



Royal Tropical Institute

CALS
Centre for Applied
Legal Studies

Gender and access to justice in sub-Saharan Africa

Conference report

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**Report on the KIT-CALS conference
29-30 October 2008
Johannesburg, South Africa**



Royal Tropical Institute
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Correct citation

Please reference this work as follows:

Mukhopadhyay, M. and S. Quintero (2008) *Gender and access to justice in sub-Saharan Africa*. Report of the conference held 29-30 October 2008 in Johannesburg, South Africa. Amsterdam: KIT and CALS

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Acknowledgements

We would like to thank the participants of the conference, all of whom generously shared their experiences and perspectives.

The conference would not have been possible without the financial assistance of the sponsors and especially the Ministry of Foreign Affairs, the Netherlands.

We thank Sandra Quintero, research assistant at KIT for background research and significant contribution to administering the conference. We would also like to thank the CALS administration for their tireless efforts to bring the participants from all over Africa and ensuring we were all housed and fed.

Maitrayee Mukhopadhyay and Likhapa Mbatha
Conference organisers

Executive summary

This conference aimed to share knowledge and experience on gender and access to justice in the Sub-Saharan Africa region. It aimed to broaden the analysis of 'accessing justice' to the study of justice outcomes; to explore the roles and meanings of customary law and traditional judicial institutions in the present and their relationship to formal state institutions. Further the aim was to critically analyse the strategies that are currently used to promote gender equality per se and gender equal access to and outcomes of justice processes. This report highlights some of the recurrent themes that were central to the discussions of the conference and is divided into four sections.

The first section addresses the question of gender in accessing justice to try and understand what gender and access to justice means, what gendered outcomes of judicial decisions implies and what needs to be done to make gendered outcomes of justice institutions and processes more gender equal. Understandably key barriers to accessing justice were the physical, social and economic inaccessibility of formal institutions of justice. These affect poor women and men but in different ways. Even if and when women do get to the institutions of justice they are unlikely to be treated equally. The law itself may be against women's interests or the rules of evidence are such that women are unable to provide them. The most difficult barrier for women, therefore, is the kind of justice that they are able to access which is gendered. Gendered justice simply put means that men are preferred to women. In some instances the law itself is discriminatory while in other cases the outcomes or decisions by courts privileges men and subordinates women. Why is this so? Research on legal and judicial processes has revealed the biases in the treatment of women in courts as witnesses, accused and as lawyers; in the selection of judges and the procedures used in courts. While revealing this kind of research took place in a liberal context, in other words, within the understanding that we are all fundamentally undifferentiated. However, we have to go beyond this liberal understanding to comprehend why judicial outcomes are gendered.

It is not that women do not get justice from formal institutions but when they do it is on the bases of women performing their traditional roles as good mothers and wives. But when they are sex workers, rape victims who have difficult pasts and are not "good mothers" women generally fail to achieve justice in our courts. This is so for two main reasons. First, when advocating or litigating for gender justice often practical interests of women's needs (arguing a case in terms of women's stereotypical roles) takes precedence over strategic arguments such as how to shift and change society and its valuation of women and men over the long term. Secondly, even when thinking and working strategically one is often working with tools that are not of one's own making. The law itself is a gendered tool that has been shaped by men's needs and men's experiences.

The second recurrent theme of the conference was about the quintessential problematic of negotiating gender equal outcomes between state and custom in contexts of multiple legal systems and authorities. In most of Africa state and customary laws (as also the institutions to dispense justice) co-exist. Customary law and institutions are closer to people and their decisions more binding on community members especially in matters pertaining to family law. This also means that gender relations are often the subject of adjudication in customary forums. The relationship between state and customary law differs from country to country – in some it is recognised whereas in others it is not. The extent to which the state has tried to regulate custom also differs between countries. A product of the colonial encounter in Africa customary law was constructed by the colonial authorities with active collaboration of community elders, traditional authorities and chiefs who fearing the loss of power over the young and women interpreted flexible rules of customary law rigidly in ways that enshrined elite male interests. At independence

most countries continued the practice of applying the official customary rules. Customary law is often perceived as a system which oppresses women. Yet, African jurisprudence shows a continuum between these two systems whereby gender inequalities are reproduced by the formal system by interpreting customary norms and/or citing a flexible and context specific norm as being the customary law, and by overturning progressive decisions in favour of women and minors made by customary courts.

The question that was raised over and over again was how the interface between state and customary law can best be managed so as to deliver gender just outcomes. Understanding the underlying principle of customary law rather than relying only on the judgements may be a first step in re-interpreting norms. However, the challenge remains as to how to get this all through the legal system and into judgements. A second related way might be to seek agreement on custom being regulated by state laws and institutions. However, this could only promote gender equal outcomes if and when regulation was subject to standards of equality.

Does the answer to resolving the problems of dual systems lie in the codification of custom and the construction of uniform codes? This concept of certainty that uniformity is supposed to bring (and the assumption that by establishing certainty just decisions will be reached) was challenged by drawing on historical evidence which showed that the colonial construction of customary law in aiming to establish certainty actually privileged elite male interests. Thus creating uniformity through codification cannot by itself achieve gender equal outcomes. In order for codification of customary law or its recognition to actually serve the purpose of achieving gender equal outcomes the process and outcomes have to be made answerable to standards, standards of gender equality in constitutions and/or international conventions. The process followed in South Africa to recognise the customary law of marriage was cited as an example of how this could be done. The process of harmonisation of customary law and the constitution was done in South Africa through consultations at every stage which included a list of questions about what different parties meant by the concepts that were being used as for example what is meant by harmonisation. However, these consultative processes which include traditional authorities in reforming customary law cannot end when the law is passed. Engagement has to continue in order to mitigate conflicts that arise in implementation, to keep traditional authorities on board and prevent derailment of the reformed law.

The third section looks more closely at why and how gender and access to justice is more than about the law. Law reform and legal processes more broadly are seen as the main sites for activism in discussions on access to justice. However, achieving gender equal outcomes requires struggles in broader societal arenas and decision-making institutions where meanings about gender relations and womanhood are generated and which then are reflected in the law and judicial processes. Access to justice is more than the law and the law is not always on the side of justice. Therefore, it is necessary to go beyond instituting legal reforms to thinking about other struggles in society that take place not only in the public sphere but also in the private sphere. In so doing distinction has to be made between role-based strategies and rights based strategies. Rights based strategies are those that address the redistribution of resources, that is material resources in the class sense and also redistribution of power resources from a feminist perspective. Further it is necessary to distinguish between strategies to attain formal equality and those used for achieving substantive equality. By this is meant recognising the difference in pursuing policy and legislative change that can be accommodated in the existing sex/gender framework and those that go to the heart of private power which is the bedrock of liberal democracy. In order to advance rights based strategies for gender equality we need to work through alliances with broader social movements for democracy and change thinking beyond gender but at the same time insert gender into the concerns of those movements. In advancing women's interests it is critically important to

recognize and work with the fact that women are not homogenous group and, therefore, their interests will differ.

Recommendations emerging during the conference were concerned with three main areas: the need to build knowledge on gender and access to justice; improving practice to shift gendered outcomes as opposed to merely focussing on equal access; and finally working with pluralism in ways that benefit women and promotes equality.

Building knowledge on gender and access to justice would involve generating knowledge about meanings and definitions that affect legal practice and wider advocacy and as well how to engage communities and dialogue with traditional leaders on gender equality.

In order to improve practice to shift gendered outcomes it is important to broaden the concept of access to justice from legal justice to gender justice. Interdisciplinary strategies aimed at enhancing women's rights and gender justice needs foregrounding. Expanding networking between civil society groups, academicians, governments, traditional communities to learn about and act on gender justice is called for. Most importantly mobilising women themselves for justice has to be the cornerstone of strategies to achieve equal outcomes. Publication of research materials and translating findings into accessible language so that practitioners can use them in their work is urgently required.

Legal strategies would include women lawyers and human rights activists using opportunities to challenge the law in constitutional courts, filing "test cases" and sponsoring private members bills in parliament; mainstreaming gender in legal professional education is a must; and undertaking strategic litigation which means selectively choosing specific types of cases to litigate based on the case's potential to achieve broad social change.

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The social and cultural attitudes around woman is the barrier that is easiest to identify and the most difficult to remove. Gendered justice is the reproduction of these biases in the process of law.

Introduction

This conference aimed to share knowledge and experience on gender and access to justice in the Sub-Saharan Africa region. It aimed to broaden the analysis of 'accessing justice' to the study of justice outcomes; to explore the roles and meanings of customary law and traditional judicial institutions in the present and their relationship to formal state institutions. Further the aim was to critically analyse the strategies that are currently used to promote gender equality per se and gender equal access to and outcomes of justice processes.

Organised by the Centre for Applied Legal Studies at the University of Witwatersrand, South Africa and the Royal Tropical Institute, Amsterdam, the conference was attended by forty persons from sixteen Sub-Saharan Africa countries. It brought together practitioners, activists, researchers, academics and policy makers from the legal and



development fields¹. While the range of disciplines, institutional locations and country contexts was diverse what these people had in common was professional and personal interest and involvement in social change more broadly and the promotion of gender equality more specifically.

The conference offered an important opportunity to reflect critically on why despite two decades of women's activism in the field of human rights, legal equality and development, it has proved difficult to entrench concepts and practice that acknowledges women's rights as human rights. As Maitrayee Mukhopadhyay said without the possibility of being heard and getting justice it is not feasible to establish a human rights and democratic culture in our societies. For most women the possibility of finding redress for wrongs done to them because of their gender remains remote. Despite the struggles for legal equality and just laws women find that in the process of adjudication women and men are treated differently and unequally.

The Centre for Applied Legal Studies has played an important role in establishing gender equality in constitution building, legal reform, customary law reform and the application of laws in South Africa. Likhapa Mbatha said this conference was timely to review experiences from across the continent and discuss strategies on how to take this work forward.

¹ Seventeen of the participants to the conference were also participants of the second Africa region short course 'Building Capacity for Rights: Development and Democracy in Africa' held at CALS 20-30 October 2008 and organised by KIT and CALS. Preparation of presentations for the conference was part of the curriculum.

Four broad themes formed the backbone of the conference, which was divided into plenary panel sessions followed by discussions in groups and plenary. The four plenary themes were: gendered nature of judicial outcomes; the continuum of formal and informal justice systems and the reproduction of gender inequality; post-coloniality and the resurgence of tradition in the modern; and strategies for achieving equal justice for women and men.

This report highlights some of the recurrent themes that were central to the discussions of the conference and is divided into four sections. The first addresses the question of gender in accessing justice to try and understand what gender and access to justice means, what gendered outcomes of judicial decisions implies and what needs to be done to make outcomes of justice institutions and processes more gender equal. The second discusses the quintessential problematic of negotiating gender equal outcomes between state and custom in contexts of multiple legal systems and authorities. The third looks more closely at why and how gender and access to justice is more than about the law. Law reform and legal processes more broadly are seen as the main sites for activism in discussions on access to justice. However, achieving gender equal outcomes requires struggles in broader societal arenas and decision-making institutions where meanings about gender relations and womanhood are generated and which then are reflected in the law and judicial processes. Finally, the report presents implications and recommendations.



