active participants in

⁷¹ "Gender Equality", <http://www.Legislationline.Org> /Topics/Topic/7#. [accessed 18 March 2021]

⁷² Ibid.

⁷³ Official Gazette of Bosnia and Herzegovina No. 16/03, 102/09 And 32/10.

⁷⁴ C. R. Abada et al, op cit. 5

⁷⁵ Ibid.

⁷⁶ "Women's Rights in the Islamic World | Middle East| News and Analysis"
www.dw.Com/En/Womens-Rights-In-The-Islamic-World [accessed 14 March 2018]

the electoral process. Legal gender equality is associated with a range of outcomes, including higher female labour force participation, more women in parliament, and a lower wage gap.⁷⁷ Laws and policies can drive women's economic inclusion. In the same vein, these laws and policies promoting women's empowerment can also affect their opportunities.⁷⁸

Law plays a critical role in changing and challenging oppressive gender relations that are justified under the name of culture.⁷⁹ The law is an essential tool for advancing women's and girls' rights and equality. A robust and effective legal system based on the rule of law is central to assisting women to become equal partners in decision-making and development. 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.⁸⁰

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 abuse, while at the same time enhancing the predictability of informal decisions.⁸¹ The presence of supportive constitutions and national laws plays a critical role in ensuring the effectiveness of legal empowerment interventions.⁸²

The law is an essential tool for advancing women's rights and gender equality. When a society is governed by the rule of law, with an accessible and just legal system, women can thrive, contribute to the system and improve it for future generations.⁸³ The rule of law requires that laws are free from bias and

⁷⁷ "No Women, No Growth – The Case for Increasing Women's Leadership in Latin America." <https://blogs.worldbank.org/latinamerica/no-women-no-growth-case-increasing-women-s-leadership-latin-america> [accessed 6 November 2020]

⁷⁸ Ibid.

⁷⁹ *Models, Strategies and Best Practices on Women's Empowerment Accessing Justice* (Rome : The International Development Law Organization, Rome 2013). 6.

⁸⁰ Ibid.

⁸¹ Ibid

⁸² Ibid, 9

⁸³ Ban Ki-Moon, UN Women, 2011-2012 Progress of the World's Women: In Pursuit of

discrimination⁸⁴ equally enforced and independently adjudicated, and consistent with international human rights norms and standards.⁸⁵ As such, a robust and effective legal system based on the rule of law is central to assisting women to become equal partners in decision-making and development. If women and girls are not equal under the law, then true gender equality is impossible. The law is a critical tool in holding governments accountable when they violate the rights of women and girls.⁸⁶

Just as a strong legal system can protect and open up opportunities for women, a justice system that is inaccessible or that contains discriminatory rules or practices can significantly impede the advancement of women's rights.⁸⁷ Legal empowerment strategies can help create a 'culture of justice' among women and ensure that principles of equality are translated into practice.

3.1 Instances of acts of violation of the law on gender equality

- 1) Acts of violation of the law on gender equality in politics include:⁸⁸
 - a. Obstructing on the grounds of gender prejudice men or women in self-nominating as candidates or nominating candidates to leading bodies of political, socio-political professional, social or socio-professional organizations;

⁸⁴ Justice (2011) 2.
See International Covenant on Civil and Political Rights (ICCPR) opened for signature 19 December 1966, 999 UNTS 171, arts. 2(1), 14 and 26, (entered into force 23 March 1976).

⁸⁵ UN General Assembly, 'The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies: Report of the Secretary-General' (23 August 2004) UN Doc S/2004/616 [6].

⁸⁶ "Gender equality isn't just good for women." Equality Now – Mail from Yasmeen Hassan info@equalitynow.org to Olaide Network for Justice and Democracy <olaidelaw@yahoo.com> accessed 10 December 2020.

⁸⁷ Ibid.

⁸⁸ Ibid, article 40 (1).

- b. Failing to appoint, or obstructing the appointment of, men or women to hold managerial or leading posts or professional titles on the grounds of gender prejudice;
 - c. Imposing and implementing village codes or community conventions or regulations or rules of agencies or organizations that contain gender-based discrimination provisions.
- 2) Acts of violation of the law on gender equality in economy include:⁸⁹
- a. Obstructing men or women in setting up enterprises or conducting business activities on the grounds of gender prejudice;
 - b. Running commercial advertisements that place at a disadvantage enterprise owners or traders of one certain sex.
- 3) Acts of violation of the law on gender equality in labour include:⁹⁰
- a. Applying different conditions in the recruitment of male and female labourers to the same job though they have the same qualifications and abilities, unless in the case of application of measures for promoting gender equality;
 - b. Refusing to recruit, or recruiting limited numbers of, labourers or dismissing labourers on gender-based grounds or for their pregnancy, delivery or raising of children;
 - c. Assigning jobs based on gender discrimination resulting in different incomes or paying different wages to male and female labourers having the same qualifications and capability;
 - d. Failing to implement the provisions of labour law exclusively applicable to female labourers;

⁸⁹ Ibid, article 40 (2).

