



IN BRIEF



MULTI-COUNTRY ANALYTICAL STUDY ON ACCESS TO JUSTICE FOR VICTIMS AND SURVIVORS OF VIOLENCE AGAINST WOMEN AND GIRLS IN EAST AND SOUTHERN AFRICA

Illustration: UN Women/ Robert Kambo

EXECUTIVE SUMMARY

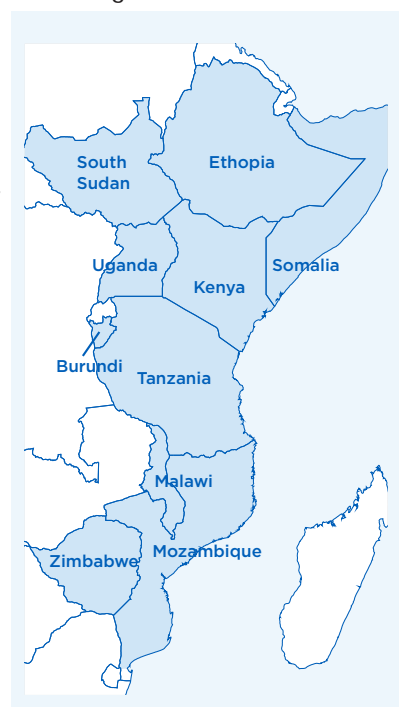
Introduction

This analytical inquiry into access to justice for women and girls in East and Southern Africa presents a steep rise in poor access to justice for women and girls, which has been worsened by the effects of the COVID-19 pandemic. The study concludes that this is not likely to level out in the region because of the circumstances facing women and girls and the limited opportunities for women and girls to access justice. This is exacerbated by the escalating numbers of women and girls facing violence across the world, and Africa is no exception. The increasing number of victims and survivors of gender-based violence (GBV) in the region creates additional barriers for women and girls on the path to accessing justice. The study shows that women and girls in the region under investigation have limited opportunities to access justice. The region's unfortunate status can be attributed to numerous legal pluralisms orchestrated by the urge to keep statutory, customary and traditional justice mechanisms all in one basket. This calls for an urgent need to widen the approaches to justice for women beyond legal measures and examine the nexus between culture, politics and economics that shapes access to justice for women and girls along the justice chain.

The study adopted an analytical methodology, which combines quantitative and qualitative approaches and tools to collect and analyse data. This holistic approach

is widely applied in gender studies, particularly those involving issues of women and girls, as it derives qualitative contextual analysis from practical experiences. A purposive sampling was applied to identify key representatives of magistrates, judges, women's rights groups and other organizations, associations, United Nations staff and other stakeholders. Snowball sampling and chain referral sampling were used to identify victims and survivors of GBV who would be difficult to access.

The study defines access to justice as the ability to approach and influence decisions of organizations that exercise the authority of the state to make laws and to adjudicate on the rights and obligations of women and girls. The study data were collected through secondary or desk review and analysis of available publications, policy frameworks, case files and traditional and cultural laws in the 10 study countries (Burundi, Ethiopia, Kenya, Malawi, Mozambique, Somalia, South Sudan, Tanzania, Uganda and Zimbabwe) on access to justice. This report presents an analysis of policy options and primary field visits, which



were largely virtual because of the COVID-19 situation across the region, and in some instances involved country researchers. Coded content on key research questions was produced from all lines of evidence to allow triangulation analysis. Gender analysis used sex, disability and socioeconomic status/norms disaggregated data and data that explain nuances in the causes and effects of gender inequalities.

The rugged terrain of violence against women and girls

The dynamic nature of violence against women and girls (VAWG) is another reason for various actors to stop concentrating on the existence of laws protecting women and the availability of legal aid and counsel in preference for adjudication and enforcement as a frame for access to justice for women victims of violence. There is a trend towards women's identities being subjected and subordinated in the areas of justice and society. This is heavily compounded by perennial structural inequalities between men and women, with the former enjoying undue advantages, women's historical and systemic disadvantaged position, the entrenched culture of impunity that mars cases of VAWG, including the prevailing preconception of gender and system of patriarchy that persist in both the judicial system and society. Attention is shifting towards the root causes of massive injustice to women and girls in the region. More than ever, engagement and partnership with traditional leaders in Africa through the Council of Traditional and Cultural Leaders of Africa is an opportunity to mitigate the harmful traditional practices that perpetuate VAWG.