1. The question of gender in accessing justice

A clear and repeated theme of the conference referred to the questions regarding gender itself whether it was to try and understand what gender and access to justice meant, what gendered outcomes of judicial decisions implied or what needed to be done to make outcomes of justice institutions and processes more gender equal.

a. Gendered outcomes

In illustrating why and how the processes of law and adjudication do not deliver equal outcomes for women and men several speakers pointed to some of the commonly experienced barriers in most of the African countries represented at the conference. Understandably key barriers were the physical, social and economic inaccessibility of formal institutions of justice. Atsango Chesoni from Kenya and Ibrahim Koreissi from Mali both mentioned the grossly inadequate formal justice structure and services that prevent



most people and particularly the poor and women from accessing institutions that should provide redress for wrongs. Atsango showed that in Kenya the formal justice system is antiquated and urban biased. Only three cities have courts and most legal services are concentrated here. There are no courts in the north of the country and people are supposed to be serviced by mobile courts which come around infrequently. Consequently, most people rely on the councils of elders for their own community to file complaints

and have wrongs redressed. Koreissi mentioned that for most people the family is the site for fifty per cent of the adjudication on conflicts and complaints. The power to decide at this level lies with male elders and spouses often jeopardising women's chances of getting a fair hearing. A second level where forty per cent of adjudication takes place is at the village or community level. The people with the power to arbitrate and decide are village chiefs, religious and/or traditional chiefs and again they are mostly men. Only the remaining ten cent of cases enters the state system and here too gender biases in the law and judicial process prevent women's claims receiving a fair hearing.

The grossly inadequate infrastructure for legal and judicial services entails costs that the poor, rural populations and especially women can ill afford. As Likhapa Mbatha (South Africa) pointed out you have to have money to go to a particular forum as for example in order to get to the magistrate court a woman would need transport which many cannot afford. Joanna Osvalda (Mozambique) said that in her country people have to travel long distances to access district courts. Women are poor, they cannot afford to pay for the attorney, and cannot afford to travel long distances.

'Even if and when women do get to the institutions of justice they are unlikely to be treated equally'

The inadequate outreach of formal judicial institutions combined with the poverty of a greater part of the populations, which prevents them from being able to afford these institutions, excludes from its ambit both poor rural and urban women and men although not in the same way. As Joanna pointed out women are more likely to suffer social ostracism if they approach formal institutions to complain about ill-treatment by husbands and other family and community elders.

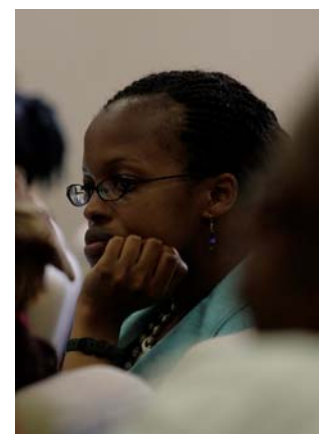


Even if and when women do get to the institutions of justice they are unlikely to be treated equally. As Koreissi observed the law itself may be against women's interests or the rules of evidence are such that women are unable to provide them. As for example, 1964 legal code of marriage for Mali deemed the husband as head of the family making complaints against him by his spouses untenable. The rules of evidence also go against women. Judges always ask for proof and when women complain of having been beaten by the husband, a medical certificate is the proof that they are expected to provide. Health centres most often refuse to provide them for fear that they would have to be witnesses.

As Kirsty Maclean summarised the most difficult barrier for women is the kind of justice that women are able to access. Illustrating this barrier Sheila Minkah-Premo showed that in the decisions on matrimonial property in Ghana the law itself discriminates against women in the way in which women are able to acquire and own property in marriage. Judgements on matrimonial property in Ghana have followed the general ruling that a married woman's contribution to property does not give her any right to a share of that property at the time of divorce. The judge in this particular case was quoted as having said 'Under customary law the domestic responsibility of a man's wife and children is to assist him in carrying out the duties of his station in life. The proceeds of this joint effort of a man, his wife and children and the properties that are acquired are under customary law the property of the man and not joint property of the man, his wife and children. Their right is to maintenance and support from the husband and father'. Some of the courts However have used the equity rule to try to give wives some share of property jointly acquired but have always made this dependant on the kind of evidence that the woman is able to provide and if she is able to prove substantial contribution. Sheila cited a case which illustrated very well that even when courts use so-called equity principles to give women a share of matrimonial property the outcomes are extremely biased and discriminatory to women. The case cited was of a woman who gave her husband the start capital for his business, the business being in the man's name. At the event of divorce the man argued that the business was in his name and the property had thus been acquired by him. The woman was able to show proof of contribution and the court used principles of equity to give her *one* house of the *ten* that he had acquired through his business.

'...under customary law the domestic responsibility of a man's wife and children is to assist him in carrying out the duties of his station in life'

Several speakers gave examples of this the most difficult of barriers for women which is the kind of justice that women are able to access and which in turn produces unequal subjects, women and men. Bether Kocach looked at examples of gender based violence in Uganda, and divorce in Uganda and Kenya. With regard to divorce there are discriminations both with regard to women obtaining a divorce and with regard to women getting a fair share of marital property. In Uganda, for example, a woman has to give numerous reasons in order to argue for a divorce, while a man can simply cite adultery. Women's share of property on divorce is a contentious issue. In Kenya the court of appeal reversed a high court decision which had awarded a woman fifty per cent of the marital property, by not taking her



non monetary contribution into account. This unequal treatment and outcomes characterises both state (formal) institutions of justice and traditional and customary (informal) institutions. In discussing the treatment of rape by traditional courts in Uganda, Bether cited the case of a girl who was raped by her brothers who in turn were severely punished (leading to the death of one) by the council of elders not for the violence against the girl but because they had committed incest.

b. Gendered Processes / Gendered Outcomes

The processes and outcomes of justice are therefore gendered which as Julie Stewart explained, simply put means that men are preferred to women. As many speakers illustrated in some instances the law itself is discriminatory while in other cases the outcomes or decisions by courts privileges men and subordinates women. Why is this so? Is it a case of biased laws, of the gender blindness of the judiciary, the conservatism of



customary and traditional institutions? That the laws themselves are biased and needed changing was mentioned by many. As for example Sheila spoke about the advocacy for a bill which is now in the Ghana parliament called the 'Property Rights of Spouses bill' which is seeking to ensure that property distribution at the dissolution of marriage will be regulated more fairly and minimising gender biased decisions by courts. Similarly Melinda Davies from Sierra Leon said that 2007 was a historic year in the fight against gender discriminatory laws

because three laws were passed which will go a long way to correct this situation. These were the devolution of property act; domestic violence bill; and the recognition of customary law of marriage. However, as Julie cautioned, the reformed law in itself will not guarantee less bias and discrimination. It has to make a difference at the level of the women on the ground.

That the processes and outcomes of justice are gendered is not exclusively an African phenomenon but is recognised world wide and has been the subject of legal research since the 1970s. Cathi Albertyn explained that in North America in 1970-1980s Gender Task Forces were set up based on the understanding that there were biases in the law, in the court rooms and that judges were biased against women. The aim was to research the kinds of biases and how they occur. Despite the shortcomings of these Task Forces they were quite instructive as to the kind of issues that are relevant to investigate. They looked at the treatment of women in courts as witnesses, accused and as lawyers. They also looked at how judges were selected; the procedures used in the court and came with a substantial body of evidence that documented the biases. Such research was clearly an important first step to change.

One of the main shortcomings of this kind of research and one that we are faced with in the present is that they tended to take place in a liberal context, in other words, within the understanding that we are all fundamentally undifferentiated. Consequently, the biases observed in the research were considered products of socialisation that can be changed since they are not deeply entrenched in society, that they were not systemic. The conclusion therefore was that with a little bit of education judges could be fairer to women. While judicial

'...understanding that there were biases in the law, in the court rooms and that judges were biased against women'

education is certainly important in terms of meeting gender equal outcomes it is not enough to address the systemic problems.

c. Women's practical needs versus strategic interests

Cathi went on to explain that based on documentation in South Africa, by WILSA for southern Africa and in east Africa a range of significant obstacles that produce gendered justice and their systemic basis have been identified. She gave the example of one that is easiest to identify and the most difficult to remove i.e. the issue of social and cultural attitudes around woman and the way in which gendered justice is the reproduction of these biases in the process of law. In a recent work she had undertaken on the constitutional court jurisprudence on equality she found that even with a court that is committed to gender justice and which has feminist judges generally the constitutional Court reproduces ideas of women that rely on traditional stereotypes of women and men. Women do get justice and women do get judgements in their favour but on the bases of women performing their traditional roles i.e. being mothers, wives. Hence, in cases where women find themselves living outside their typical roles, e.g. when they are in cohabiting relations, when they are sex workers, when they are rape victims who have difficult pasts and when they are not "good mothers" women generally fail to achieve justice in our courts.



Even when they do get justice in difficult cases as for example when they are accused of killing their abusive husbands, it is more likely that a woman can get a favourable judgement if she pleads temporary insanity. People struggle with the idea that killing an abusive husband or partner is a rational response. And so if you are considered temporarily mad it fits more with the stereotype of women that allows more sympathetic treatment of the women. There is a lot of evidence to suggest that even in a justice system that is committed to gender equality a lot of judgements delivered is a kind of gendered justice. There are many reasons for this but there are two that she pin-pointed. First, when you are taking a case or when you are advocating or litigating for gender justice often practical interests of women's needs rather than strategic ideas of where we want to go in society will shape what it is you are doing. And so it is often easier to argue a case in terms of those traditional stereotypical roles. And so even the most sensitive lawyers are guilty of saying that we want to go in and win this case and it is much easier to argue that this woman is victim, a poor mother and poor rather than arguing that this woman is an active agent engaging in choices in the world. Also women are mothers and you want to go into court to protect that role and therefore have to rely on quite traditional stereotypes of women's role. And so women will get justice but justice that suits their practical needs rather than a justice that suits the strategic objectives of how do we begin to shift and change society and its valuation of women and men over the long term. We need to think about how in advocating for women's rights and litigating for women's rights we can think about a form of justice that is more strategic. The second and more difficult question is that even when thinking and working strategically one is

'...when litigating for gender justice often practical interests of women's needs rather than strategic ideas of where we want to go in society shape what you are doing'

often working with tools that are not of our own making. The law itself is a gendered tool that has been shaped by men's needs and men's experiences. Part of the challenge in achieving positive outcomes that are gender equal is also to think about how the law needs to be changed and how we need to think about choice, consent and the idea of the 'reasonable' man in a way that reflects women's and men's experience. This in turn will allow us to think about how to shift the conceptual boundaries of the law to make it possible to understand women's experience and deliver just outcomes.