⁹⁰ Ibid, article 40 (3).

- 4) Acts of violation of the law on gender equality in education and training include:
 - a. Prescribing different training and enrolment ages between men and women;
 - b. Advising or coercing other persons to drop out of school for gender reasons;
 - c. Refusing to recruit qualified persons to training or retraining courses or for their pregnancy, delivery or raising of small children;
 - d. Providing career-oriented education, compiling and disseminating textbooks containing gender discrimination knowledge.
- 5) Acts of violation of the law on gender equality in the family⁹¹
 - a. Impeding members in the family who have all qualifications as provided by law from participating in the determination of assets under common ownership of a family for gender based reasons.
 - b. Not allowing or impeding members in the family from contributing their opinions to the use of common assets of the family, conducting income-generating activities or satisfying other needs of the family for gender prejudiced reasons.
 - c. Unequally treating members in the family for gender based reasons.
 - d. Constraining the schooling of female members in the family.
 - e. Imposing the performance of family work and the taking of contraceptive measures as though these are the responsibilities of members of one certain gender.

3.2 Necessary measures to ensure the realization of Gender Equality

⁹¹ Ibid, article 41.

Achieving gender equality involves the implementation of the following measures:

1. The practical implementation of the gender equality principle either by means of legislative or by other suitable means.
2. The prevention of any type of gender based discrimination either by means of legislative measures or by other suitable means accompanied with sanctions as the case may be.
3. Ensuring that any legal act, custom or practice which constitutes gender discrimination is changed or repealed by means of legal and sub legal measures or by other suitable means.
4. Taking the appropriate measures to create the necessary and legally justifiable facilities aimed at guaranteeing equal chances and access to both genders.
5. Ensuring through public institutions and national courts, the effective protection for both genders against any discriminatory actions.⁹²
6. Advancing women's political participation at all levels of governance is a vital step that must be taken towards gender equality and elimination of all forms violence against women. The political arena remains one of the most difficult public spheres for women to enter and only a minority of leadership positions in political parties, parliaments and governments across the world are held by women.⁹³
7. Legal and policy instruments should be established to foster gender equality based on quality.

3.3.1 Overview of International and Regional Instruments on Gender Equality

⁹² Albania, Gender Law No. 9970 of 24 July 2008.

⁹³ A. Guterres, UN Secretary General's Statement on International Women's Day, 8 March 2018.

International law can be a powerful tool for promoting gender equality worldwide. The principle of equality forms the core of the human rights vision of the Charter of the United Nations (1945) which states that human rights and fundamental freedoms should be available to all human beings ‘without discrimination on the basis of race, sex, language or religion’.⁹⁴

The principle of the equal rights of women and men is thus one of the pillars upon which the United Nations was founded.⁹⁵ The principle of the equal rights of women and men is also contained in the Universal Declaration of Human Rights and all subsequent major international human rights instruments such as the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all Forms of Racial Discrimination, the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the Convention for the Protection of Human Rights and Fundamental Freedoms.

A summary of relevant provisions of some of these international (including regional) instruments are presented below;

i. Universal Declaration of Human Rights (1948)

The Universal Declaration of Human rights states that each individual should enjoy his/her freedoms and rights “without distinction of any kind”⁹⁶ and that

⁹⁴ “UN Charter” www.un.org [accessed 10 February 2020]

⁹⁵ S. Goonesekere, “A Rights-Based Approach To Realizing Gender Equality” <http://www.UN.Org/Womenwatch/Daw/News/Savitri.Htm> [accessed 15 November 2020] See ILO Conventions Concerning Equal Remuneration For Men And Women Workers For Work Of Equal Value (100) (1951), On Discrimination In Respect Of Employment And Occupation (111) (1958), And On Equal Opportunities And Equal Treatment For Men And Women Workers: Workers With Family Responsibilities (156) (1981); Declaration Of The Heads Of State And Government Of Member States Of The African Union, On Gender Equality At The Meeting In The Third Ordinary Session Of Our Assembly In Addis Ababa, Ethiopia, 6 - 8 July 2004.

⁹⁶ Universal Declaration of Human Rights, (1948) article 2.

“all are equal before the law and are entitled without any discrimination to equal protection of the law”⁹⁷.

ii. Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW, 1979)

CEDAW addresses the advancement of women, describes the meaning of equality, and sets forth guidelines on how to achieve women’s equality. CEDAW holds States Parties responsible for adopting appropriate legislation and other measures to prohibit discrimination against women and establish legal protections for women’s equal rights. CEDAW is often described as an international bill of rights for women.⁹⁸ CEDAW is the most authoritative human rights instrument to protect women from discrimination. It is the first international treaty to comprehensively address fundamental rights for women in politics, health care, education, economics, employment, law, property, and marriage and family relations.⁹⁹

The Convention emphasizes the equality of men and women and their equal entitlement to fundamental freedoms and human rights. Based on these premises the Convention holds state parties responsible for the adoption of appropriate legislation and other measures, such as repealing discriminatory national penal provisions. It also highlights women’s right “to participate in the formulation of government policy and implementation thereof, and to hold public offices and perform all public functions at all levels of government”¹⁰⁰ International Covenant on Civil and Political Rights (ICCPR, 1966).

