

For or Against Gender Equality?

Evaluating the Post-Cold War "Rule of Law" Reforms in Sub-Saharan Africa

by Celestine Nyamu-Musembi





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acronyms

ADB	African Development Bank
AGOA	African Growth and Opportunity Act (United States)
COVAW	Coalition on Violence Against Women
DANIDA	Danish International Development Agency
DFID	Department for International Development (United Kingdom)
EPZ	export processing zone
ERC	Economic Reform Credit programme
GERA	Gender and Economic Reforms in Africa
IDF	Institutional Development Fund
IFI	international financial institution
KHRC	Kenya Human Rights Commission
LCC	local council court (Uganda)
NCG	Nordic Consulting Group
NSSF	National Social Security Fund (Uganda)
ROL	rule of law
SSAJ	safety, security and access to justice
TRIPS	Trade-Related Aspects of Intellectual Property Rights
USAID	US Agency for International Development
WLSA	Women and Law in Southern Africa
WTO	World Trade Organization

summary résumé resumen

SUMMARY

The central question explored in this paper is: has the post-Cold-War rule of law (ROL) reform agenda in sub-Saharan Africa enhanced or impeded gender equality? Rule of law (ROL) reforms are seen as indispensable to establishing a market economy and democratic rule, the two prongs of the neo-liberal project. In sub-Saharan Africa, legal and institutional reforms that originated with the “second wave” of political reform in the immediate post-Cold-War era have been justified in terms of these twin goals. The overwhelming emphasis and investment has been in creating a suitable legal and institutional environment for the market. Some attention has been given to the democratic-rule prong, for instance through reform of electoral laws and of institutional structures such as courts and national human rights commissions. The bulk of substantive legal reforms have focused on areas such as commercial codes, bankruptcy, banking, tax and property laws (including intellectual property), corporate governance and freedom of information.

In this same period, the region has seen a significant rise in the profile and impact of movements concerned with gender equality. Some of the concerns of the gender equality movement do overlap with the ROL agenda. Examples include ending the vicious effects of corruption, ineptitude and institutionalized bias (including gender bias) in the functioning of institutions that administer justice; and progressive constitutional reforms that have the potential to enhance legal protection from gender-based discrimination. However, a juxtaposition of the law reform priorities with the priorities articulated by gender equality advocates shows that ROL reforms have not automatically translated into reforms that enhance gender equality. The gains for gender equality have been limited and hard won. A large part of the gender equality agenda remains unaddressed by the legal and institutional reforms undertaken so far. The main gaps identified are:

- Constitutional guarantees of rights have only a limited reach, particularly where customary and religious laws are not only allowed to regulate family matters but to supersede anti-discrimination laws.
- Reforms to property law have at worst deepened gender inequality and at best left existing biases intact. Official discussion of gender and land tenure remains disconnected from broader processes of economic restructuring, such as those affecting the financial services industry. Financial sector reforms have not been co-ordinated with reform of land and family legislation and practice, yet land and family law are at the heart of women’s ability to access financial services.
- The ROL reform agenda lacks any serious engagement with informal or quasi-formal institutions, yet these play a key role in making decisions and resolving disputes (particularly intra-family ones), and have far more impact than formal justice institutions in shaping gender relations.

- Reforms to equip the judicial sector (for example through provision of new buildings and computerization) have privileged commercial dispute resolution and underinvested in judicial subsectors such as family courts and legal aid for family proceedings. Yet where these subsectors deal, for example, with custody, maintenance and succession claims, inexpensive measures such as assistance with form-filling would make a tremendous difference.
- There has been a failure to extend labour regulations and provision of social security benefits to sectors such as small and medium-scale farming, informal businesses, domestic service and export processing zones (EPZs) (where labour protection laws often do not apply), all of which are dominated by women. In the formal sector, inadequate labour regulations allow gender discrimination to persist.

The paper is divided into three main sections. The first gives an overview of the ROL reform programme in sub-Saharan Africa. It begins with an observation on the role that international financial institutions such as the World Bank have played in providing the ideas and funding that have driven the reform projects. The second section discusses the priorities that have been articulated by gender justice advocates in the region, and then evaluates the reform initiatives taken by governments and donors in order to highlight specific gender gaps in the ROL agenda. The concluding section observes that even where governments profess commitment to gender equality, this commitment is not reflected in the articulation of priorities or the allocation of funds earmarked for legislative, judicial and law enforcement reforms. While advocates of gender equality have been adept at emphasizing the “democratic rule” prong of the ROL agenda to force the opening up of space for women’s constitutional rights, there has been less engagement with the specific “legal environment for the

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