Women lawyers and human rights activists need to be bolder in confronting women's abuse and lead the way for law reform. There are numerous opportunities to challenge the law in constitutional courts, filing "test cases" and sponsoring private members bills in parliament. Strategies aimed at redistributing power and privileges include pushing for reform of property law, divorce law, land law, inheritance laws and resource allocation. In this, multidisciplinary work is important and strong collaboration is needed between legal aid justice centres, women's organizations, law societies, law schools and academic institutions.



Noluthando Ntlokwana stressed that strategic litigation means selectively choosing specific types of cases to litigate based on the case's potential to achieve broad social change. It uses both justice system strategies and international gender equality strategies. It may also incorporate both political and grassroots strategies and can establish precedence for countless future claimants. Among its many advantages, strategic litigation also raises issues publicly and cheaply. Appropriate cases do need to be

selected, however if strategic litigation is to be effective. Concerning this strategy Shereen Mills suggested that in countries like South Africa, where there is a strong commitment to constitutional democracy there are greater opportunities to challenge inequality and unequal practices that hinder women's rights. For Shereen Mills data from social and legal research can be used by organizations such as CALS to inform test case litigation. While this can be effective, it is nevertheless difficult, even in a constitutional democracy, to induce change where an issue is systemic and where there is a culturally-ingrained attitude. Litigation is an overt feminist approach through which women can be empowered, presenting them no longer as victims but as rights-holders who are challenging discriminatory and unequal practices.

Access to justice: gendered outcomes

- Physical, social and economic barriers represent a first constraint for most poor people, particularly poor rural women in accessing formal judicial institutions.
- The kind of justice women are able to access constitutes a second and most difficult barrier and in turn produces unequal subjects, women and men. Gendered outcomes characterise what women are able to get both in formal (state) and informal (customary) judicial institutions.
- The law itself discriminates against women. Gender biases entrenched in the law and the reproduction of traditional roles of women as i.e. wives and mothers are reinforced in courts by judges and even by the lawyers advocating for women's rights.

There is a need to think about a form of justice that is more strategic recognizing that the law is itself a gendered tool –it is not of our own making.

2. Negotiating gender equal outcomes between state and custom

Another common thread in the conference deliberations was the difficulties of achieving gender equal outcomes in contexts of multiple legal systems and authorities. In most of Africa state and customary laws (as also the institutions to dispense justice) co-exist. Customary law and institutions are closer to people and their decisions more binding on community members especially in matters pertaining to family law. This also means that gender relations are often the subject of adjudication in customary forums. The relationship between state and customary law differs from country to country. In some as in South Africa and Uganda customary law is recognised whereas in some others it is not. The extent to which the state has tried to regulate custom also differs between countries.



a. Customary law and the colonial heritage

This co-existence (and in some cases parallel systems) of state and customary law is the product of colonialism in Africa. As Chuma Himonga explained the impact of colonialism on gender relations and customary law is well documented. In a nutshell men increasingly lost their control over women and young people as a result of the processes of colonialism and the urbanisation and industrialisation that went with it. These processes in turn opened up the mobility of women and young people in two senses – first, in the sense of physical mobility away from rural areas and extended families to urban centres requiring labour for new industries; second, mobility from the control of traditional authorities and extended families. In an attempt to regain the control that they were losing in these processes male elders, traditional authorities such as chiefs and others such as assessors who acted as judges in native courts in most of Africa (created to advance indirect rule) began to construct rules of customary law which they applied as heads of family councils etc. e.g. flexible rules of customary law began to be interpreted in a rigid way as for example in the area of customary marriages and inheritance in ways that distorted them as compared to the way they were interpreted before.

Official customary law vs. Living customary law



In explaining the genesis of official customary law Chuma added that it does not always correspond with the living customary law that the African people practiced. This official customary law and justice systems was reinforced by other factors during the colonial period such as the codification of customary law in the name of certainty, the application of customary rules by Europeans who were ignorant of the rules that they were supposed to be

applying to settle disputes and who in turn relied on traditional male elders, assessors, witnesses to give them the rules that they wanted them to apply. Male elders had their own interests in distorting the norms and rules that were being fed into the courts. The system of precedent was introduced resulting in the application of decisions taken previously to contexts which were very different. At independence most countries continued this practice of applying the official customary rules especially in the superior courts by magistrates whose education was in the common law sphere excluding the customary law completely.



b. Plural legal systems: doing forum shopping for justice

Co-existence also implies that women and men have to go forum shopping to find out which system will best answer their claims. Likhapa explained that women have to decide whether their right is better claimable under customary law – it is not easy because customary law is subservient legal system – or under the western formal system which is the one that they do not know. As if this is not problematic enough there are parallel structures – the customary and the formal. The western law is developed, tested through application whereas customary law remains a monster which does not serve the interests of women adequately in most instances. Because it does not the tendency is to demonise it and say that this is the system that oppresses women when in fact this is something that is man made.

The widely prevalent view that the customary system oppresses women was evident in many of the presentations. As for example Melinda Davies said that the customary laws relating to inheritance in much of Sierra Leon subordinates the personal status of the wife to the husband's. Being regarded as a chattel the woman and her property become part of the husband's property. However, his property at all times remains his own and devolves on his death as if he had never been married. Where the husband dies intestate leaving property it is administered according to 'native' law and custom which differs from one group to another. Joyce Macmillan spoke about a study that her organisation had undertaken in Zambia in 1999 on women and administration of justice to get an idea of what the system was on the ground. This study found that there were more women using the informal system than men. Women did not have the resources to meet the cost of litigation in the formal system. The study also found that in the informal courts judgements being given were not gender sensitive that these courts discriminated against women and with little or no recognition of human rights principles. Traditional courts had given themselves a lot of power, adjudicating on subjects relating to family law, land matters and sometimes criminal matters.



c. The continuum in formal and informal justice

However, subordinating customary law to state law and making decisions by traditional courts appealable in state courts does not by itself result in gender equal outcomes. Sandra Quintero mentioned that a main finding of KIT's desk research on Access to Justice in Sub-Saharan Africa is that as a result of the attempt to bring into line two

different systems of law in which traditional courts are accountable to the state and in which state courts have the duty to respect customary law, a continuum between the formal and the informal system is set up whereby gender inequalities are being reproduced and reinforced by the formal system under the excuse of protecting customary law interpreting it strictly and ignoring in many cases the flexibility of certain customary courts' decisions. Sandra Quintero gave case examples from the KIT research to show that in some cases, state courts overturn decisions of local courts which recognized women's property and inheritance rights. The landmark case from Zimbabwe *Magaya v. Magaya* is such a case. In this case Venia Magaya, a 58 year old seamstress, resorted to the community court (traditional court) to request being appointed as her father's heir after he passed away. Community courts are supposed to apply customary law whereby, in principle, women cannot inherit. Nevertheless, the outcome of the court was remarkable since it indeed appointed Venia Magaya as heir. Her half-brother appealed the community court's decision to the magistrate's court which appointed him as heir because of being the eldest male relative. Magaya then appealed to the magistrate's decision to the Supreme Court of Zimbabwe. The Supreme Court finally upheld the decision based on section 23 of the Constitution of Zimbabwe -which provides exceptions to the prohibition of discrimination deferring to African customary law- by ruling that "what is common and clear from the texts is that under the customary law of succession of the above tribes males are preferred to females as heirs" (*Magaya v. Magaya*, (SC No. 210-98 Zimbabwe, Feb. 16, 1999:2)



Similar instances were also cited from other countries. In Zambia, the Lusaka Local Court of Appeal cases No. 86 of 1982 and 164 of 1981 illustrate how high courts overruled decisions from lower courts in which women were granted property after divorce, justifying their decision by citing 'interpretation of customary law'. The judge stated: "I do not know on what customary law the court below based their findings" (Lusaka Court Appeal no. 164 of 1981) – referring to the local court's order to give the wife a share in the house that she and her husband had built together.

Managing the interface between state and custom

The question that was raised over and over again was how the interface between state and customary law can best be managed so as to deliver gender just outcomes. Speaking about the *Magaya vs. Magaya* case in Zimbabwe in which she was personally involved Julie Stewart said that in preparing for this litigation they had documented many instances of family and community deliberations on property since there is a provision for lower courts to accept this documentation. However, it was just one judge on the Supreme Court panel for this case who threw out the order of the lower court by saying that the inheritance system in Zimbabwe was patrilineal. The questions we asked in our research and documentation were related to the underlying principle of customary law and to the purpose of for example customary inheritance. When the eldest sons were questioned about inheritance their response inevitably was

'When the eldest sons were questioned about inheritance their response inevitably was that the purpose of customary laws of inheritance was to look after the family'

that the purpose of customary laws of inheritance was to look after the family. Thus the eldest son does not necessarily inherit the property but that he becomes the manager of property for the family's interest. Julie asserted that that there is a need to document what is going on, not just about decisions but about the principles behind the decisions. Another challenge is how we get that into the legal system and to ensure that it goes all the way through the system. She was of the opinion that community leaders desperately want to keep in step with modernity. In other words they want to keep power and this is pushing them to accept change.

Echoing Julie Stewart's understanding that community leaders and traditional authorities can be persuaded to accept change because they increasingly see this as a way to retain



some authority, Joyce gave the example of recent developments in Zambia and showed how women's organisations and lobbies can intervene to ensure that gender equality becomes part of the agenda for reform. While traditional courts had given themselves a lot of power, adjudicating on subjects relating to family law, land matters and sometimes criminal matters, in terms of statues the traditional courts are not recognised at all. So these courts were doing what they were doing in the rural areas and the government did not

say anything about it and they were not regulated. After the study (1999) undertaken by WILSA the state was lobbied for regulation of these courts but this did not yield results. The only thing that came out of the lobbying was that the government prioritised access to justice in the 5th national plan. Realising that women on the ground were not being helped the women's organisations decided to go back to the communities where they did the study to find out how to resolve the problem of regulation. One site was selected and chiefs were asked what they thought should be done to solve the problem. They recommended that the state should regulate these courts and that they would like to lead the process themselves on how and what kinds of regulation should be put in to deal with the courts. This provided the opportunity to work with the chiefs on gender equality issues and to make this a central concern for any future regulation. Sensitisation exercises were conducted with the women's organisations in the area so as to ensure that there would be demand for gender just decisions. Training and sensitisation programmes were undertaken for traditional leaders who preside over these courts and as well the chiefs and a host of other programmes through radio for the communities. The chiefs have now come up with a position paper on the subject to explain their position on the subject and what they want to see happening for government and the house of chiefs. It is now a matter that is being discussed in the constitution making process and the hope is that something good will come out of it.