Specifically relevant is article 26 of the ICCPR which provides that all persons are equal before the law and are entitled without any discrimination to equal

⁹⁷ Ibid, article 7.

⁹⁸ “CEDAW. <http://www.UN.Org/Womenwatch/Daw/Cedaw/Cedaw.Htm> [accessed 16 April 2019]

⁹⁹ Adopted by The UN General Assembly In 1979. See Arts 1, 2, 3 And 16. See International Covenant on Civil And Political Rights, Article 3. Adopted and Opened For Signature, Ratification and Accession By General Assembly Resolution 2200a (xxi) of 16 December 1966. Entry into Force 23 March 1976.

¹⁰⁰ Ibid, article (7b).

protection of the law. In this respect, the law shall prohibit discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status).

iii. The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The covenant contains a similar provision under article 3 which provides that the States Parties to the Covenant undertake to ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights set forth.

iv. The Beijing Declaration and Platform for Action (1995)

The Beijing Declaration and Platform for Action is a political commitment rather than a Convention, so it is not legally binding. It identifies 12 areas of “critical concern” and actions to be taken to advance and empower women. The Beijing Declaration and Platform for Action is a set of international commitments by governments to combat gender-based violence and achieve gender equality in all spheres of society.

Beijing Declaration and Platform for Action adopted an ambitious Platform for Action that called for the “full and equal participation of women in political, civil, economic, social and cultural life.” Since that time, countries around the world have made considerable progress in enacting laws to elevate the status of women and girls.¹⁰¹

While these hard-earned gains are rightfully celebrated, serious gaps remain. No country in the world has achieved a level playing field for women across

¹⁰¹ UNESCO, “Making Laws, Breaking Silence: Case Studies from the Field grows out of a High Level Roundtable Convened by Penn Law, UN Women, UNESCO, Un SDG Fund, and IDLO. March 2017.

political, economic, and social life. Hundreds of laws and policies continue to constrain women's opportunities.¹⁰²

The last two decades following the Beijing Platform of Action have seen a proliferation of laws that address gender equality in the intersecting areas of women's political and economic participation, violence against women, equal pay for equal work, family relations, reproductive rights, land and property rights, and access to services.¹⁰³ Yet, despite the efflorescence of gender equality laws, the implementation of these laws has faced challenges across regions.¹⁰⁴

v. African Charter on Human and Peoples' Rights (1981)

The Charter in Article 3 affirms the equality of all before the law. Each person is therefore entitled to equal protection of the law. The Charter grants to all "the right to the respect of the dignity inherent in a human being and to the recognition of his legal status."¹⁰⁵ It specifically went further in Article 18(3) to enjoin each State Party to ensure that all forms of discrimination against women are eliminated and to also "ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."

vi. Protocol on the Rights of Women in Africa (2003)

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa provides that, "States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures".¹⁰⁶ States Parties are also enjoined by the Protocol to

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ African Charter on Human and Peoples' Rights, (1981) article 5.

¹⁰⁶ Protocol on the Rights of Women in Africa, (2003) article 2-1.

ensure “increased and effective representation and participation of women at all levels of decision-making.”¹⁰⁷

vii. European Union Directives on Gender Equality

There have also been other Directives at the European Union regional level. The Directive 2002/73/EC - equal treatment of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions states that: "Harassment and sexual harassment within the meaning of this Directive shall be deemed to be discrimination on the grounds of sex and therefore prohibited."¹⁰⁸

The principle of equality between women and men has been part of European Union law since the signing of the Treaty of Rome in 1957. Since then, a considerable body of legislation and Directives has been adopted on matters such as equal treatment in employment and occupation, health protection in the context of maternity, parental leave or access to goods and services.¹⁰⁹

¹⁰⁷ Ibid, Article 9.

¹⁰⁸ Council Directive of 9 February 1976 on the Implementation of the Principle of Equal Treatment for Men and Women as Regards Access to Employment, Vocational Training and Promotion and Working Conditions. (76/207/EEC). <http://Eurlex.Europa.Eu/Lexuriserv/Lexuriserv.Do?Uri=Consleg;197610207:20021005:En>.