Photo: UN Women/ Ana Lukatela

The Council of Traditional and Cultural Leaders of Africa has managed to rally and set up dialogue with African traditional leaders on the harmful effects of traditional practices such as child marriage and female genital mutilation. As a result, some chiefdoms (e.g. the Chamuka Royal Establishment in Zambia) and kingdoms have already legislated for by-laws barring such practices. In addition, this engagement has created a platform for intergenerational dialogue between young people and traditional leaders on matters that affect women, including their limited access to justice.

The unpredictable journey of access to justice for women and girls

Women in the study countries experience various challenges in accessing justice, including culture and customary specific harmful practices, legislative and policy challenges, corruption, which inhibits access to justice for women and girls, limited access to technology, demographic and economic forces, and pervasive lack of awareness. For instance, most courts in Ethiopia, Kenya, Malawi, Mozambique and Tanzania are few in number and situated far from communities and are therefore not readily accessible. In addition, there are fewer female magistrates and judges who can focus on victim- and survivor-friendly courts to support their needs in the study countries of study, which also causes delays in concluding cases. These two challenges were replicated across all study countries.

The study reports various forms of discrimination faced by women, largely driven by patriarchy, harmful masculinity and cultural norms. In all of the study countries, sexual abuse, physical violence, female genital mutilation, divorce and child custody breaches, child marriage, abuse of inheritance rights, widowhood rights and land security rights, femicide and emotional violence constitute some of the most common forms of violence directed against women and vulnerable groups, including women with disabilities. In Tanzania, for example, statistics show that 3 out of 10, or 30 per cent, of women between the ages of 13 and 24 years have been victims of one of these forms of violence in their childhood or teenage years. The factors contributing to the high prevalence of GBV in the country vary, ranging from poverty to perverted cultural beliefs and social conditioning. Regardless of the reasons, the rates of violence against vulnerable populations are exceptionally high.

In Tanzania



Women between 13 - 24 years have been victims of one of the forms of violence in their childhood or teenage years

The study finds that women face discriminatory social norms and powerful obstacles to achieving equal rights culminating in many layers of limitation, including poverty, disability, ethnicity, geographical location, poverty and migratory status. Women's pursuit of justice is riddled with legal discrimination on paper and in practice, uneven implementation of safeguards and patchy legal protection. The study notes that women's justice needs are fashioned by several cross-cutting themes, namely legal discrimination and discriminatory practices, overlapping disadvantages and plural systems. The study notes that all of the countries still experience widespread poverty and social exclusion. Thus, poor and vulnerable women are still cut off from socioeconomic and legislative systems. From a human rights perspective, poverty is a human condition defined by chronic deprivation of resources. Therefore, access to justice improves women's enjoyment of rights as well as playing a crucial role in fostering their dignity. The exclusion of women living in poverty was witnessed in all 10 study countries and is an outright violation of their rights to access to fundamental representation and protection. Women's testimonies from Ethiopia, Kenya, Malawi, Mozambique and Tanzania confirmed their difficulties in finding the fees to access judicial services including lawyers and courts and, worse still, for the corruption of government officials.

Interventions on delivering justice for women and girls

Clearly, many approaches to and interventions for combatting GBV have been tested and initiated throughout the world. There is no single, most effective approach because all interventions must be effective in their specific contexts. Combining two or more approaches is the best strategy to prevent and respond to GBV at the national level. In addition, addressing GBV requires international, regional and local organizations to

have integrated awareness on GBV to allow governments to draw up strategies and create interventions. From the study's analysis, there are examples of good and best practices related to implementing GBV legislation and practices that together create a system to respond to sexual and other forms of gender-based violence (SGBV). The good practices are placed in different categories depending on their implementation approach. These include:

1. survivor-centred approach;
2. legislating for the provision of funding;
3. strengthening the justice system;
4. inter-agency coordination;
5. initiatives focusing on the needs of specific groups; and
6. monitoring and evaluating the implementation of legislation or policies.