Law reform processes, traditional authority and gender

While acknowledging that the tainted origin to what in African societies is known as the codification of official customary law, Rashida Manjoo explained that nevertheless these are systems that exist, that three generations have bought into and are not going away. There are people who believe that these laws come down via their ancestors or in the case of religious law that it is divine and has remained unchanged. Arguing about the tainted origins and that these must be got rid of is not a strategy that is likely to work. It is fine to question the legitimacy of traditional leadership and institutions but it has to be done in ways that do not further deepen the public private split which would be contrary to the interest of the constituencies for whom we want to work. In South Africa the

constitution recognises chieftainship and customary law. It makes an attempt to incorporate traditional leaders into government but in advisory in an ex officio role, that is they have to be consulted via the official house of traditional leaders; they cannot turn down parliament on legislation but are nevertheless consulted to show respect. An example of legislation that was achieved in South Africa through this process was the recognition of the law of customary marriages in 1998. The process of recognition of traditional leadership can lead to the imposition of identity; it can also result in patriarchy being brought in through the back door because of compromises on legislation. Rashida gave the example of the lack of monitoring of the law for 30% quota for women in traditional councils to illustrate how this can happen. Traditional leaders complain that women do not want to stand for elections and do not want to be on these bodies to explain the fact that these quotas are not being met or that often it is the wives, daughters and sisters of the traditional elite who sit on these councils. However, the question is who is asking women to stand for elections and which women are being asked. The challenge therefore is does the law reflect the reality on the ground? Law reform processes have been long but are they deep – whose voices get heard in these processes?

The question of harmonisation and codification

Does the answer to resolving the problems of dual systems lie in the codification of custom and the construction of uniform codes? Participants raised this issue in several ways throughout the conference by talking about the need for establishing 'certainty', by documenting customary practice and so forth. Sheila mentioned that the process of codification of customary law is underway in Ghana. The power to ascertain and harmonise the law has been given to the national house of chiefs. The process has started with the land law. An interesting methodology to ascertain and harmonise the law has been put in place in that the authorities responsible will consult not only the chiefs but women and other people in communities that live under customary law. The aim is to learn more about what the situation is at present. According to Sheila one of the challenges for the legal system is the lack of certainty of customary law.



This concept of certainty (and the assumption that by establishing certainty just decisions will be reached) which is very much part of the western legal system was challenged by both Chuma Himonga and Maitrayee Mukhopadhyay by drawing on historical evidence. Chuma had pointed to that the codification of customary law in the colonial period and showed how flexible rules of customary law began to be interpreted in a rigid way, how the interests of male elites got written in to the rules and norms because colonial authorities relied on traditional male elders, assessors, and witnesses to give them the rules that they wanted them to apply. In a similar vein Maitrayee spoke about the historical research on the construction of personal law in colonial India. In the 19th century the colonial authorities in India used the law as an instrument to establish authority over diverse populations practicing a myriad of rules and norms to regulate property, inheritance, marriage, divorce and the custody of children and so on. They homogenised these diverse practices by categorising people according to their religion – Hindu, Muslim, and others – making the scriptures the basis for law. They consulted male elites and keepers of religion to establish 'certainty' of religious rules. The impact was that bounded religious communities were created and fluid, negotiated relations between

communities disrupted resulting in strife that continues to this day. Male elites gave their version of rules that enshrined their interests and in many instances woman friendly norms of inheritance and property transfer were eliminated.

Thus creating uniformity through codification cannot by itself achieve gender equal outcomes. Maitrayee pointed out that the colonial authorities used codification as an instrument of rule and extended the power and privileges of male elites and we should not allow the modern state to do the same. In order for codification of customary law or its recognition to actually serve the purpose of achieving gender equal outcomes the process and outcomes have to be made answerable to standards, standards of gender equality in constitutions and/or international conventions. Likhapa Mbatha pointed to the process followed in South Africa which resulted in the Recognition of Customary Marriages Act. She said that the process of harmonisation of customary law and the constitution was done in South Africa through consultations at every stage which included a list of questions about what different parties meant by the concepts that were being used as for example what is meant by harmonisation.

'Thus creating uniformity through codification cannot by itself achieve gender equal outcomes.'

The consultative processes which include traditional authorities in reforming customary law cannot end when the law is passed. This process of engagement has to continue in order to mitigate conflicts that arise in implementation, to keep traditional authorities on board and prevent derailment of the reformed law. As for example, despite efforts by governments like South Africa to harmonise customary law with the equality guarantees in the constitution and to do so in as participatory and consultative manner as possible, Mothokoa Mamamshela said that tensions persist between the new laws and systems being put in place and the system of traditional authority. This was to be expected since the traditional leaders feel that their powers and functions are being usurped by the new state. This tension and conflict is clearly evident in the case of the Municipal Structures Act which sought to establish categories of municipalities and then divide the powers and functions of municipalities between the traditional authorities and counsellors. In so doing it tended to take some of the spaces of the traditional leaders, their sphere of influence and land. There is now a lot of tension and conflict between traditional leaders and the counsellors that were introduced by the municipal structures act. Speaking about how these conflicts of interests can best be managed Mothokoa gave the example of a project undertaken in 2003 in Kwazulu Natal which worked with traditional leaders to appraise how they deal with new legislation when they hand down judgements. In the same vein Rashida mentioned the on-going project with traditional authorities which dialogues with them about gender justice, customary law and the reforms. These are some of the ways in which tensions can be managed, ownership and accountability created and in the long run create understanding about equality per se and gender equality specifically.



Thus different strategies and approaches put forward by participants stressed the need to engage with both state and custom in ways that promote justice and entrench concepts of gender equality. As Chuma reminded the conference "If there is a retreat of traditional

authorities into the private arenas of control then our failure to positively engage will result in a wider gap between women's rights and what is happening on the ground".

Struggling for gender equality in plural legal contexts

- Customary law as we know it is part of the colonial heritage of most African countries. It has resulted in the co-existence of the so called official and customary law in the present. The colonial construction of official customary undertaken in consultation with chiefs and traditional authorities de-contextualised the norms, reducing flexibility and enshrining the interests of male elites. Women and young people lost in rights and entitlements in the process.
- The coexistence of customary and state law has forced people to do "forum shopping" for justice. Rural people continue to rely on customary judicial institutions particularly due to the physical, social and economic barriers in accessing state institutions.
- Customary law is often perceived as a system which oppresses women. Yet, African jurisprudence denotes a continuum between these two systems whereby gender inequalities are reproduced by the formal system interpreting customary norms strictly, often ignoring its flexibility and overturning progressive decisions made by customary courts.
- There is a need to engage traditional leaders in working towards a solution to the interface between state and customary law. Traditional leaders want to retain their power and authority and therefore are willing to accept change.
- Codification of customary law has being one solution adopted by several African countries to the problem of plural systems. For it to actually serve the purpose of achieving gender equal outcomes the process and outcomes have to be made answerable to standards of gender equality.
- Any strategy to "harmonise" the plural legal system must respond to the question of the meaning of harmonisation itself. It must be a consultative process which includes traditional authorities and the community in reforming the customary law and implementing it.

3. Gender and access to justice is more than about the law

Whereas law reform and legal processes more broadly are seen as the main sites for activism in discussions on access to justice, achieving gender equal outcomes requires struggles in broader societal arenas and decision-making institutions where meanings about gender relations and womanhood are generated and which then are reflected in the law and judicial processes.



Kirsty Maclean had pointed out that cultural attitudes to women underpinned all of the barriers that different speakers had highlighted throughout the conference as being the most intractable. Ibrahima Koreissi illustrated this by saying that in Mali women are seen as 'goods' to be transferred between families and as cementing familial and other relationships. As such they are considered as objects for whom choices are made. Cathi Albertyn had in her

presentation noted that the social and cultural attitudes around woman is the barrier that is easiest to identify and the most difficult to remove. Gendered justice she said is the reproduction of these biases in the process of law.

The processes of gendering and gender disadvantage start from the family and all the way to the courts, as Julie Stewart remarked. This conundrum of gender disadvantage which although it seems to be produced by families and communities is nevertheless reproduced by so-called neutral institutions like the state and courts in the form of policy and laws. This was well illustrated at the conference by Rufina Anozie on behalf of the participants of the Building Capacity for Rights training workshop. Using a case study from Tanzania, which most other African countries could identify with, she showed that government policies to enable women to access credit came to nought not only because families and communities refused to give women a share in property which could be used as collateral to obtain credit, but because state policies regarding land distribution, property transfer and inheritance favoured men over women.

In accessing credit the first barrier that women face is that banks require collateral for access to credit. Landed property is the most common form of collateral but land rights are more favourable to men which means that most landed property is in men's possession. As daughters in the family women are told that it is not right to inherit property because if she does it would revert to her husband at marriage. A woman's existence is thus between a family which is represented by her father and marital family represented by her husband. At marriage property is registered in the husband's name which makes it difficult for her to use it to get a loan. Even if she jointly owns property she needs her husband's permission to use the property as collateral which may be denied or he may have used this property already to get credit. We use an example of the Tanzanian national land policy. This shows the continuum family, kinship, community and the state. The policy says that in order to enhance women's access to land and security of tenure women are entitled to property not only through purchase but through allocation.

However, clan and family land will continue to be governed by custom and tradition provided it is not contrary to constitutional principles. And so we can see the expressed continuum between different systems in that the formal system gives women the land rights but inheritance is subject to custom which can discriminate against women which the state tolerates. So women cannot access land which is what they need to access credit. The possibility of using non land collateral does not exist and is a major constraint on accessing credit. Furthermore, women cannot get redress to this denial of their right to access credit.

Taken from the presentation by Rufina Anozie

a. From victims to agents

'The processes of gendering are most effective because women have internalised the attributes as part of their identity'

The processes of gendering are most effective because women have internalised the attributes as part of their identity. As Shamim Meer remarked, 'The ideas about what a good woman represents is deeply entrenched in our societies– we don't ask for property, we don't go with our problems to the public sphere and we don't get divorced. This is what we are up against'. These ideas of womanhood and the good woman are further reinforced by well-intentioned activists through images of women as victims of oppressive states, families, customary authorities and traditions. As Likhapa Mbatha put it while there have been considerable efforts in many African countries to reform the position of women and there are numerous challenges being posed we nevertheless continue to talk about women as helpless victims lacking agency.