¹⁰⁹ Council Directive 75/117/EEC of 10 February 1975 on the Approximation of the Laws of The Member States Relating to the Application of the Principle of Equal Pay for Men and Women OJ L 45, 19.2.1975, 19–20. Council Directive 76/207/EEC of 9 February 1976 on the Implementation of the Principle of Equal Treatment for Men and Women as Regards Access to Employment, Vocational Training and Promotion, and Working Conditions OJ L 39, 14.2.1976, pp. 40 - 42, Council Directive 79/7/EEC of 19 December 1978 on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security OJ L 6, 10.1.1979, 24–25.

- Council Directive 86/378/EEC Of 24 July 1986 on the Implementation of the Principle of Equal Treatment for Men and Women in Occupational Social Security Schemes, OJ L 225, 12.8.1986, 40–42.
- Council Directive 86/613/EEC of 11 December 1986 on the Application of the Principle of Equal Treatment Between Men and Women engaged in an Activity, including Agriculture, in a Self- Employed Capacity, and on the Protection Of Self-Employed Women During Pregnancy And Motherhood OJ L 359, 19.12.1986, 56–58.
- Council Directive 92/85/EEC of 19 October 1992 on the Introduction of Measures to Encourage Improvements In The Safety And Health At Work of Pregnant Workers and

viii. The Economic Community of West African States Protocol on Democracy and Good Governance (2001)

The Protocol stipulates that “Member States shall take all appropriate measures to ensure that women have equal rights with men ... to participate in the formulation of government policies and the implementation thereof and to hold public offices and perform public functions at all levels of governance.”¹¹⁰

3.3.2 Select National Laws as Fundamental Tools to address Gender Equality

Majority of women and girls in the world today still live under conditions that limit their educational attainment, restrict economic participation and fail to guarantee them equal rights and freedoms, as compared to men.¹¹¹ In the vast majority of countries around the world, gender-based discrimination is still

Workers who Have Recently Given Birth Or Are Breastfeeding (Tenth Individual Directive within the Meaning of Article 16 (1) of Directive 89/391/EEC) OJ L 348, 28.11.1992, 1–8.

– Council Directive 96/34/EC of 3 June 1996 on the Framework Agreement on Parental Leave. Concluded By UNICEF, CEEP and the ETCU OJ L 145, 19.6.1996, 4–9.

– Council Directive 96/97/EC of 20 December 1996 Amending Directive 86/378/EEC On The Implementation Of The Principle of Equal Treatment for Men and Women in Occupational Social Security Schemes OJ L 46, 17.2.1997, 20–24.

– Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 Amending Council Directive 76/207/EC on the Implementation of the Principle of Equal Treatment for Men and Women as regards Access to Employment, Vocational Training and Promotion, and Working Conditions OJ L 269, 5.10.2002, 15–20.

– Council Directive 2004/113/EC of 13 December 2004 Implementing The Principle Of Equal Treatment Between Men and Women in the Access to and Supply of Goods and Services OJ L 373, 21.12.2004, 37–43.

– Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the Implementation of The Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast) OJ L 204, 26.7.2006, 23–36 which applies to the following three principles: 1) equal wages; 2) equal treatment in social and security fields; 3) equal treatment in access to employment, vocational training and promotion, and working conditions.

- Council Directive 2010/18/EU Of 8 March 2010 implementing the Revised Framework Agreement On Parental Leave Concluded by Business EUROPE, UEAPME, CEEP AND ETUC and Repealing Directive 96/34/EC OJ L 68, 18.3.2010, pp. 13–20.

- The European Union Equal Treatment Directive (2006)

¹¹⁰ ECOWAS Protocol on Democracy and Good Governance, (2001) articles 2-3.

¹¹¹ M. F. Fathallah, “How Much Are Mothers Worth. International Federation of Gynecology and Obstetrics.” (FIGO). Proceedings of the XIII World Congress of Gynecology and Obstetrics, Singapore, September 15 - 29, 1991 Washington.

embedded in laws.¹¹² From family codes limiting women's inheritance rights to labour laws restricting their eligibility for certain kinds of employment, discriminatory provisions remain an ingrained part of most countries' legal frameworks.¹¹³ Beyond that, progressive laws enabling women to participate fully and equally in society, through policies that legally mandate parental leave or criminalize domestic violence, for example, remain limited.¹¹⁴

The implementation of a strong legal framework on gender equality at the national level based on human rights standards alongside broad efforts to transform gender equality is central to sustainable development. One of the most proactive steps government should take to guarantee women's rights to political participation is to place these rights in the Constitution as stated in the examples below:

i. Nigerian Constitution (1999)

According to section 17 (2) of the 1999 Constitution of the Federal Republic of Nigeria, "every citizen shall have the equality of rights, obligations, and opportunities before the law." Section 42 of the Constitution also provides that "no Nigerian citizen shall be discriminated against because of a particular sex, religion or ethnic group".

ii. Ugandan Constitution (1995)

Article 21 of the Ugandan Constitution, 1995, among others, proclaims the equality of all persons under the law, including equal protection of the law to all, and prohibitions against discrimination on the ground of sex.

iii. South African Constitution (1996)

¹¹² M. O'donnell and C. Kenny, "Can Legal Reform Help Improve Gender Equality?" Centre For Global Development, London. 2015.

