

Findings

Africa Region



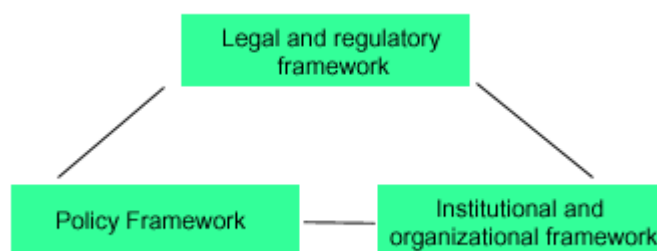
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Gender and Law in Francophone Sub-Saharan Africa: The Role of the World Bank

Gender-responsive institutional, policy and legal/regulatory frameworks

Law is society's institution which articulates rules to govern legal and non-legal institutions. Rules of legal institutions aim to protect the citizen against discretionary and arbitrary power, ensure equality with others and guarantee procedural fairness. Impartial administration of the law through independent accessible courts and a democratic process of law-making, defines and enforces the limits and powers of state institutions and sets out the scope of legitimate state intervention in the affairs of its citizens (*Women in Development: The Legal Issues in Sub-Saharan Africa Today*, D. Martin and Fatuma Omar Hashi, June 1992:17). To the extent that the rule of law accomplishes this, a neutral legal order exists, capable of supporting the competitive market economy in the following ways: a) ensuring predictability and security of property rights and transactions; b) limiting arbitrary and discretionary rational power of the state and its agents; c) maintaining the independence of the judiciary and at the same time curtailing judicial activism; and d) limiting the retroactivity of rules of law. Because of the lack of a formalized private sector in Africa, in many countries the State plays a major role in economic activity; it may supercede or qualify the market. This makes it even more important that the law should emphasize fair and efficient administration (Figure 1).

Figure 1: Gender-responsive laws and regulations as part of a broader institutional, policy, and legal/regulatory paradigm



In Sub-Saharan Africa), the fluidity of mixed legal traditions raises many complex issues

relating to the application and interpretation of laws, inasmuch as the potential application of conflicting laws reduces certainty as to the choice of law. In the colonial past, some broad categorizations and assumptions were made: a) *political rights and activity* were regarded as falling within the domain of constitutional law; b) *commercial activity* was regarded as falling within the domain of statutory law; c) *civil law*, especially those issues relating to property rights, land tenure, inheritance and succession, and family relations in general were covered by customary law. In a context characterized by government desire to promote an *état de droit* (state based on laws) founded on the supremacy of written law over customary laws and practices, such neat categorization is no longer realistic. Land tenure is often the basis of commercial activity. Ownership of land provides collateral, and collateral translates into access to credit for further commercial activity. Inheritance is a means of wealth acquisition and the basis of generating further wealth. If women are constrained under customary law in their inheritance rights and in the ownership of land, they are likely to be marginalized from the process of directly generating and directly benefiting from further wealth.

Unless these dynamics are fully appreciated and the interrelations between rights under statutory and customary law, and their instrumentality in consolidating social, political and economic status are recognized, little advance can be made in promoting the economic advancement of women and in promoting them as an economic force.

Strategy for addressing gender-sensitive legal and institutional reforms

The application of this integrated institutional/organizational, policy and legal/regulatory approach to gender-responsive development has been key in the World Bank's support for analysis of gender and law initiated in Francophone SSA. In 1994, an *Operation Evaluation Department* study traced how the concept of *women in development*, and later the broader concept of *gender*, had yet to be reflected in Bank policies and lending. That same year, the Bank issued the *Operational Policy 4.20 paper*, and a best practice note, which called for integrating gender concerns in Bank work. Consistent with the findings of the 1997 update of the 1994 study, the objective here is to further advance the Bank's commitment to gender, through a set of guidelines to help task managers apply the understanding of the key role of gender-responsive government policy, institutional and legal/regulatory reforms in Bank supported lending and non-lending initiatives (see Box I). This proposed integrated approach was initially formulated in three working papers prepared by the Gender Africa team in June 1992 : *Law as an Institutional Barrier to the Economic Empowerment of Women*; *Gender, the Evolution of Legal Institutions and Economic Development in Sub-Saharan Africa*; and *Women in Development: The Legal Issues in Sub-Saharan Africa today*. The implications for sector-specific Bank lending is spelled out in the working paper *Gender-sensitive legal and institutional reforms in Francophone SSA* (March 1998), and modeled as a country-specific example in the working paper *Gender and Law in Benin* (March 1998).

