



WOMEN AND CUSTOMARY AND INFORMAL JUSTICE SYSTEMS: A GLOBAL CONSULTATION ON NAVIGATING COMPLEX PATHWAYS TO JUSTICE

Side event organized by the **International Development Law Organization (IDLO)** with the support of

Federation of Women Lawyers (FIDA-Kenya) and **Landesa**

on the occasion of the 63rd session of the Commission on the Status of Women

Friday, 15 March 2019, 3:00 to 4:15 pm
Ex-Press Bar, United Nations HQ

Background

In the developing world, 80% of disputes are resolved by customary or informal justice systems (CIJs).¹ This means that a majority of women rely on dispute resolution outside of the formal courts. Issues of significance to women, such as inheritance, family formation, divorce, property rights, control and governance over land and natural resources, and even violence against women and girls, are resolved or adjudicated in these systems.

Many justice seekers turn to CIJs as they are often more accessible, affordable and familiar than formal systems. They are also seen as offering other advantages such as speedy resolution, cultural relevance, use of non-confrontational approaches and flexibility. CIJs thrive in places where the formal system does not exist, is weak or not trusted, offering a space to address grievances and resolve disputes.² The relationship of these systems with the formal justice system differs from context to context. Many constitutions of the world do recognise customary law³; elsewhere, CIJs may be merely tolerated or wholly disavowed.

Despite their perceived advantages, CIJs are often skewed against women, favoring male-dominated structures, patriarchal values, and discriminatory and harmful outcomes for women. In many cases, they fail to uphold women's human rights, in particular those pertaining to gender equality and non-discrimination as enshrined in the Convention on the Elimination of all forms of Discrimination against Women. In many CIJs, only men can mediate disputes. In others, women are not allowed to speak or can only do so through male relatives. While it is important not to generalize, some CIJs do not consider even the most severe forms of gender-based violence as serious offences, including rape (both within and outside marriage), and domestic violence. They often tolerate or reinforce discriminatory practices such as female genital mutilation, bride sales, denial of widow inheritance, or impose discriminatory sanctions such as forced marriage or the exchange of women or young girls as resolution for a crime or as compensation. There are accounts that attempts by individual women to go against or bypass CIJs have led to outright ostracism and physical harm to these women.

¹ For a discussion of these estimates, see: IDLO. 2019. Practitioner Brief. Navigating Complex Pathways towards Justice – Engagement with Customary and Informal Justice Systems (DRAFT), p.4 and note 4.

² IDLO. Policy and Issue Brief: Navigating Complex Pathways to Justice: Engagement with Customary and Informal Justice Systems (DRAFT), p. 6.

³ UN Women Global Gender Equality Constitutional Database: <http://constitutions.unwomen.org/en>.

Within the broader justice, governance and development sector, there has been growing discussion on engaging with CIJs to enable broader access to justice. Nevertheless, while understanding the need to enhance justice delivery, the challenges above show why it is critical to place women's issues and concerns central to any conversation on CIJs.

A growing number of initiatives recognize the importance of working with plural legal systems to enhance women's human rights. The CEDAW Committee, in its General Recommendation 33 on women's access to justice, paragraph 63, "*has observed a range of models through which practices embedded in plural justice systems could be harmonized with the Convention*". Several of these efforts are showing that while there are significant challenges to working with CIJs, there are also models, lessons and approaches that we can draw from to identify possible opportunities for strategic engagement.⁴

Event Description

This event aims to provide space for an open consultation on the relationship between women and CIJs, on legal pluralism and on the intersection of formal and informal justice systems. With a gender lens and a focus on challenges and opportunities of engagement, participants will discuss the specificities of promoting women's rights within plural legal systems. The event is part of a series of global consultations being initiated by IDLO to inform policy and programming on CIJs, plurality and access to justice.

In particular, the event will seek to answer the following questions:

- **What challenges do women encounter when they seek justice through CIJs?** Do these challenges vary based on the kind of cases – such as gender-based violence, land rights, family matters, access to services – type of CIJ, location, or level of recognition by formal laws?
- **Are there lessons and approaches for strategic engagement with CIJ systems?** What are the possible entry points for engagement? Are there good practices across themes and regions to support them?

Speakers and Moderator

The speakers for the event are:

- Prof. Patricia Kameri-Mbote, School of Law, University of Nairobi
- Dr. Gina Alvarado, Senior Research and Evaluation Adviser, Landesa
- Jemimah Collins Aluda, Board Member, Federation of Women Lawyers (FIDA-Kenya)

The event will be moderated by Dr. Ilaria Bottigliero, Director, Policy, Research and Learning, IDLO.

⁴ See also: IDLO. 2013. [Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment](#).