¹¹³ Ibid.

¹¹⁴ Ibid.

Due to its 1995 ratification of CEDAW, South Africa has “assumed the obligation to pursue by all appropriate means and without delay a policy of eliminating discrimination against women ‘by refraining’ from engaging in any act or practice of discrimination against women.”¹¹⁵

As a result, South Africa must ensure that public authorities and institutions act in conformity with the obligation not to discriminate against women. This includes the adoption of legislative or other measures to prohibit discrimination and ensuring, through competent national tribunals and other public institutions, the effective protection of women against any act of discrimination. Consistent with international legal standards, South African Constitutional Law Act No. 108 (1996), Section 9 (3) states:

The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

iv. Albania’s Constitution (1998)

Albania’s Constitution guarantees equality before the law in Article 18, which states that “all are equal before the law” and that “no one may be unjustly discriminated against for reasons such as gender.”

v. China Constitution (2004)

According to Articles 33 and 48 of the Constitution, “All citizens of the People’s Republic of China shall be equal before the law.” “Women in the People’s Republic of China shall enjoy equal rights with men in all aspects of life, political, economic, cultural and social, and family life. The State shall protect

¹¹⁵ South African Constitution, (1996) s. 9.

the rights and interests of women, apply the principle of equal pay for equal work for men and women and train and select cadres from among women.”¹¹⁶

vi. Belarus - Laws on Gender Equality

In Belarus, the Marriage and Family Code (1999), the Civil Code (1998), the Labour Code (1999), and the Housing Code (2013), all support the goal of gender equality. For instance, In the article 22 of the Constitution of the Republic of Belarus it is said that all the citizens are equal before law are entitled without any discrimination to the equal protection of the rights and legitimate interests. Article 14 of the Labour Code prohibits any discrimination in labour relations, gender inequality in the labour market between men and women.

vii. United Kingdom - Equality Act (2010)

The Equality Act (2010) of the United Kingdom addresses a wide variety of non-discrimination provisions. The Act made it a legal requirement for all large employers (defined as having 250+ employees) to report and publish the gender pay gap data for their organizations.

The legislation has the same goals as the four major EU Equal Treatment Directives, whose provisions it mirrors and implements.¹¹⁷ The Act provides for equal treatment in access to employment in private and public services, regardless of the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, and sexual orientation.

viii. Kosovo - Gender Equality Law (2004)

¹¹⁶ Constitution of the People’s Republic of China (2004).
See also Article 13 which states that: “Women shall enjoy Equal Rights as Men in Employment.

¹¹⁷ See EU Directive 2000/78/EC, 2000/43/EC, 2006/54/EC.

Gender equality is treated as a fundamental value for the democratic development of the Kosovo society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other fields of social life.¹¹⁸ The provision of equal rights is the duty of the entire society and means the elimination of any barriers in achieving gender equality.¹¹⁹

ix. Socialist Republic of Vietnam Law No: 73/2006/QH11

The law provides principles of gender equality in all aspects of social and family life measures to guarantee gender equality and responsibilities of agencies, organizations, families and individuals in ensuring gender equality.

Other examples are as follows : ¹²⁰

In Ethiopia, article 35 (3) of the constitution of 1994 states: The historical legacy of inequality and discrimination suffered by women in Ethiopia taken into account, women, in order to remedy this legacy, are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to women so as to enable them to compete and participate on the basis of equality with men in political, social and economic life; as well as in public and private institutions;¹²¹

The Equatorial Guinea Constitution of 1995, in addition to the recognition of the principle of equality between all citizens, affirms that the women have equal rights and opportunities with men in all spheres of public life, private and family in the civil, political, economic, social and cultural. It states in Article 15 that any act of bias or discrimination duly recognized, tribal, ethnic, gender, religious, social, political, is punishable by law.

¹¹⁸ Kosovo, Gender Equality Law No. 2004/2, article 1.

¹¹⁹ Ibid, Article 1.3.

¹²⁰ Souad Abdennebi-Abderrahim, "Study on discrimination against women in law and in practice in political and public life, including during times of political transitions."