What could be the ways forward for activists and researchers to challenge gender inequality and disrupt processes of engendering at multiple institutional levels? As Cathi Albertyn explained an important area of research and action would be to ascertain what the transformative ideas about gender relations are that resonate with society and what are the alternative ideas of woman that we should be putting forward. Cathi's sense of what these alternative ideas could be was women as agents, making choices and as independent beings. However, one could argue this in liberal ways or in strategic ways. 'We need to be thinking about what are the progressive ideas, the language we can use to promote them in a particular society and look at how those can be promoted both politically and legally in courts'.

b. Facing the dilemmas of gender equality advocacy

Access to justice goes beyond the law

Exploring the idea of how to move politically and beyond the parameters of law and judicial processes, Shireen Hassim spoke about three areas of dilemmas that confront gender equality activists in engaging the state which should be the arbiter of justice and regulator of reform. The first area of dilemmas is centred on the understanding that access to justice is more than the law and that the law is not always on the side of justice. Therefore, it is necessary to go beyond instituting legal reforms to



thinking about other struggles in society that take place not only in the public sphere but also in the private sphere. This requires some way of facilitating a discussion between people located between sectors inside and outside the state – people working on law reform, social policy reform, and those working on engaging traditional leaders on everyday issues. We need engagement across society and across sectors on what we mean by equality in specific contexts and what we mean by gender equality to develop a conceptual framework that makes sense in particular contexts. Gender equality can be talked about in an abstracted way and feminist academics do it all the time. Nevertheless what we need is to facilitate a discussion that allows people to infuse that broader understanding of gender equality with meaning in their own contexts and in a way that makes sense of citizenship, and that shifts agency. Access to Justice should not be seen as a strategy that is only about reaching upwards to those in power but reaching out to communities and citizens. What we mean by gender equality can and does change meaning in local contexts and over time.

Achieving formal and substantive equality

The second dilemma is that is the distinction between those strategies that are used to achieve formal equality and those used for substantive equality. By this is meant the



difference in pursuing policy and legislative change that can be accommodated in the existing sex/gender framework and those that go to the heart of private power which is the bedrock of liberal democracy, of the distinction between public and private on which liberalism rests. This requires making a distinction between role-based strategies and rights based strategies. Rights based strategies are those that address the redistribution of resources, that is material resources in the class sense and also redistribution of power resources from a feminist perspective. It is important to reflect on the experiences of advancing rights based strategies in the different country contexts to learn more about the kind of policies that have been proposed and what the fate of these policies is. In the South African context one of the earlier strategies that need to be re-examined is that of setting up national machineries to advance women's position. It is clear from the South African experience and from others

similar institutions around the world that national women's machineries did not always favour gender redistributive policies.

Who then is going to advance rights based strategies in the state? Is this the role of female politicians? Questions that activists confront when aligning with female politicians or fighting for greater share of political power and representation for women are what is their commitment to equal women's rights, not abstract rights and not in a thin way; when are they likely to stand up for poor women's rights and where and when do they articulate it; in what way and when do they become allies, allies of those working outside the state, and when do they stop being allies of women's movements. Speaking to this issue Hope Kabuchu said that in Uganda the constitution has made provision for the representation of marginalised groups and women in parliament and other decision-making bodies. While this has resulted in greater numbers of women in parliament there has been a singular failure to push through positive legislation for women. Gender awareness is supply driven yielding very little in terms of fundamental change for women.

Are rights based strategies for gender equality likely to be advanced through alliances with broader social movements for democracy and change? Women's movements are often under pressure to state where they stand on alliances with progressive political parties and other social movements. The hesitation of joining these alliances is often based on the fact that they are not good on gender equality. However, engagement can help in democratising the system. This provides diverse but progressive social movements with common access and a common set of interests. Thus rights based strategies for gender equality have to go beyond thinking of gender while at the same



time inserting gender into the concerns of other rights based movements. The question that needs addressing is how these democratic alliances can be built in terms of democratic practices in institutions that advance gender equality and as well democratisation of the system. For those countries represented at the conference the reality is that democratic practices are not deeply rooted in political culture, or in the system as a whole. The question is how to join others in creating a

democratic political culture while preventing women from becoming the foot soldiers of other social movements; having voice while at the same time realising that poor women have many issues in common with movements led by men, especially issues to do with redistribution. How will the politics of alliances be built messy and compromised as these may be?

Multidisciplinary strategies in context

The third area of dilemmas has to do with the fact that there is often no direct link between the strategies that are pursued between feminist organisations and legal organisations, between strategies at a national level and what women want at a local level. In order to advance women's interests there is a need to recognise and work with the fact that women are not a homogenous group and therefore their interests will differ. At a local level there are many trade-offs between short and long term benefits determined by the fact that local women have to live in the communities that they are challenging. They therefore cannot pursue pure feminist strategies engaging instead in agency that works for them which feminists need to learn from. We need a sharing of strategies across different levels, sectors and national contexts.

'We need a sharing of strategies across different levels, sectors and national contexts'

Speaking about her involvement as a women's rights activist in Senegal, Coumba Toure pointed to the need to engage in different ways to deepen and democratise struggles. The time tested ways of exposing injustice have been to assemble facts and appeal to people in power to respond. The international network Women Living under Muslim Laws (WLUML) of which she is a member does and continues to use this strategy to great effect. Mobilising women and walking down the street in protest is of course the most visible way of speaking out against injustice and women's movements all over the world have used this and continue to do so. However, there are less visible ways which each of us pursue in our daily life and work.

Coumba talked about her work as an activist in the popular education movement as a writer and illustrator of books and educational materials especially for children. These forums and movements can be made to speak to gender equality by talking about the experience of young girls, providing them a forum to discuss their problems and exposing children to issues of justice and equality through available means.



Citing the experience of FIDA-Uganda in enhancing women’s access to justice, Allen Assimwe showed that an effective way was through a dual strategy targeting the formal and informal justice systems. Further by broadening the concept of justice systems to include decision-making structures, administrative systems and multi-sector initiatives as for example health, education and livelihoods (See Annex D for explanation) this strategy seeks to move out of a

narrow legalistic approach to accessing justice and encompasses all those systems and processes that should deliver on social and economic rights. The dual strategy is based on promoting dialogue, aimed at changing practice, and creating demand for justice.

Research presented by Rokhaya Gaye showed that, particularly in rural communities, women prefer to go to alternative dispute resolution forums like family or more informal ad hoc commissions. In Senegal, for example, members of the community are appointed to act as mediators on a special commission for some types of disputes. Organisations like RADI (Senegal) are responding to this by training the commission members in human rights, women’s rights and mediation skills.

Rokhaya Gaye also observed that legal aid organisations should not limit themselves to providing legal assistance because their task is to act as facilitators in accessing justice rather than access to legal institutions. They can also work with communities by bringing legal and non-legal professionals closer to the communities; encouraging advocates, paralegals, medical doctors and other non-legal professionals to visit communities; hold informal meetings about services in order to make them visible and identifiable to the people. This will help to demystify legal and non-legal processes that are supposed to deliver justice.



Strategies to achieve gender justice: going beyond the law

- Achieving gender equal outcomes requires struggles in broader societal arenas and decision-making institutions where meanings about gender relations and womanhood are generated and which then are reflected in the law and judicial processes.
- Cultural attitudes towards women underpin all the barriers in accessing justice. Women are not perceived as subjects of rights and equal to men, they are usually seen as objects for whom choices are made.
- The processes of gendering are most effective because women have internalized the attributes as part of their identity. Well intentioned advocates reinforce this by continually talking about women as helpless victims lacking agency.
- Access to justice is more than the law and the law is not always on the side of justice. Therefore, it is necessary to go beyond instituting legal reforms to thinking about other struggles in society that take place not only in the public sphere but also in the private sphere
- We must recognise the distinction between role-based strategies and rights based strategies. Rights based strategies are those that address the redistribution of resources, that is material resources in the class sense and also redistribution of power resources from a feminist perspective.
- It is necessary to distinguish between strategies to attain formal equality and those used for achieving substantive equality. By this is meant recognising the difference in pursuing policy and legislative change that can be accommodated in the existing sex/gender framework and those that go to the heart of private power which is the bedrock of liberal democracy.
- In order to advance rights based strategies for gender equality we need to work through alliances with broader social movements for democracy and change thinking beyond gender but at the same time inserting gender into the concerns of those movements.
- In advancing women's interests there is a need to recognize and work with the fact that women are not homogenous group and therefore their interests will differ.

4. Implications and recommendations

a. Building knowledge on gender and access to justice

Generating knowledge about meanings and definitions affecting legal practice and advocacy

- There is a need to map the understandings of key concepts such as gender, gender equality, and access to justice among civil society, academia and legal professionals for a specific context. This mapping while exposing the differences in meaning between the key actors working on these issues will also help activists to appreciate how these differences affect judicial outcomes and advocacy strategies.
- Research into the practices, rules and ethical codes of legal professionals (lawyers) and judges that have a bearing on gender justice outcomes is needed. This investigation is critical for engaging and dialoguing with these professionals around their approaches to gender justice delivery.
- Jurisprudential and theoretical research around legal issues is required to ascertain how judges are using concepts such as choice, family and equality in making judgements in order to understand how these can be given the meaning that is consistent with transformative ends or substantive equality



Generating knowledge on how to engage communities and dialogue with traditional leaders

- Research that seeks to identify potential dialogue points; ways of approaching local community structures for dialogue and how to conduct these dialogues; as well as identifying strategies for engagement processes is required. This research would involve both substantive and methodological investigations.



- There is a need to know how things were, what the status quo is today and where we want to go. Knowing the past is not the same as dwelling in the past. It is important to focus on the way justice is being delivered *now* by traditional leaders, the so-called living customary law, and not get stuck in customary law as it was during the pre-colonial and colonial eras. Research is also needed into the *process* of change

that customary law has undergone in order to understand the positive aspects of official and living customary law.

- There is an urgent need to document living customary law and what this system of law is saying about women. This research would be relevant to dialoguing with local community structures and traditional authorities on women's rights and access to justice; advocacy, litigating women's rights; and to law reform strategies generally.
- Research into the judicial outcomes in traditional courts as these relate to gender justice claims should be prioritized. Methodologically these investigations pose specific problems since decisions and the rationale for arriving at decisions may not be written down. However, tracking the decision-making process by interviewing the leaders, chiefs and other authorities of these courts, as well claimants and defendants can help in understanding the principles followed, how these support gender equality goals or contravene them.

b. Improving practice to shift gendered outcomes

- Broaden the concept of access to justice from legal justice to gender justice
- Demystify the law through the adoption of interdisciplinary strategies aimed at enhancing women's rights and gender justice
- Expand networking of civil society groups, academicians, governments, traditional communities to learn about and act on gender justice.
- Mobilise women for justice and sustain their movements and organizations. Share lessons on mobilization of women, social movements and sustaining organizations across communities and within communities.
- Methodologies of research and action need constant revisiting to ensure that these are participatory and action-oriented and involve the women concerned in the issues. Sharing methodologies within networks will help to improve practice.
- Publication of research materials and translating findings into accessible language so that practitioners can use them in their work is urgently required. A wider sharing of materials is needed to aid dialogue and learning between countries and groups. A suggested first initiative is to develop an inventory of practices that have worked and share it through the (KIT/CALS) website.