An example of a good practice is the provision of free legal assistance and legal education for survivors, which has received significant support in Ethiopia through university legal centres. All higher education institutions in the country are obliged to offer community-based legal services as well as teaching and research. Law schools steadfastly transformed and embraced innovation between 2005 and 2018 when the legal institution was experiencing oppressive legislation, strict restrictions on the media, and incorporation of antiterrorism strategies. This resulted in some civil society organizations, such as the Ethiopian Women Lawyers Association, opting to reduce the number of staff in their regional offices.

Another example is from Zimbabwe, where Chief Charumbira of the Shona community illustrated his awareness that the Constitution and acts of law are expected to respect human rights. In an incident in which a 16-year-old girl was defiled by her 20-year-old boyfriend, the Constitution would not recognize this as a crime because 16 years is considered the age of consent. However, culture has a different opinion, and therefore in ruling the chief ordered that, at 16 years old, the girl was unable to consent. Therefore, the man was forced to pay seduction damages to the girl's father regardless of Zimbabwe's Constitution. In Chief Charumbira's area, there are 21 female heads of villages (sabhuku) who have a say in the proceedings of the court as assessors. They also play an advisory role, and their views are as important as those of men.

The gendered dimension of the effect of the COVID-19 pandemic on access to justice for women

The study establishes that the COVID-19 crisis has seriously tested the resilience of justice systems in the region. Apart from the weak justice delivery systems that entirely depended on physical judicial proceedings and processes in navigating the justice terrain, women and girls have been most affected by the health crisis. It is notable that court systems in some study countries adopted various mechanisms for classifying cases as either 'exceptional' or 'urgent' to continue with prosecution. Although this approach, including the activation or reactivation of virtual courts, was a creative solution during the pandemic, its application and of course the classification of cases varied widely across the region. Judiciaries must find innovative ways of handling cases of recurring domestic violence, rape, child custody disputes, divorce, and rights to alimony and property, among others, during this pandemic.

The study finds that in East and Southern Africa, just like in the 10 study countries, the COVID-19 pandemic has conditioned lawyers, magistrates, courts, judges and others, such as alternative dispute resolution practitioners and traditional leaders, involved in the justice system to re-evaluate how they deliver justice to ever-changing ecosystems. This requires them to use technology and alternative means to operate remotely and to make use of technological tools that often are not constructed to support the needs of those operating in the justice sector. The majority of the court cases reviewed and delivered during this period confirm that responses at the court level have been marred by decisions that have been informed by the COVID-19 pandemic. For example, Justice Sylvain Oré, President of the African Court on Human and People's Rights issued a proclamation on 23 March 2020 suspending the 56th ordinary session of the court by declaring that all matters would be handled remotely. In his recommendation, he highlighted that essential staff should work on rotation, observing social distancing, while non-essential staff should work remotely. At the Economic Community of West African States sub-regional level, Justice Edward Asante, President of the Economic Community of West African States Court of Justice, also issued a statement suspending court hearings until further notice. As witnessed in East African community states, many countries are embracing online methods, turning to remote and virtual participation from various

locations, including prisons. To this end, women and girls are in particular danger of being adversely affected in the administration of justice, access to legal remedies and resolution of disputes. At the same time, Uganda's Chief of Justice and his Kenyan counterpart issued directives to suspend court hearings and appearances and deliver virtual and online rulings.

The creation of a 'new normal' in justice institutions has resulted in growing injustice for women and girls in all of the countries studied. Furthermore, restrictions on access to justice for intimate partner violence (IPV) survivors through support services, comprising first responders and helpline crisis hotlines, which serve as linking schemes to legal aid, safe housing and financial assistance have greatly affected the justice system delivery structure. This was affirmed by respondents during the focus group discussions and key informant interviews in the study countries. Job losses caused by COVID-19 have affected women's support and alimony, including potential adjustments to case management, enforcement and decisions, leaving women vulnerable and cut off from access to justice in all 10 study countries. In addition, lockdown conditions in the countries studied exacerbate the risks of abuse, violence, exploitation and harassment, as evidenced by previous predicaments and by the preliminary cases studied in Burundi, Ethiopia, Kenya and Mozambique. The study notes that pre-existing gender justice gaps and challenges have increased as a result of the COVID-19 pandemic. This extends to IPV, emergent injustice for women workers on the front line of the crisis and discriminatory laws. Globally, it is estimated that approximately 2.73 billion women around the world live in countries where stay-at-home and lockdown orders are in place, which severely amplifies the risk of IPV. Among the study countries, unrestricted movement was allowed only in Tanzania, where activities continued as usual. Therefore, access to justice for women was largely unaffected. Evidently, the pandemic has increased the levels of inequality and injustice experienced by the growing number of victims and survivors of GBV, coupled with less effective delivery of justice. This calls for effective and innovative ways to support women's access to justice and empower them to realize their rights.