¹²¹ See <http://www.servat.unibe.ch/icl/et00000.html> [Accessed 5 January 2021]

3.4 Litigating Gender equality through Case Law

Courts have shown themselves to be both progressive and strategic, willing to engage in social context and substantive equality analysis to arrive at decisions in line with the spirit, and not just the letter, of the law.¹²² Further, the cases demonstrate a wide range of different constitutional provisions which have been referenced to improve women's equity and agency, beyond non-discrimination and equality clauses.¹²³

In *Uganda v. Matovu*,¹²⁴ the court held that,

"Article 21 of the Ugandan Constitution proclaims equality of all persons under the law, equal protection of the law, and prohibition against discrimination on

¹²² "Gender Equality and Women's Empowerment: Constitutional Jurisprudence." The Just Governance Group and UN Women, (2017). See notable judgments by the Court of Justice of the European Union (CJEU) | European Union : Defrenne II judgment of 8 April 1976 (Case 43/75): the Court recognised the direct effect of the principle of equal pay for men and women and ruled that the principle not only applied to the action of public authorities but also extended to all agreements which are intended to regulate paid labour collectively; Bilka judgment of 13 May 1986 (Case C-170/84): the Court ruled that a measure excluding part-time employees from an occupational pension scheme constituted 'indirect discrimination' and was therefore contrary to former Article 119 of the EEC Treaty if it affected a far greater number of women than men, unless it could be shown that the exclusion was based on objectively justified factors unrelated to any discrimination on grounds of sex; Barber judgment of 17 May 1990 (Case C-262/88): the Court decided that all forms of occupational pension constituted pay for the purposes of former Article 119 and the principle of equal treatment therefore applied to them. The Court ruled that men should be able to exercise their pension rights or survivor's pension rights at the same age as their female colleagues. Marschall judgment of 11 November 1997 (Case C-409/95): the Court declared that a national rule which, in a case where there were fewer women than men in a sector, required that priority be given to the promotion of female candidates ('positive discrimination') was not precluded by Community legislation, provided that the advantage was not automatic and that male applicants were guaranteed consideration and not excluded a priori from applying; Test Achats judgment of 1 March 2011 (Case C-236/09): the Court declared the invalidity of Article 5(2) of Council Directive 2004/113/EC as being contrary to the principle of equal treatment between men and women in the access to and supply of goods and services. Consequently, for men and women, the same system of actuarial calculation has to be applied to determine premiums and benefits for the purposes of insurance.

¹²³ Ibid.

¹²⁴ Cr.Case No.146 of 2001.

the ground of sex, Uganda enacted the heart of the above international instruments in one stroke and therefore Uganda has the obligation to give effect to the contents of those international instruments."

The Court held that the discriminatory attitude against women was unconstitutional and therefore null and void. This case shows how a country's local jurisprudence must be made to comply with international legal obligations, specifically upon ratification of CEDAW.

The Indian Supreme Court in *Mudaliar v. Thirukoil*,¹²⁵ ruled that a reservation the Indian Government made to CEDAW which protected local cultural practices was negated by other provisions and declarations of CEDAW and by the Indian Constitution itself.

In *Noel v. Toto*,¹²⁶ the Supreme Court of Vanuatu, also, considered laws which enforced patrilineal succession. The court weighed Article 5 of the Vanuatu Constitution, preventing discrimination on the grounds of sex, against Article 74, protecting custom as the basis of land ownership. The court concluded that it would be inconsistent with the Constitution and intent of Parliament to rule that women have fewer rights than men.

Similarly, in *Gurung v. Department of Central Immigration, Ministry of Home Affairs*,¹²⁷ the Supreme Court of Nepal struck down a residency law based on cultural traditions which favoured men's marriages rather than women's as a contravention of Nepal's constitutional equality provision.

In *Romualdez-Marcos v. Commission on Elections and Cirilo Roy Montejo*,¹²⁸ the Supreme Court of Philippines struck down a law based on traditional custom whereby a woman's domicile was defined by the residence of her husband (even

¹²⁵ (1996) 8 SCC 525. 5.

¹²⁶ Vanuatu; Case Id: Case No. 18 Of 1994.

¹²⁷ [2012] EWCA Civ 62.

¹²⁸ Case G.R. No. 119976 (September 18, 1995).

after her husband's death). The court relied upon the newly enacted Family Code of the Philippines¹²⁹ which was enacted to embody many of the principles set out in CEDAW.

Another progressive decision is that of the Supreme Court of Nigeria in *Ukeje v Ukeje*,¹³⁰ which voided the Igbo law and custom, that forbids a female from inheriting her late father's estate, on the grounds that it is discriminatory and therefore inconsistent with section 42(1)(a) and (2) of the 1999 Constitution of Nigeria. Mrs. Cladys Ada Ukeje (the deceased's daughter) had sued the deceased's wife and son before the Lagos High Court, claiming to be one of the deceased's children and sought to be included among those to administer their deceased's father's estate who died intestate in Lagos in 1981. In its judgment, the Supreme Court held that the Court of Appeal, Lagos was right to have voided the Igbo's native law and custom that disinherited female children.

Traditionally, Igbo custom forbids women from being named in Wills or receiving any of their late parents' legacies because they are supposed to have left their families upon marriage. The Supreme Court held that no matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her later father's estate. Consequently, the Igbo customary law, which disentitles a female child from partaking in the sharing of her deceased father's estate breaches the rule against discrimination encapsulated in section 42(1) and (2) of the Constitution, a fundamental rights provision guaranteed to every Nigerian.