Box 1: Guidelines to apply gender-responsive reforms in Bank initiatives

- Identify the existence of a ***national policy for women***, addressing economic empowerment and the gender dimension of poverty. If this policy exists, how is it translated into sector policy and action plans in key sectors at the central, regional, and local levels?
- Assess the current ***legal and regulatory frameworks***. Which are the legal and regulatory constraints which directly/indirectly affect the societal status of women?
- Analyze the current ***institutional framework***. Which is the government agency responsible for promoting a comprehensive gender policy and action plan for the advancement of women? Which are the government agencies (focal points) responsible for mainstreaming gender within key technical ministries' strategies and action plans? What is the role of the associations and agencies of the non-governmental civil society?
- Verify the ***gender component in budgetary allocations*** per key lending sectors in government budget. Do budgetary allocations reflect government's commitment to implement the set of activities set forth in the policy, strategy and action plan for the advancement of women ?

Strategy vis-à-vis existing World Bank lending and non-lending instruments

The Bank, based on its global scope and interdisciplinary expertise, is well-positioned to act as coordinator of external legal technical assistance in its borrowing member countries. At the moment, a number of modalities by which the Bank can address the linkage between gender, law and development are already available and involve the following.

- a. **Economic and Sector Work (ESW)**. This means mainstreaming gender and law concerns within the *Country Assistance Strategy*, as it appears in the section on *Gender and women in development* of the March 1998 CAS for Rwanda (n.17478:13) and the December 1998 *Policy Framework Paper* for Benin. Access to legal and judicial services should be mainstreamed in the current World Bank strategy in social protection, as it is the case for the 1999 Africa Region Issues Paper.
- b. **Non-lending instruments**. These include the *Small Grant Programs* (technical and financial assistance provided for a *National Workshop* convened by the *Association of Women Jurists of Mali* on constitutional reform, 1993), and the *Institutional Development Funds* (see approved IDFs for the promotion of the legal status of women in Benin, 1997, Togo, Mali and Mauritania, 1999).
- c. **Lending instruments**. This involves sensitizing Country Directors, cluster leaders and task managers to address the potential for enactment and enforcement of gender-sensitive legislation

within their projects and sector lending (see legal component in the Mauritania's *Financial and Private Sector Capacity* loan, cr.2730, and the conditionalities attached to the *Economic Recovery Credit* for Rwanda n.57294).

Legal reforms cannot be confined only to the drafting and enactment of legislation. They also comprise the formulation, enactment and application of administrative and judicial reforms, which ensure that the legislative changes a country introduces are implemented and enforced to serve their purposes. Reforms in institutions, sector policies and legal/judicial systems are corner stones of the WB *Comprehensive Development Framework*. In this respect, a future involvement of the Bank in funding self-standing administrative and judicial reform technical assistance and lending projects with due analysis of the gender implications in Sub-Saharan Africa is conceivable.

Among the currently available *non-lending instruments*, the Institutional Development Funds constitute a viable instrument designed to provide institutional strengthening and capacity-building. As a result of constructive interaction with government and non-government agencies in Francophone Sub-Saharan Africa, it has been possible to identify programs of technical assistance in almost all the twelve selected Francophone countries. The identified needs were the result of a systematic review of the selected countries institutional, policy, legal/regulatory and judicial frameworks (including enforcement procedures), social/customary laws and practices as well as budgetary allocations for initiatives related to the advancement of women. These country-specific reviews were carried out by in-country NGOs and associations (the leadership role varying by country) with technical support from the Francophone Gender and Law Team.

For a comprehensive analysis and summary of initiatives carried out in Francophone Sub-Saharan Africa in the area related to gender and law, please refer to Findings 148, December 1999 on Gender and Law Initiatives in Francophone Sub-Saharan Africa, published by the Francophone Gender and Law Team. For more information, please contact Elizabeth Morris-Hughes, Rm. J8-105, World Bank, Washington D.C.20433. Tel. no. : (202) 473-8508; e-mail : Emorrishughes@worldbank.org