The effects of the global COVID-19 pandemic have been felt in the judiciary. In response, countries around the world have effected changes in their judicial systems. Courts around the African continent are either closed or are operating under new hours, with limited types of cases being heard. The unfolding unprecedented

global situation is widening the justice gap in general and is particularly affecting women's and girls' access to justice. In most instances, women bear the brunt of GBV, environmental disasters and health crises. Even in the COVID-19 era, access to justice for women is a fundamental principle of the rule of law, which is a basic human right. It is a means of implementing other human rights, good governance, and gender justice and is linked to the impartiality, credibility, and independence of the judiciary.

It is evident that the COVID-19 pandemic is hitting women hard, as they may be victims of domestic violence as they are locked down with their abusers as well as working in jobs that lack social protection. It is also noted that 40 and 75 per cent more women report legal issues than men in relation to domestic violence and child support, respectively. In addition, women with disabilities are significantly disadvantaged in accessing justice, and this has been exacerbated by the COVID-19 pandemic. This has been aggravated by the use of technology in most courts, which have not integrated assistive gadgets for people with disabilities, jeopardizing efforts to serve women with disabilities. Across the world, measures to contain the spread of COVID-19 have created disruption for the main marginalized groups. Furthermore, the vulnerability of women and girls with disabilities to GBV has spiralled in this context because of pre-existing gender inequalities, toxic social norms, and barriers to accessing related services, including access to justice.



Photo: UN Women

Recommendations

The study recommends eliminating retrogressive laws, enforcing existing laws and upholding standards that impartially implement women's rights as human rights. Moreover, it recommends that perpetrators who violate women's rights be held accountable through available justice systems. This will involve a relentless and sustained fight against impunity towards women's access to justice. The study also recommends creating a sector in the judiciary that solely addresses issues of access to justice for women, which should include more women judges trained in these issues to respond to the current situation where no such specialized courts exist amidst the high backlog of gender-based cases. Countries should create provisions for the compensation of women and girls who are victims of abuse and discrimination in matters including violence, inheritance rights and child support for divorcees. Upholding women's property rights and raising their economic status to combat exclusion and poverty through provisional avenues of access to justice should be accelerated in all the study countries. This includes women's ability to rightfully own and inherit land and to access assets such as housing and machinery. Poverty eradication therefore calls for improving income levels and access to housing, food, water and sanitation, education and health services. It is widely noted that access to justice plays a fundamental role in fulfilling women's rights and serves to protect their rights, personal security and entitlements (which may include protection from sexual harassment, economic exploitation and lack of power). Access to justice helps women living in poverty by preventing their exploitation by powerful private or public actors.

Eliminating GBV and discrimination is a central pillar of sustaining peace and the rule of law as well as ensuring that the obstacles preventing women's access to justice are prioritized and overcome. This extends to creating a justice avenue that protects women from economic exploitation, unfair labour practices, physical harm and unequal pay by helping them to access justice to address emerging unfair practices.

Feminization of the justice sector and strengthening the justice experience for women should be prioritized in the study countries. Women in leadership positions, including the police services and judiciary, contribute to ensuring better experiences for women who are witnesses and survivors of abuse and discrimination by making the process less distressing for women and girls who appear before them. They may be less likely to make sexist

comments or ask victims about their intentions, helping victims to open up to the process. In other instances, women judges may provide litigants with holistic justice solutions, making formal justice systems more appealing, and their presence alone may be appealing to female victims. Member States and other stakeholders are encouraged to enhance training for all judicial personnel, police officers and prison staff on advancing access to justice for women. This will ensure that they respond to the dynamic needs of women in accessing gender-responsive justice and in ensuring proper enforcement of the legislative provisions on protection of women and access to justice for women.