In the United States, a wife's legal subordination to her husband was fully ended by the United States Supreme Court in *Kirchberg v. Feenstra*.¹³¹ In that

¹²⁹ The Act amending Article 75 of The Family Code of the Philippines.

¹³⁰ (2014) 11 NWLR (Pt.1418) 384. See *Chihowa v. Mangwende*, (1987) SC-84 – 87, where the court in Zimbabwe held that a woman who has reached the age of majority can succeed her father who has died intestate. It based its decision on the Zimbabwe Legal Age Of Majority Act, No. 15 Of 1982, which it concluded supersedes customary law prescribing that intestate inheritance is through the male line only.

¹³¹ 450 U.S. 455 (1981).

case, the Court held that a Louisiana Head and Master law, which gave sole control of marital property to the husband, unconstitutional.

3.5 Challenges to the enforcement of laws on gender equality

There are many general challenges to the enforcement of laws: lack of knowledge, lack of enforcement skills, corruption, inappropriate structures and limited infrastructure, among others. In many of these cases, women may be differently or disproportionately impacted than men.¹³² A major obstacle to pursuing litigation on gender equality violations lies in the fact that women lack awareness of their rights and harbour a deep distrust of police authorities and the judiciary.

At the national, level, comprehensive equality legislation is lacking as some States do not have such legislation. Many countries also do not uphold their treaty obligations.

Even where constitutional guarantees provide for equality and laws protect women's rights, discriminatory practices by law enforcement and security services, courts, lawyers and social services can serve as major obstacles to women's security and access to justice.¹³³ Customary and traditional norms and practices, including informal justice mechanisms, may also perpetuate gross violations of the rights of women and girls.¹³⁴

Lack of recognition of gender equality is another problematic factor. Some men regard gender equality violations occurring across the country as purely social, rather than legal problems. Some women are skeptical about the legal system's ability to address harmful traditional practices like child marriage, female genital mutilation, and dowry that have been tolerated for centuries.

¹³² C. R. Abada et al, note 75.

¹³³ "Gender Equality". http://Www.Unrol.Org/Article.aspx?Article_Id=28 [accessed 11 May 2021]

¹³⁴ Ibid.

Another challenge is generating awareness of gender equality rights. Even after the court recognizes and provides remedies for violations of gender equality, a significant hurdle to the practical realization of these rights lies in conveying the necessary knowledge to women whose daily lives are affected by discriminatory cultural and religious practices. Raising awareness and educating the public of the injustices that are being challenged through litigation are means of changing public opinions and achieving greater social change.

There is also the challenge of limited availability of legal aid to assist victims in vindicating their rights. Indigent claimants remain deterred from pursuing litigation due to lack of effective access to legal aid and financial constraints. There is also a lack of tradition of providing *pro bono publico*, or free legal services by lawyers.

Costs and length of legal proceedings similarly pose some daunting challenges. In addition to prohibitive costs, litigation involves lengthy court proceedings before obtaining a final judgment. The combined effects of high costs and long delays in court proceedings to obtain final judgments potentially discourage victims from litigating on reproductive rights abuses.

Economic and social issues such as lack of access to education and health care, discrimination, traditional harmful practices, violence against women remain serious constraints.

Poor prosecution of gender violation cases by law enforcement agencies. As a result of lack of knowledge of law and technical experience, law enforcement agencies have messed up a number of otherwise straight forward cases. Often times, they compromise cases because of corruption and ignorance of the law.

Political, social, cultural, economic and religious barriers. Cultural and religious beliefs had long discouraged millions of men and women from pursuing gender equality violations.

Although many countries have signed several international conventions to promote gender equality and women's rights, translating these into real life advancements for women is yet to be fully materialized.

Women's reluctance to seek help is due to several factors. Some of these are: discriminatory attitudes that normalize and excuse violence, poor awareness of their rights as well as the fear of retaliation, family or community pressure not to speak out, and in some cases, the stigma attached to seeking help.¹³⁵

There are also legal, policy and programmatic deficits that dissuade women from seeking help. These include police and justice systems that are inaccessible and unresponsive, especially to cases of domestic violence, and services such as help lines and shelters that are disconnected from legal and justice services.¹³⁶

Other challenges include, restrictive jurisdictional rules, overly complex regulations, ineffective enforcement mechanisms, and corruption.

4.1 RECOMMENDATIONS FOR THE ADVANCEMENT OF GENDER EQUALITY

To achieve lasting change, it is important to enact and enforce legislation and develop and implement policies that promote gender equality by: ending discrimination against women in marriage, divorce and custody laws; ending discrimination in inheritance laws and ownership of assets; improving women's access to paid employment and developing and resourcing national plans and policies to address violence against women.¹³⁷

¹³⁵ *UN Women, Turning Promises into Action: Gender Equality in the 2030 Agenda For Sustainable Development.* (New York : United Nations, 2018). 199.

