

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



© 2021 UN Women. All rights reserved.

View the report at: <http://africa.unwomen.org/en/digital-library/publications>

The views expressed in this publication are those of the authors and do not necessarily represent the views of UN Women, the United Nations or any of its affiliated organizations. The boundaries and names shown, and the designations used on the maps in this report do not imply official endorsement or acceptance by the United Nations. The names used in the case studies do not necessarily represent the actual names of those mentioned.

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



ENDING VIOLENCE AGAINST WOMEN
East and Southern Africa Regional Office



ABOUT UN WOMEN

UN Women works for the elimination of discrimination against women and girls; the empowerment of women; and the achievement of equality between women and men as partners and beneficiaries of development, human rights, humanitarian action and peace, and security. Placing women's rights at the centre of all its efforts, the UN Women leads and coordinates United Nations system efforts to ensure that commitments on gender equality and gender mainstreaming translate into action throughout the world. It provides leadership in support of Member States' priorities and efforts, building effective partnerships with civil society and other relevant actors. UN Women also contributes to gender equality and the empowerment of women and girls by addressing issues of obtaining justice for victims and survivors of violence against women. UN Women regional publications can be accessed on the link <https://africa.unwomen.org/en/digital-library/publications>

TABLE OF CONTENTS

ABOUT UN WOMEN	IV		
TABLE OF CONTENTS	V		
ACKNOWLEDGEMENTS	VIII		
ABBREVIATIONS	X		
DEFINITION OF KEY TERMS	XI		
LIST OF FIGURES	XII		
LIST OF TABLES	XIII		
LIST OF CASE STUDIES	XIV		
EXECUTIVE SUMMARY	XVI		
Introduction	xvi		
The rugged terrain of violence against women and girls	xvii		
The unpredictable journey of access to justice for women and girls	xvii		
Interventions on delivering justice for women and girls	xviii		
The gendered dimension of the effect of the COVID-19 pandemic on access to justice for women	xviii		
Recommendations	xx		
Conclusion	xxi		
1. BACKGROUND AND CONTEXT OF THE STUDY	1		
1.1 UN Women: background	1		
1.2 State of access to justice for women and girls	1		
1.3 COVID-19 and women's access to justice	3		
1.4 Objectives of the study	3		
1.5 Scope of the study	4		
2. STUDY METHODOLOGY	5		
2.1 Study approach	5		
2.2 Data collection tools and methods	6		
2.3 Sampling and collection of data	7		
2.4 Data analysis	8		
2.5 Quality assurance, data management and reporting	8		
2.6 Research quality and ethics of the study	9		
2.7 Limitations of the study	9		
2.8 Theoretical framework	10		
2.9 Conceptual framework	10		
3. FINDINGS, CONCLUSIONS AND RECOMMENDATIONS	12		
3.1 Introduction	12		
3.2 Response rates	12		
3.3 Gender of respondents	13		
3.4 Organizations at the forefront of advocating for access to justice for women	13		
3.5 Types of justice systems for women in the study countries	14		
3.6 Community practices that hinder access to justice for women	15		
3.7 Awareness of places where women in the community seek justice	15		
3.8 Availability of free legal assistance for women	17		
3.9 Corruption in the justice chain	18		
3.10 Gender-responsive access to justice	19		
3.11 Who do women trust most to resolve their disputes?	19		
3.12 Women's trust in courts of law	21		
3.13 How often do women have to pay bribes, informal payments or other inducements to expedite a court process in your country?	21		
3.14 Women's trust in traditional leaders for dispute resolution	22		
3.15 Trust in the religious community in offering justice for women	22		
3.16 Do the courts have disability-inclusive access to justice services for women with disabilities?	23		

3.17	Are court fees hindering women's access to justice?	24
3.18	Language as a barrier for women's access to courts	25
3.19	The length of time it takes to resolve a case	25
3.20	Gender considerations in prosecuting matters on gender-based violence	26
4.	GENDER-BASED VIOLENCE AND ACCESS TO JUSTICE FOR WOMEN AND GIRLS	29
4.1	Global and regional gender-based violence analytical review	29
4.2	The multiple forms of gender-based violence	31
4.2.1	Intimate partner violence	31
4.2.2	Sexual violence by non-partners	31
4.2.3	Conflict-related gender-based violence	32
4.2.4	Harmful practices	33
4.3	Overview of country good practices on gender-based violence response systems	33
4.4	Country findings, review and situational analysis of gender-based violence	34
5.	ACCESS TO JUSTICE FOR WOMEN AND GIRLS IN EAST AND SOUTHERN AFRICA	42
5.1	Global context and overview of access to justice for women and girls	42
5.2	Regional overview on access to justice for women in Africa	44
5.3	Manifestations of discrimination faced by women and girl survivors and victims of violence in accessing justice	46
5.4	Mapping access to justice interventions and initiatives for women in East and Southern Africa	48
5.5	Existing justice delivery institutions in East and Southern Africa	54
5.6	Challenges of access to justice for women and girls in East and Southern Africa	60
5.7	Women and girls with disabilities, including intellectual disabilities	67
5.8	Lesbian, gay, bisexual, transgender and intersex persons	70