The study also recommends strengthening victim and survivor protection, as culture-associated fear of negative consequences and backlash from the community (reprisals and revictimization) among survivors of sexual violence prevents them from reporting it to the police, seeking treatment, guidance and counselling and giving evidence during court proceedings. Patriarchal systems and male-dominated rural societies, in which cultural and religious laws define what women do or say, have a great influence in disenfranchising women from seeking justice. There is a need to invest more in establishing women-only courts, which will cater for the specific experiences of women who are victims and survivors of GBV, as in countries such as Kenya, where there are children-only courts. Governments are advised to remove barriers to accessing justice for women such as court fees and lack of representation in court, as witnessed in all 10 study countries. This is done by waiving court fees and providing advocates to women, including women with disabilities, at government cost. In addition, stakeholders in the study countries need to create policies and laws that favour investment in and creation of disability-inclusive services for women to access justice. This includes investing in the architecture of the court buildings, providing sign language interpretation, providing access to facilities and assistance for women with disabilities, and responding to the needs of these women in the justice system while reducing procedures that could delay the delivery of justice to them.

At the community level, there is a need to engender traditional justice systems to ensure that they understand gender issues and that their committees are gender sensitive and women are represented. This study finds that traditional justice systems led by women and those where women were part of the decision-making proved more gender sensitive in issuing their judgments

and were more responsive to the needs of women and girls who accessed justice after experiencing GBV. In addition, cases sitting before committees including women representatives took a shorter time to expedite than those sitting before male-dominated judges who showed patriarchal tendencies that disregarded women's needs, resulting in biased judgments favouring the male perpetrators of the violence. In this regard, there is a need for sustaining engagement with traditional and religious leaders and cultural authorities in engendering the traditional dispute resolution systems at community level, actively responding to the justice needs of women, building positive forms of masculinity, and ending retrogressive cultural practices and stereotypes against women and girls through an engagement strategy. This is in addition to ensuring that the customary laws are in line with constitutional provisions on fundamental rights and international human rights standards; declaring the illegality of customary laws that are discriminatory towards women and girls, for example early marriages; and developing a coordinated community response on matters of violence against women and access to justice for women.

Conclusion

Although efforts are being made by individual countries to end GBV, the statistics remain high, especially on IPV, non-partner sexual violence, conflict related GBV and harmful practices. Significant adoption by institutions and internal reforms of different agencies aimed at creating systemic approaches towards reducing GBV have not been very successful. Therefore, urgent integrated interventions that address GBV at the national level in all the countries studied are needed.

The potential for women to access justice can be found across cultures, customs, tribes and traditions and is closely connected to values of equity, accountability, fairness and impartiality. In practice, however, women have consistently suffered pervasive attitudinal, structural and systemic challenges in pursuing access to justice. The 10 study countries have enabling policies, legal frameworks, standards and laws that promote the rights of women to access justice; however, some of these legal frameworks exist alongside negative cultural practices and discriminatory statutes, including lack of equality and equity with men. Overall, inequality, discrimination and violation of rights are still prevalent and connected to financial and technical barriers, from patriarchal attitudes, an practices of disinheritance and GBV.

Access to justice for women and girls with disabilities is riddled with more challenges, as access to courts or support in the justice system is hardly prioritized. The structures of the courts are not disability-inclusive, as they do not have ramps, sign language interpreters or Braille in most of the countries studied. For women and girls with intellectual disabilities, it can be concluded that there is a lack of state accountability as manifested by the insufficient documentation of cases of GBV against people with intellectual disabilities. There is limited knowledge of the reproductive health rights of women and girls with intellectual disabilities among office bearers. The study also noted a lack of sufficient data and constitutional approaches to facilitating access to justice for lesbian, gay, bisexual and transgender persons.

The 10 study countries and various Member States, agencies and stakeholders from East and Southern Africa have designed and promoted agreements, conventions and protocols to promote access to justice for women. Relevant laws and regulations include sexual violence and domestic violence laws, anti-corruption laws, and family status laws regulating marriage, divorce, custody and inheritance. The study cautions that these legal and policy frameworks are not in themselves sufficient drivers for dismantling the systemic barriers identified and must be paired with effective enforcement and comprehensive prevention and protection efforts in order to realize the vision of access to justice for survivors of VAWG.



Photo: UN Women/ Eva Sibanda