¹³⁶ Ibid.

¹³⁷ <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>. [Accessed 5 January 2021]

- 1) Governments must enact and enforce appropriate laws, devoid of discriminatory legal loopholes, to unleash the cultural change necessary to achieve the gender equality goal of the UN's Sustainable Development Agenda and give girls the opportunities they deserve. Such legislation should promote gender equality and be implemented or enforced independently through effective, accountable and inclusive institutions which should provide women with opportunities to access justice and other essential public services.
- 2) National laws and policies should be strengthened to ensure that all women exercise their human rights as recognized in international human rights instruments such as International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.
- 3) Women and girls should be empowered to ensure that they have equal opportunities to benefit from development, and remove the barriers that mitigate them being full participants in all spheres of society.
- 4) To overcome gender inequality, women's empowerment and gender equality require strategic interventions at all levels of programming and policy-making.
- 5) Governments should strengthen legal, institutional and policy frameworks for gender equality.
- 6) Regulatory bodies should be established to ensure the effective implementation of gender equality laws.
- 7) Government should engender gender equality in Constitutions, enact laws that will eliminate gender inequalities, strengthen and mandate institutions to implement gender mainstreaming.
- 8) Law reform must involve not only removal of discriminatory provisions from existing laws, but also the drafting of new laws needed to advance gender equality.

- 9) Law reform should target gender equality through policies that support overall development, especially for the improvement of the females' status, so that they are entitled to the benefits of gender equality.
- 10) Lawyers and other civil society organizations should embark on sensitization and advocacy programs on advancing gender equality. Activists are enjoined to utilize education, outreach, and the court system to challenge their governments' lack of compliance. The international community should consider ways to support States in implementing equality measures, and to hold them to account should they fail to do so.
- 11) Governments should address legal and policy barriers that prevent women from exercising their rights and provide access to evidence-based and comprehensive education and information about gender equality and human rights to all.
- 12) Rules that govern court procedures should provide gender-sensitive procedures through, but not limited to the use of gender-fair language and non-discriminatory environment, especially for women (as litigants, witnesses or even judges). Doing this, among others, involves allowing women subjected to sexual violence to testify in private chambers, adopting non-adversarial procedures in resolving disputes, creating special waiting areas for victims, confidentiality and privacy, and simplified evidentiary requirements.¹³⁸
- 13) Ensure equal access to women and girls on health care, education and participation in political, economic and public life.
- 14) Ensure the active promotion and protection of all human rights for women and girls, including the right to education, freedom from discrimination, property and inheritance rights including their rights to

¹³⁸ C. R. Abada et al note 75.

housing.

- 15) Introduce reforms in the educational system and curricula to address issues such as gender-based violence, gender equality and promote gender awareness programs.
- 16) Laws are not enough to ensure gender equality, holistic approach to local attitudes and ingrained beliefs are needed.
- 17) Reduce social, economic or political power inequalities between women and men, girls and boys, ensure that women benefit equally with men from the activity, or compensate for past discrimination.
- 18) States should develop legal and institutional environments by taking necessary actions on full implementation of existing commitments and obligations for the attainment of gender equality.

4.2 CONCLUSION

Gender inequality persists worldwide, depriving women and girls of their basic rights and opportunities. Advancing gender equality requires formulation and implementation of laws and policies that provide equal opportunities for all, regardless of sex, to counter deeply rooted gender-based discrimination.

Every woman should have full and equal dignity of her person, including equal opportunities in political, economic, and social activities. Gender equality requires fundamental transformation in the distribution of power, opportunities and outcomes for both women and men. In spite of global efforts to assure the respect of human rights and the strengthening of women's role within our societies, full gender equality has not been achieved yet. On the contrary, women are still discriminated against and their potential remains largely unexploited.

In the absence of equal participation for females and males in all relevant fields of social lives, equal status, equal opportunities and the entitlement to rights and use of their individual skills for the development of the society and equal

benefit from the results of such development, gender equality remains rhetoric. Effective laws on gender equality are crucial in guaranteeing the equal rights and opportunities of women and men in various spheres of life as well as in preventing widespread discrimination against women.

An appropriate framework for addressing inequalities requires democratic systems of governance, accountability and strict adherence to the rule of law. Advocating for women's and girls' equal rights, combating discriminatory practices, cultural prejudices and stereotypes that affect inequalities and exclusion must be challenged. Despite the fact that progressive laws abound, especially in developed nations, barriers to full gender equality persist especially in developing countries.

The way forward is to allow the rights of women to be treated on an equal basis with men to ensure economic and social freedoms for women. An enabling legal environment is essential for countries to translate the gender principles into action. Inclusive institutional frameworks and platforms, adequate legal frameworks and policies all contribute to ensuring that gender equality becomes a reality.

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