Legal activism

- Women lawyers and human rights activists should use opportunities to challenge the law in constitutional courts, filing “test cases” and sponsoring private members bills in parliament. Strategies aimed at redistributing power and privileges include pushing for reform of property law, divorce law, land law, inheritance laws and resource allocation. In this, multidisciplinary work is important and strong collaboration is needed between legal aid justice centres, women’s organizations, law societies, law schools and academic institutions.
- Mainstream gender in legal professional education by:
 - i. teaching appropriate gender research methodologies in undergraduate (as opposed to graduate studies only) legal studies, since some of the activists do not go on to do postgraduate studies;
 - ii. creating profound gender awareness among legal professionals
- Undertake strategic litigation which means selectively choosing specific types of cases to litigate based on the case’s potential to achieve broad social change.
 - Define the effect that the legal outcome should have.
 - Define implementation, monitoring and evaluation systems. In strategic litigation, the expected outcome can guide the strategy that is selected.
 - Use litigation for class actions (public interest litigation) and declaratory judgements that strike down certain laws or practices and that hold the authorities accountable. Such orders must have an alternative to replace what is struck out.



c. Working with pluralism in ways that benefit women and promotes equality

- Engaging the state in harmonisation of laws and systems in ways that include the voices of women living under customary law, traditional authorities and other stakeholders; with a clear consensus on meanings of harmonisation; and harmonisation of laws being made subject to equality clauses in the constitution and/ or agreed regional/international standards on gender equality.
- Facilitate in mainstreaming gender and human rights in the work of traditional courts



- Create dialogue on issues which contradict the provisions of the constitution so that the constitution becomes the measure. (This dialogue must take into consideration that using the constitution as a basis may create challenges, since some African constitutions have claw-back clauses that maintain the status quo and do not enable people to ask hard questions)
- We need to bring together the formal and informal systems to work on gender awareness and gender justice. In other words, we need to engage the customary leaders in examining ideas and perceptions of women and gender equality, bringing customary leaders into the discussion, making them part of the process, forging a consensus, and, if that doesn't happen, create a system to check the congruence of formal and informal systems that ensures transparency and accountability



Annex A: Agenda

Wednesday, 29 October

Opening	
9.00 - 10:00	Registration
10:00 - 11:00	Welcome Objectives and Agenda Introduction
11:00 - 11:30	Coffee/Tea Break
<p>Theme 1, Plenary 1: Gendered nature of judicial outcomes Most of the literature on access to justice focuses on the constraints women face when accessing justice delivery institutions. There is less research and information on the outcomes of justice claims and the relationship between the types of authorities responsible for meeting such claims and the outcomes for women. What are the gendered nature of outcomes i.e. what do we know about what kind of justice women are getting? And from which institutions are they getting what kind of judgements? What specifically are the consequences in sub Saharan Africa? Do women's organisations and feminist legal institutions understand/ appreciate the ways in which the process of law and the nature of judgements reproduce gender biases? What can be done?</p>	
11:30 – 13.00	Presentations and Plenary Discussion ²
13.00 – 14.00	Lunch Break
14.00 – 15.00	Small Group Discussions
15.00 – 15.30	Feedback to Plenary
15.30 – 16.00	Break
<p>Theme 2, Plenary 2: The formal and informal continuum and gender The development (and legal) literature tries to keep a balance between pointing out the advantages to women of informal justice systems and their evident bias and inequality, but nevertheless separates out the formal and informal systems as discrete entities. It is often suggested that formal systems are more likely to deliver on gender equality as compared to the informal. However, several instances of case law from sub Saharan Africa suggests a continuum between the formal and informal justice systems which actively promotes gender inequality. The formal system often overturns (somewhat progressive) judgements made by the informal justice institutions citing customary gender roles and obligations as reasons for judging in favour of men and to the disadvantage of women. What are the power dynamics of the formal-informal justice system in specific contexts and in what ways does it influence the gendered nature of outcomes?</p>	
16.00 – 17.30	Presentations and Plenary discussion
17.30 – 18.30	Small Group discussions and Conclusion
19.00 – 21.00	Opening dinner

² There will be up to 8 panel speakers for each plenary who will speak for not more than 7 minutes each. A chairperson will be designated to introduce and sum up. Panel speakers for each of the themes will be selected from among participants depending on their expertise and thematic interest before the Conference.

Thursday 30 October

<p>Theme 3 Plenary 3: Post-coloniality, customary laws, traditional judicial institutions and gender</p> <p>Some researchers claim that the arena and power of customary authorities is shrinking. However, empirical evidence suggests that there is a retreat to those arenas where control can be more easily asserted i.e. in the control of women, sexuality, and young people, arenas that are beyond the reach of the modern state. This process seems to be accelerating with globalisation, privatisation and the fact that national governments of many countries are siding with these forces. Islamic law, which has to be distinguished from customary law, is seeing a worldwide resurgence. What are the implications of this resurgence of the traditional in the modern for women's struggles for equality? What are the strategies to achieve justice in the present state of post-coloniality?</p>	
9:00 - 10:30	Presentations and Plenary Discussion
10:30 - 11:00	Break
<p>Theme 4 Plenary 4: Strategies to achieve justice</p> <p>Strategies to achieve justice are being pursued by women themselves, women's organisations, development organisations, legal aid and human rights organisations and as well in academia. This panel will take a critical look at some of these strategies and their relevance for achieving just outcomes and empowering women.</p>	
11:00 - 12:30	Presentations and Plenary Discussions
12:30 - 13:30	Lunch
<p>Theme 5 Group Work: Future areas of research and activism</p> <p>Groups will be formed to discuss strategies for the future both in terms of further research needed and activism and programming. The discussion about the future will be based on key issues emerging from the discussions in the Conference.</p>	
13:30 - 14:30	Small Group discussions
14.30 - 15:30	Sharing of key points in plenary
15:30 - 16:00	Break
16:00 - 17:45	Book Launch Certificate ceremony for participants of the KIT/CALS course 'Building Capacity for Rights: Development and Democracy in Africa'
19:00 -	Informal Dinner

Annex B: Participant list

Name	Organisation
JOYCE MACMILLAN	WLSA Zambia
MONICA IGHORODJE	BAOBAB
IBRAHIMA KOREISSI	Demeso
ROKHAYA GAYE	RADI (R'eseau Africain pur le d'evlopment Int'egr'e)
COUMBA TOURE	Feminist activist, writer (translator)
SHEILA MINKAH-PREMO	Leadership and Advocacy for Women in Africa (LAWA)
HOPE KABUCHU	Infinite Development Services (IDS) Ltd
ALLEN ASIIMWE	Uganda Women Lawyers Association
OSVALDA JOANA	Association of Mozambican Women in Legal Careers. (AMMCJ)
JULIE STEWART	Southern and Eastern African Centre for Women's Law (SEARCWL) , formerly the Women's Law Centre. U. Zimbabwe
SOAD BEN ABDENNEBI	African Centre for Gender and Social Development (ACGS) United Nations Economic Commission for Africa
ATSANGO CHESONI	Private consultant
MELINDA DAVIES	LAWYERS
RASHIDA MANJOO	University of Cape Town UCT
NOLUTHANDO NTLOKWANA	Women's Legal Center - Cape Town -WLC-
MOTHOKOA MAMASHELA	University of Kwazulu -Natal
SHIREEN HASSIM	University of Witwatersrand (WITS)
SHEREEN MILLS	CALS
CHUMA HIMONGA	University of Cape Town UCT
NAJMA MOOSA	University of the Western Cape
SOFIA DOHMEN	SIDA
KIRSTY MCLEAN	WITS
EVELIEN KAMMINGA	KIT
SARAH SIMPSON	KIT
SANDRA QUINTERO	KIT

Participants of the CALS-KIT Building capacity for rights, Short course

NAME	ORGANISATION
SIMMI PILLAY	SA HUMAN RIGHTS COMMISSION
ANTHONY MUNENE	KENYA SCHOOL OF LAW
AKURUT VIOLET ODOME	WORLD VISION NAMANYONI
FIHLIWE CHRISTINE LUSU	SACCAWU
FLORENCE MULENGA	UNITED NATIONS POPULATION
MUBYANA KAKENENWA	YWCA Council of Zambia
BETHER KOCACH	EASTERN AFRICA COALITION FOR ECONOMIC, SOCIAL & CULTURAL RIGHTS
AZIEB BEHANE WOLDEAB	NATIONAL UNION OF ERITREAN WOMEN
FATIM BICHET BA	ADEP Oxfam Quebec
LOUISE THIPE	SACCAWU
LENSON NJOGI	LEGAL RESOURCES FOUNDATION
TADESSE TAFESSE	Minority Rights Group International
MEKDES MEZGEBU	OHIO NORTH UNIVERSITY, USA
LYNETTE OSIEMO	KOMATI FOUNDATION WOMEN DEVELOPMENT
GERTRUDE NINNANG	ASSOCIATION OF CHURCH DEVELOPMENT PROJECTS (ACDEP)
JANE ZUM	Embassy of Netherlands DAR-ES-SALAAM
RUFINA ANOZIE	TRANS-BORDER MISSIONRIES
KARIN FALLMAN	SWEDISH INTERNATIONAL DEVELOPMENT COOPERATION AGENCY (SIDA)
AYEMI ABBA OGBOPENA	CENTRE FOR SOCIAL & CORPORATE RESPONSIBILITY, PORT HARCOURT (CSCR)

Annex C: Participant bios

1. Joyce Mcmillan (Zambia)

Ms. Macmillan is a lawyer from the University of Zambia and an advocate of the High Court for Zambia. At present she is the National Coordinator Women and Law in Southern Africa (WLSA) at their office in Zambia. Ms. Macmillan has previously worked as Program Officer –Legal Aid and advocacy in WLSA Zambia. She has experience in socio-legal research, lobbying, advocacy and women’s and human rights Centered and Public Interest Litigation.

Her publications include:

- Women’s Sexual and Reproductive Rights and HIV/AIDS Transmission in Zambia, (WLSA-Zambia) (2007)
- Review of Law and Tenure in Southern Africa, Chapter One, (United Nations Center for Human Settlement (Un-Habitat) (2005)

2. Monica Ighorodje (Nigeria)

Ms. Ighorodje works as a Programme Officer with BAOBAB for Women’s Human Rights. She obtained a law degree at the University of Benin, Edo State, Nigeria and attended the Nigeria Law School Bwari, Abuja. She was called to the Nigerian Bar in 2004. Monica was a past president of University of Benin, Junior Chamber, an affiliate of Nigeria Junior Chamber and Junior Chamber International. She is a trained trainer and facilitator and a Prime Graduate with the Junior Chamber International Training Institute (2000). She was a beneficiary of the training on Capacity Building on Young Women Effective Leadership organized by CASA-Africa, Spain. Ms. Ighorodje has facilitated at various workshops and seminars including human rights training for criminal justice personnel, paralegal training and leadership trainings for women in the course of her human right work since 2005.

