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Why we need to make customary laws work for women

Trying to fix informal justice systems can backfire, unless male domination of community power structures are addressed



Rights activists carry pictures of an Afghan girl, Shakila, who was shot dead after being raped, as they demand justice during a rally in Kabul, Afghanistan. Photograph: S. Sabawoon/EPA

Afghanistan's constitution and domestic laws offer extensive protection to women, yet abuse of Afghan women from domestic violence, sexual harassment and rape to trafficking of women and children and "honour killings" is pervasive.

Even where violations of the 2009 law on the elimination of violence against women are reported, such behaviour is often considered legitimate or a family rather than a legal matter in the country's informal justice systems, which are largely composed of

influential male elders. These informal systems seek to preserve family harmony and to prevent tribal and other conflicts from escalating.

But such informal systems in developing countries present a major challenge to efforts to promote gender equality, seen as a cornerstone in achieving the millennium development goals (MDGs). As the International Development Law Organisation (IDLO) noted in a new report: "Informal justice systems often tolerate or reinforce discriminatory practices such as female genital mutilation, bride sales, denial of widow inheritance, or discriminatory sanctions such as forced marriage or the exchange of women or young girls as resolution for a crime or as compensation."

Despite these shortcomings, many women prefer these informal systems on the grounds of familiarity, cost and convenience. In Afghanistan, 73% prefer local *jirgas* and district *shuras* to state courts, describing them as in keeping with local norms and values.

"Most legal disputes in developing countries end up being resolved outside the courts. Informal justice systems are here to stay. So wherever these systems are receptive to change, and not inherently unjust, we should make them work for women instead of against them," said Irene Khan, IDLO director general.

IDLO's report questions the approach of aid donors that consists of trying to wrench customary rules and procedures into line with internationally recognised standards of women's rights. It warned that this "fix it" approach can backfire unless more fundamental issues are addressed, which comes down to traditional male domination of community power structures.

For instance, attempts to change Kenya's customary procedures for land titles to widen women's access to land had the effect of cementing male ownership and precluding women's access and use of land under customary law. IDLO advocates "legal empowerment" strategies through legal literacy programmes, legal aid or alternative mechanisms to settle disputes.

"Bottom-up legal empowerment approaches targeting women can pressure community leaders to reform discriminatory practices," said the report. "When women are informed of their rights and encouraged to discuss or challenge informal laws and practices, they can put pressure on customary justice systems to better protect basic rights."

In Afghanistan, IDLO supported the creation of the violence against women units in the attorney-general's office in Kabul in 2010, expanding the programme to seven other provinces. It has also set up a training programme for those in the informal justice sector to address the lack of information about sharia and Afghan constitutional law, which is seen as a major factor behind traditional practices harmful to women. During its first year of operation in Kabul, the unit received 300 cases. By June 2012, the

number of cases had risen to 1,175.

In Namibia, it was a case of getting more women to be appointed traditional leaders in the Uukwambi region, where one of the five district senior councillors in the traditional authority is a woman. IDLO also worked to increase the presence of women in court proceedings, encouraging them to take part as witnesses and representatives, and to promote gender equality among village chiefs. IDLO said Namibia provides a successful example of the legal empowerment approach, attributing it to commitments to gender equality at national level and a momentum for change following independence.

However, the legal empowerment approach brought less success to the issue of land rights in Rwanda, despite national legislation allowing daughters to inherit land from their parents, because of the larger framework of social beliefs. Despite limitations of the legal empowerment approach, Shirin Ebadi, a Nobel peace prizewinner, believes in the value of empowering women through legal education, legal training and the provision of legal services.

"Legal empowerment strategies can slowly pay long-term dividends, by allowing women to claim power from those who rule in their name, rather than leaving reforms to the whims of the state and community decision-makers, whose interests often lie in the preservation of the status quo," she said.

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