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in Eastern Africa



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Care, Work and Property: How is Care Labour Valued? Addressing SDG Goal 5: Target 4 in Plural Legal Systems

Two-day workshop to be held at the British Institute in Eastern Africa, Nairobi

12 -13th September 2017

Introduction

The workshop is organised by Professor Ann Stewart (School of Law, University of Warwick, UK) in conjunction with the British Institute in Eastern Africa (BIEA) and the National Gender and Equality Commission of Kenya (NGEC). It results in part from her research undertaken while holding a Leverhulme Trust Fellowship on caring for elderly women in Kenya's plural legal contexts with a particular focus on the contribution of 'woman to woman' marriages. BIEA provides a forum within Eastern Africa for discussion of research including on care issues. The over-arching goal for the NGEC, established under the Constitution of Kenya, is to contribute to the reduction of gender inequalities and the discrimination against all.

Purpose

To explore and reflect critically on the ways in which care for the elderly is provided in plural legal systems such as Kenya and other parts of Africa. In particular, the workshop seeks to analyse how the provision of care-work has evolved within families and communities, and how changes in social organisation and economic development give rise to new challenges. These challenges need to be addressed to meet Kenyan constitutional mandates of ensuring equality and non-discrimination on the basis of sex or age (Article 27 (4)), and specifically ensuring that the elderly obtain care and assistance from their family and the state (Article 57).

Background

How are older people in Africa cared for? How does the law contribute to the way in which caring relationships are supported, and to what extent are the interests of both those in need of care and those who provide it recognised and protected?

There are many assumptions in relation to caring: that the African family system with its strong values relating to respect for elders supports and protects its elderly members; that the elderly live in rural areas; and that, worldwide, women are responsible for providing unpaid care within the family and community.

Until recently, the result of these assumptions has been that the provision of care generally and the position of the elderly in African societies has not attracted the attention of international or national policy makers (UNRISD 2016; Hakimajii 2014). This is changing. Policy makers, including those focusing on international development, are recognising the need for care policies: public policies that allocate resources in the form of money (including income), services or time to caregivers or people who need care. Such policies arise in a wide variety of sectors such as health and education, as well as those relating to labour and social protection. After years of gender-based advocacy, there is also increasing recognition that the unequal distribution of unpaid care and domestic work between women and men is a powerful driver of gender inequality in the economic and social realms (UNRISD 2016). One outcome of this advocacy is Sustainable Development Goal 5, Target 4:

Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate.

Equally, there is growing recognition that the needs of the elderly as well as those of the youthful population should be of concern to policy makers in Africa. The African Union's Social Policy Framework (2009) calls for implementation of the AU Policy Framework and Plan of Action on Ageing (2002), while the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, adopted in January 2016, obliges member states to secure the rights of the elderly while recognising the roles played by family, state, civil society and private organisations in care provision.

This workshop provides an opportunity to assess the contribution of family and community-based arrangements for care where there is little social welfare available. In particular, the workshop will highlight the role of 'woman to woman' marriages, as described by the courts, in Kenya and in other parts of Africa in relation to the provision of care, particularly for the elderly. The everyday practices of caring for older people, particularly women, traditionally woven into communal relations, are changing in the socioeconomic and political circumstances of contemporary Kenya. How is caring understood and valued? Is it seen as part of everyday life or as a particular form of labour? Are ways of recognising and 'rewarding' caring labour undertaken informally by family members changing? How is the contribution of domestic workers valued? Are unpaid female family members being replaced with paid domestic workers for instance? How are claims for recognition of the cost of caring work understood in the 'formal' courts and within community dispute resolution practices? Is caring labour recognised and compensated through claims on property and in relation to distribution of bequeathable assets? To what extent do social protection measures substitute for and/or relieve family responsibilities? Do they contribute to the pursuit of gender justice or reinforce existing assumptions in relation to care?

Themes and sub-themes to be addressed

The broad thematic areas include:

- Caring for the elderly in plural legal systems
 - How care work is regulated in plural legal systems (in Africa)
 - How law facilitates and limits the provision of care for the elderly
 - The role of the state in providing care for the elderly
- Is care-giving labour? The nexus between labour and care
 - Domestic work and the intersection between formality and informality in providing care for the elderly
 - The role of the family in providing care- is caring recognized and treated as labour?
- Valuing care work: the nexus between property and labour
 - Care work as a means of accessing/acquiring property
 - When care is not valued/undervalued: dispute resolution, access to justice, protection of rights of care-givers
- ‘Woman to woman’ marriage as an institution for providing care for the elderly

Objectives of the workshop

- To analyse the ways in which care for the elderly is provided in plural legal systems
- To explore the role of law in facilitating and limiting the way in which care for the elderly is provided
- To explore the role of the state in providing care for the elderly
- To explore how property as an institution affects the provision of care for the elderly
- To explore how care-work is recognized and regulated as a form of labour
- To demonstrate the ways in which WTW marriages are used as an institution for providing care for the elderly
- To contribute to the development of legal and social policy making relating to care for the elderly in the context of implementing SDG Goal 5 target 4 and other international, regional and national obligations relating to care work and the elderly

Participants

- Scholars drawn from a variety of disciplinary backgrounds including those with interests in care provision (familial and state), ageing, care labour including domestic work, family and community dispute resolution and equality and human rights
- Legal practitioners and those involved in dispute resolution within formal (within the courts) and informal forums
- Civil society organisations including those with special interest in the position of older people and/or social protection; gender and rights campaigners and advocates; domestic worker organisations;
- Legal and social policy makers at county, national, regional and international levels

We anticipate that there will be approximately 30 participants attending the workshop but we aim to provide live streaming of sessions to enable a larger number to participate virtually.

Outcomes of the Workshop

- Contribution to scholarship relating to care for the elderly in plural legal systems in Kenya but also within Africa more generally
- Key areas for further research identified
- Policy makers provided with research based evidence to support care policy development
- Legal practitioners (particularly those involved in dispute resolution whether formal or informal) provided with research based evidence to ensure that the rights of those who care and those in need of care are fully recognised
- Contribution to the implementation of SDG Goal 5 on Gender Equality