Her publications include:

- (Co-author) “Reproductive Health and Rights of women” Legal Literacy Leaflet, BAOBAB for Women Human Rights – 2007
- Ighorodje, Monica and Obinwa, Chibogwu “Paralegal Training Manual from A Gender Perspective”; Edited by Sindi Medar-Gould.

3. Ibrahima Koreissi (Mali)

Mr. Koreissi holds a Masters in Administrative Law from the Ecole Nationale d’Administration du Mal. He is the National Coordinator of the Legal Ail Clinic DeMe So. He has long experience in paralegal trainings and has been consultant of different NGOs like FABEMA and SECO. Mr Koreissi coordinated a project on judicial cooperation in Mali and was the President of OXFAM Novib partners in Mali.

4. Rokhaya Gaye (Senegal)

Ms. Gaye holds a Masters in Law. She is a Legal Adviser at the African Network for Sustainable Development. She is a specialist on family laws. Ms Gaye works at the grass root level to provide women with information regarding their rights and providing them with lawyers when needed.

Her publications include:

Study on the Practice of Trafficking in Persons in Senegal, USAID, September 2004

5. Coumba Toure (Senegal)

Ms. Toure is an artist and an educator seeking alternatives in education, an activist struggling for radical social change and working for just and sustainable relations worldwide. She has more than ten years of experience in community work in West Africa as well as international experience in organizing. Ms. Toure works for social justice through popular education and has facilitated hundreds of educational workshops on

gender, race and economic justice, HIV Aids and advocacy. She has worked with very diverse groups of people and organizations including the Institute for Popular Education in Kati, Mali, African Consultants International in Dakar, Senegal, 21st Century Youth Leadership Movement in Selma, Alabama, and Youth for environmental Sanity in Soquel, California. She speaks regularly at college campuses and conferences and sits on the board of several non-governmental organizations. She is currently writing and publishing books and educational materials for children and building a learning community that supports children in creating their own material.

6. Sheila Minkah-Premo (Ghana)

Ms. Minkah-Premo holds an LL.M from the Georgetown University Law Centre. She is currently the Chairperson of the Leadership and Advocacy for Women in Africa (LAWA) Ghana. In addition, she works as an attorney for Skiff & Co. Legal Consultants in Accra, Ghana. For her fellowship internship, she worked at the Institute for Women's Law and Development Working with Women, Law and Development International on two major projects for the UN Special Rapporteur on Violence Against Women. Ms. Minkah-Premo participated in the Beijing conference and has been a member of FIDA (International Federation of Women Lawyers), Ghana since 1989. Prior to LAWA, she volunteered for the Planned Parenthood Association of Ghana. In 2003, she became coordinator of G.T.Z (Family Law Focal Area), a German Technical Co-operation Project aimed at enhancing the rule of law and gender equity in Ghana's rural legal systems.

Her publications include:

- GTZ Legal Pluralism and Gender Pilot Project: The Participatory Learning and Action Process, Research report published by Attorney General and Ministry of Justice Access to Justice Series No. 5, July 2006.
- GTZ Legal Pluralism and Gender Pilot Project: Marriage Forms and Matrimonial Property Rights in Ghana, Research report published by Attorney General and Ministry of Justice Access to Justice Series No. 7, July 2006.
- GTZ Legal Pluralism and Gender Pilot Project: Working with Traditional Authorities on Family Law, Research report published by Attorney General and Ministry of Justice Access to Justice Series No. 10, July 2006

7. Hope Kabuchu (Uganda)

Ms. Kabuchu holds a Masters Degree in Development Studies from The Institute of Social Studies (ISS), The Hague, The Netherlands. She is a facilitator and senior advisor in social development with over 10 years national and international experience. She has professional training in Organizational Development (OD), Leadership Skills, Developmental Planning, Monitoring and Evaluation, Lobbying and Advocacy and Consultancy Skills. Her experience includes supporting and advising leaders and staff of international organizations, donor agencies, governments and Civil society and Community groups on issues of strategies and knowledge development. She is a trainer in gender equity and diversity, in leadership, policy analysis and advocacy and a facilitator of change processes. Ms. Kabuchu is an Associate and also serves as a member of the Board of Trustees of EASUN, The Center for Organizational Learning in Arusha, Tanzania. She is a member of and has served on the Boards of professional women's organizations such as Uganda Women's Network (UWONET), and Uganda Media Women's Association (UMWA).

Her publications include:

- Johnson, Deb; Kabuchu, Hope and Santa Vusiya Kayonga "Women in Ugandan local government: the impact of affirmative action" In Gender, Development and Citizenship, Ed. Caroline Sweetman, 2004

8. Allen Asimwe (Uganda)

Ms Allen Asimwe holds an LL.M in International Business Law from the University of Manchester, UK. She is currently the Executive director of the International Human

Rights Network East Africa (IHRN EA). She has extensive experience on justice sector reforms in Uganda and other regions. She is a trained Manager with business and project management experience in the private, public and non-profit sectors. Ms. Asimwe has considerable experience in institutional management and development (including budgeting and financial management), programme monitoring and evaluation, developing, implementing and monitoring Government policies and reforms in the Justice sector.

9. Osvalda Joana (Mozambique)

Ms. Joana holds a Masters of Law from the University of Maputo. She is specialized in judgeship and has been judge of different tribunals in Mozambique. Ms. Joana currently works as a counselor at the International Women's Association. She was the President of the Association of Mozambican Women in Legal Careers (AMMCJ). The association works to eliminate all discrimination, to promote the equality in the rights and the opportunities of men and women, and to defend the human rights. It offers juridical assistance to victims of domestic violence.

10. Julie Stewart (Zimbabwe)

Ms. Stewart is the Director of the Southern and Eastern African Regional Centre for Women's Law (SEARCWL), University of Zimbabwe (former Women's Law Centre) at UZ which ran for ten or so years a Regional Postgraduate Diploma Programme in Women's Law – this has now been transformed into a Masters Programme as from 2003. The programme focuses on developing research and analytical skills in mature students of both sexes who work within the formal legal arena or in legally focused NGOs and similar organisations. Ms. Stewart research interests are in women and customary law, women's, and men's, access to law in plural systems of law. Her other complementary areas of research are in Inheritance Law, Family Law and Human Rights Law. Professor Stewart is also a former member of the WLSA Zimbabwe.

Her publications include:

- Stewart, J with Anne Hellum, Shaheen Sardar Ali and Amy Tsanga (eds) Human Rights, Plural Legalities and Gendered Realities: Paths are Made by Walking, Weaver Press, Harare, 2007
- Stewart J.E. et al In the Shadow of the Law: Women and the Justice Delivery System in Zimbabwe, WLSA, Harare, 2000

11. Souad Ben Abdennebi (Ethiopia)

Ms. Abdennebi-Abderrahim is a graduate of the University of Tunis. She received her "Licence en droit" from the Faculty of Law of Tunis, and a Diplôme d'Etudes approfondies en Droit pénal from the University of Poitiers, France. She is currently working at the Economic Commission for Africa as the Regional Advisor for the Promotion of Women's Human and Legal Rights. She is intervening as a strong advocate on women's rights in many African countries in view to improve the legal and social status of women. Ms. Abdennebi performed her duties in interpreting and applying laws in various chambers, civil, penal, social, family and child Justice at the Justice Court of Tunis. She has served the Ministry of Family and Women's Affairs of Tunisia as Director of the Department of the Advancement of Women's Rights

Her publications include:

- "Tackling women's Poverty For Economic Growth and Development in Africa", GenderNet, Economic Commission for Africa (ACGS), Issue 6, 2008. (contributor).
- "Millennium Development Goals and the Protocol of Right of women in Africa" In Grace, Tenacity and Eloquence. The struggle for women's rights in Africa, Ed. By Patrick Burnett, Shereen Karmali and Firoze Manji; Fahamu – Networks for Social Justice, 2007.

12. Atsango Chesoni (Nairobi/Kenya)

Ms. Chesoni currently works as a private consultant focusing on governance, gender, human rights, anti-corruption and democracy issues. She has extensive experience working as a human rights' monitor both at the national and regional levels. She has written extensively on human rights, constitutionalism, institutional reform, regionalism, women's rights, violence against women and gender mainstreaming, in Kenya, South Sudan and at the level of the African Union. Her recent work includes: a study on mainstreaming human rights based approaches within the water and urban development sectors in Kenya on behalf of the Swedish Agency for Development Evaluation (SADEV). This study has been published as one of the chapters in Integrating the Rights Perspective in Programming: Lessons Learnt from Swedish-Kenyan Development Cooperation. A study on inequality published as part of the Society for International Development (SID) is Readings on Inequality in Kenya: Sectoral Dynamics and Perspectives.

Her publications include:

- "Ethnic Chauvinism, Xenophobia and Gender Inequality in Kenya. Sectoral Dynamics and Perspectives", In Readings on Inequality in Kenya, Society of International Development, 2006
- Chesoni, Atsango; Muigai, Salome and Kanyinga, Karuti; "Promoting Women's Human Rights and Enhancing Gender equality in Kenya"; Sida Evaluation 06/25; Department for Africa, 2006.

13. Melinda Davies (Sierra Leone)

Ms. Davies is the President of Legal Access through Women Yearning for Equality, Rights and Social Justice (LAWYERS)

14. Rashida Manjoo (South Africa)

Rashida Manjoo holds an LL.M and is an Advocate of the High Court of South Africa and a Research Associate in the Faculty of Law, University of Cape Town. Former commissioner of the Commission on Gender Equality (CGE), a constitutional body mandated to oversee the promotion and protection of gender equality. Since 2005, Ms. Manjoo is an HRP Clinical Advocacy Fellow. She was also involved in setting up both a national and a provincial network on violence against women and she is the founder of the Gender Unit at the Law Clinic at the University of Natal and the Domestic Violence Assistance Programme at the Durban Magistrates Court (the first such project in a court in South Africa). Ms. Manjoo was also an active member of the Women's Caucus for Gender Justice in the International Criminal Court and remains an Advisory Board member. She is a member of the Women Living Under Muslim Laws Network. Her current research interests include legal pluralism and transitional justice issues, with a primary focus on gender justice. She has recently returned from Harvard Law School where she taught in the Human Rights Program.

Her publications include:

- "The Recognition of Muslim Personal Laws in South Africa: Implications for women's Human rights", International & Comparative Law Colloquium Papers, 2008

15. Noluthando Ntlokwana (South Africa)

Ms. Noluthando is an admitted Attorney of the High Court of South Africa. She is currently working as an attorney at the Women's Legal Centre. In 2007 represented Marie Stopes clinics (pro-abortion) Western Cape –South Africa in a dispute with Western Cape Provincial Department of Health in the Cape High Court. (Choice Act). Her expertise is on women's access to land and housing.

Her publications include:

- Noluthando Ntlokwana, Women's Rights and Customary Law In customary Law Revisited: The role of customary law in the 21st century, Leitner Center, 2008, Bostwana.

16. Mothokoa Mamashela (South Africa)

Ms. Mamashela is a senior Lecturer in Law, University of KwaZulu-Natal, Pietermaritzburg. She is a member of the Ubambiswano project which aims to assist Traditional Authorities to conform to the requirements of the Traditional Leadership and Governance Framework Act of 2003. In 2005, 2005 she was in the team which travelled to the south coast appraising the traditional leaders of the new changes introduced by the Act. The main objective of this exercise is to provide professional and technical support to the Department of Traditional and Local Affairs Ubambiswano Coastal Regional Project Management Teams in transforming traditional institutions and aligning them with emerging legislation.

Ms. Mamashela also works in a project with the Centre for Criminal Justice Impact Study (CCJ) assessing the impact of the cases that were reported to the Centres on the community members and coordinating the project. She presented her report in February, 2007.

Her publications include:

- Mamashela, Thokozani Xaba, "The Practical Implications and Effects of The Recognition of Customary Marriages Act No. 120 of 1998" School of Development Studies, University of Natal – Durban, Research Report No. 59, 2003; ISBN No. 1-86840-499-
- Family Law Through the Cases in Lesotho (1991): Mothokoa Mamashela – WLSA Lesotho.

17. Shireen Hassim (South Africa)

Shireen Hassim is an Associate Professor of Political Studies at the University of the Witwatersrand. She has worked on the South African women's movement for several years, and has lectured and published in this field. During 1999, she was a member of the Gender and Elections reference Group of the Electoral Institute of South Africa, and co-edited the Elections bulletin. She is a member of the Advisory Board of Womensnet, a website for women.

Her publications include:

- Women's Organizations and Democracy in South Africa: Contesting Authority (University of Wisconsin Press, 2006), which won the 2007 American Political Science Association's Victoria Shuck Award for best book in women and politics.
- Co-editor with Anne Marie Goetz No Shortcuts to Power: African Women in Politics and Policy-Making, and with Shahra Razavi, Gender and Social Policy in Global Context: Uncovering the Gendered Structure of the 'Social'.

18. Shereen Mills (Johannesburg-South Africa)

Shereen Mills is an Attorney and Researcher based at the Centre for Applied Legal Studies (CALS) at the University of the Witwatersrand. She worked as a Supervising Attorney and Senior Tutor at the Wits Law Clinic conducting public interest and other litigation for the poor, specialising in labour law and women's rights, in particular child maintenance, sexual harassment, domestic violence and child abuse cases. In 1998 she was the recipient of the Maria Pia Gratton Award Fellowship to the University of Illinois, USA where she spent a year doing postgraduate work on postcolonial, feminist and African-American women's literature, and creative writing. She has worked in the areas of race and gender equality, participating in the drafting of key legislation like the Promotion of Equality and Prevention of Unfair Discrimination Act as well as advocacy on the Employment Equity Act. Her current work involves research, advocacy, and strategic litigation on violence against women and children (specifically domestic violence, femicide and abused women who kill, and rape), gender equality, poverty and women's access to justice. Ms. Mills has been involved as amicus curiae in a number of groundbreaking cases involving gender based violence. She also teaches a component of the Gender and the Law course at the Wits Law School. She currently sits on the Board of the Gender

Education and Training Network (GETNET) in Cape Town, as well as the Women's legal Centre, and also acts as trustee of a number of other NGO's.

Her publications include:

- Mills, Shereen (2003) "Family Mothers In The Corridors Of The South African Legal System: An Assessment Of The Johannesburg Family Court Pilot Project", In: JENDA, ISSN: 1530-5686: Johannesburg.

19. Chuma Himonga (South Africa)

Professor Himonga is a Doctor in Law. She teaches Law of Persons & Marriage and African Customary Law at the university of Cape town. She is experienced in Women and Law; Children's Rights; South African Family Law; Customary Law; Comparative Family and Succession Law in Africa. Dr. Himonga is a Member of the South African Law Commission Customary Law Project Committee and a Board member of the International Association of Law Schools.

Her publications include:

- Family and Succession Law in Zambia: Developments Since Independence, 1995, Munster, Lit. Verlag, pp.335.

- 'Zambia: Family and Succession Law' monograph in International Encyclopedia of Laws Series (2002, revision 2008) Kluwer Law International) Family Law and Succession Law suppl. (June 2008) 1-214.

20 Najma Moosa (South Africa)

Ms. Moosa is the Dean of the Faculty of Law of the University of the Western Cape. She is an expert on Muslim Personal Law & South African Law.

Her publications include:

Najma Moosa a Comparative Study of the South African and Islamic Law of Succession and Matrimonial Property with Especial Attention to the Implications for the Muslim Woman Unpublished LL M thesis, UWC (1991)

Najma Moosa An Analysis of the Human Rights and Gender Consequences of the New South African Constitution and Bill of Rights with regard to the Recognition and Implementation of Muslim Personal Law (MPL) Unpublished LL D dissertation, UWC (1996)

21 Sofia Dohmen (Sweden)

Ms. Dohmen holds a Master of Sciences in Development studies from the London School of Economics. She is a Gender Adviser of the Swedish International Development Cooperation Agency (Sida). Ms. Dohmen previously worked at the National Women's Institute (Instituto Nacional de la Mujer – INAM), Honduras as an Bilateral Associate Expert at the Swedish International Development Cooperation Agency (Sida); as research associate at the Royal Tropical Institute (KIT) in the Netherlands; and as a consultant at the Swedish Trade Council, The Netherland, among others.

Her publications include:

Governing for Equity: Gender, Citizenship and Governance (research assistant), Royal Tropical Institute (KIT), The Netherlands (2003).

Engendering governance: learning from civil society initiatives in Southern Africa and South Asia. Paper presented at the International Conference on Social Welfare, Rotterdam, The Netherlands (2002).

22 Kirsty Mclean (South Africa)

Ms. Mclean is a senior researcher in gender and socio-economic rights in CALS. She completed BMus and LLB degrees at Wits, where she received the Society of Advocates Prize for the Most Distinguished Graduate for the degree of LLB in 2001. After graduating, she worked as a clerk for Justice O'Regan at the Constitutional Court of South Africa in 2002 and was also a part-time lecturer at Wits in 2002 and 2003. From

2003 to 2007, Ms. Maclean worked as a professional and consultant to Ashira Consulting, a public-sector legal consultancy, specialising in, amongst other sectors, housing and local government law. During the same period, she completed a DPhil at Oxford University, with a thesis on the role of the judiciary in the interpretation and enforcement of socio-economic rights in South Africa. Her thesis will be published in early 2009.

Her publications include:

- Forthcoming K McLean Ten Years of Socio-Economic Rights Jurisprudence in South Africa: A Critical Review (Pretoria University Law Press). (2009)
- Forthcoming chapter 'The "Reasonableness Test" in South Africa's Socio-Economic Rights Jurisprudence' in Between Rhetoric and Reality: Social Justice and Human Rights in a Global Perspective. (2008)
- 'Deconstructing Deference: A Comparative Analysis of Judicial Approaches to Health Care in Canada and South Africa' in P Andrews (ed) Comparative Constitutionalism and Rights. (2008)

23 Evelien Kamminga (The Netherlands)

Ms. Kamminga Evelien Kamminga is a social anthropologist with extensive experience in Africa. Currently she is working as a social development and gender equity advisor at KIT and responsible for an action research program on Gender Inclusive Citizenship in West Africa with a focus on access to justice, economic rights and political participation.

Meeting organisers

The conference is organised by the Royal Tropical Institute (KIT) in Amsterdam and the Centre for Applied Legal Studies (CALs) in Johannesburg. KIT and CALs form a unique partnership which brings together the perspectives of rights in development with legal activism to further rights-based work. KIT and CALs collaborate on action research, publications, conferences and the annual course 'Building capacity for rights: democracy and development in Africa': <http://www.kit.nl/smartsite.shtml?id=15680>

The Royal Tropical Institute (KIT) in Amsterdam is an independent centre of knowledge and expertise in the areas of international and intercultural cooperation, operating at the interface between theory and practice and between policy and implementation. The Institute contributes to sustainable development, poverty alleviation and cultural preservation and exchange. The Institute is a not-for-profit organization that works for both the public and the private sector in collaboration with partners in the Netherlands and abroad. To find out more about our work on social development and gender equity, visit the website: www.kit.nl/gender

The Centre for Applied Legal Studies (CALs) is a research, advocacy and legal services centre in the School of Law at the University of the Witwatersrand. CALs' work is currently organized in four areas: access to justice, constitutional law, gender research and socio-economic rights. For more information, visit the website: <http://web.wits.ac.za/Academic/Centres/CALS/>

Likhapha Mbatha is the head of the section on Customary Law at Centre for Applied Legal Studies CALs. She has an LLM from Wits University, an LLB from Roma University, Lesotho and a Diploma in Women's Law from the University of Oslo. Likhapha was co-coordinator of the Lesotho branch of Women and Law in Southern Africa before she joined the Gender Research Project in 1995 where she runs a project on customary law. For the past 12 years, Likhapha has pioneered the use of innovative qualitative methods to conduct legal research into, inter alia, marriage, access to resources and customary courts. She has been engaged in research in rural and urban African communities for more than a decade and is an advocate for the engendering of culture and customary law and an expert on gender, culture and customary law and practice.

Maitrayee Mukhopadhyay, PhD, is a social anthropologist specialised in social development with a focus on gender and development. She has expertise in social and institutional analysis, citizenship and rights in development and integration of equity concerns across sectors in policy development, programme and project planning, monitoring and evaluation. At present Dr. Mukhopadhyay is the Area Leader for Social Development and Gender Equity in the Department of Development Policy and Practice at KIT where she is responsible for the development of the programme for her area with a special focus on gender, citizenship and governance and rights based approaches in development. She is involved in building partnerships, capacity and agendas to undertake action research; advisory work in social development, conducting international and regional training programmes on gender and development; and publications.

Cathi Albertyn is professor of law at the University of the Witwatersrand. She is the former director of the Centre for Applied Legal Studies, a constitutional and human rights research, advocacy and litigation centre attached to the School of Law at the University of the Witwatersrand. She is a constitutional and human rights lawyer with a particular specialisation in equality and women's human rights. Cathi was fortunate to be able participate in the development of South Africa's new Constitution through her work on the legal working group of the Women's National Coalition and as a technical expert in the Constitutional Assembly. Since 1994, she has been involved in several policy development and law reform processes, as well as litigation on equality and women's rights. Between 1997 and 1999, Cathi was a part-time commissioner for the Commission on Gender Equality and in 2007 she was appointed as a commissioner for the South African Law Reform Commission.

Research Assistance

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Dual Strategy targeting the formal and informal justice systems