6.	LEGISLATIVE AND POLICY FRAMEWORKS FOR ACCESS TO JUSTICE IN EAST AND SOUTHERN AFRICA	71
6.1	Review of legislative and policy frameworks for access to justice	71
6.2	Signatories to CEDAW in East and Southern Africa	72
6.3	Legislative review of access to justice for women by country	76
6.3.1	What does the law say about access to justice for women?	76
6.3.2	Are women-friendly justice principles given authority in law, policy regulations and training, including regarding statements taken from women, the provision of evidence by women, court set-up when women testify, privacy and confidentiality?	79
6.3.3	Does the law provide for training of police and judicial officers to uphold women's protection?	81
6.3.4	Is knowledge on the part of the police and courts ensured through the constant availability of relevant laws in all justice delivery structures?	84
6.3.5	Discrepancies and gaps between statutory and customary provisions on access to justice for women	85
6.3.6	Does the country have women-specific courts?	89
6.3.7	Do the country laws mandate the establishment of court and police gender desks?	90
6.3.8	6.3.8 Is there a non-discrimination clause in the constitution and does it explicitly mention gender?	91
6.3.9	6.3.9 Does the constitution guarantee equality before the law?	93
6.3.10	6.3.10 Is customary law recognized as a valid source of law under the constitution?	94
6.3.11	Does the law recognize customary courts?	95
6.3.12	Does a woman's testimony carry the same evidentiary weight in court as a man's?	97
6.3.13	Is there compensation for victims of crime? For what kinds of offences? What does this compensation consist of?	98

7. COVID-19 AND ACCESS TO JUSTICE FOR WOMEN IN EAST AND SOUTHERN AFRICA 101

7.1 Global context 101

7.2 Regional analysis for COVID-19: alternative approaches to providing access to justice for women 103

7.3 Country situational analysis of access to justice by women during COVID-19 107

7.4 Good practices in COVID-19 delivery of justice for women 113

8. CONCLUSIONS AND RECOMMENDATIONS 114

8.1 Conclusions 114

8.2 Recommendations 116

ACKNOWLEDGEMENTS

UN Women Senior Management Team

Roberta Clarke, Officer in Charge, UN Women East and Southern Africa Regional Office (March 2020-March 2021); Anna Mutavati, Kenya Country Representative; Clara Mah Anyangwe, Malawi Country Representative; Delphine Serumaga, Zimbabwe Country Representative; Hodan Addou, Tanzania Country Representative; Jennet Kem, Burundi Country Representative; Marie Laetitia, Mozambique Country Representative; Letty Chiwara, Ethiopia Country Representative and liaison to the African Union; and Peterson Magoola, UN Women South Sudan Country Representative.

UN Women Report Team

Zebib Kavuma, UN Women Deputy Regional Director for East and Southern Africa; Sadiq Syed, UN Women Somalia Country Programme Manager; Sunita Caminha, Policy Specialist for Ending Violence Against Women and Girls for East and Southern Africa; Jack Onyisi Abebe, UN Women Knowledge Management and Research Specialist for East and Southern Africa; and Evelyn Ongige, UN Women Programme Assistant for Ending Violence Against Women and Girls for East and Southern Africa.

UN Women staff at the country offices

Ntirampeba Scholastique, Programme Specialist for Ending Violence Against Women and Human Rights, Burundi; Addisalem Befekadu, Programme Specialist for Ending Violence Against Women and Girls, Ethiopia; Etsehiwot Eguale, Programme Specialist for Ending Violence Against Women, Ethiopia; Grace Wangechi, Programme Analyst for Gender-based Violence, Kenya; Habiba Osman, Programme Specialist, Malawi; Pamela Mkwamba, Programme Specialist, Malawi; Ondina da Barca Vieira, Programme Specialist, Mozambique; Fernanda Bernado, Programme Specialist, Mozambique; Monalisa Zatjirua, Programme Officer for Gender Based Violence, South Sudan; Paulina Chiwangu, UN Women South Sudan Deputy Country Representative; Monalisa Zatjirua, UN Women South Sudan Programme Officer; Abdikadir Ahmed Noor, Programme Officer for Rule of Law, Somalia; Lucy Tesha, Programme Analyst, Tanzania; Racheal Boma, UN Women Tanzania Programme Specialist, Women's Access to Justice; Lucy Tesha, UN Women Tanzania Programme Specialist, Ending Violence Against Women and Girls; Jackline Chami, UN Women Tanzania Programme Analyst, Women's Access to Justice; Beatrice Mulindwa, Programme Specialist, Uganda; and Molline Marume, Programme Specialist for Ending Violence Against Women, Zimbabwe.

UN Women Headquarters, New York

Beatrice Akua Duncan, UN Women Policy Adviser for Rule of Law, Justice and Constitution.

Consulting firm

Interface Research and Consultancy

UN agencies, stakeholders, civil society organizations and women's rights organizations, and government

UN Women extends its appreciation to all stakeholders consulted during the study and its validation. It also extends its appreciation to UNICEF, UNFPA and UNDP, the entire justice systems in all the ten countries including the judiciary, police and prosecution who played a critical role in the study's quality assurance and peer review processes. We also appreciate Tarkuo Wolfgang Weah, UNDP Access to Justice Officer for South Sudan; Josephine Chandiru, Steward Women South Sudan Executive Director; Ahmed Hassan Yusuf, Director General Ministry of Justice-Federal Government of Somalia; Ismail Haji Abdi, Director General-Ministry of Justice, Religious Affairs, Constitution and Rehabilitation Puntland state of Somalia; Bedel Abdi Jama, Director General-Ministry of Justice, endowments, and religious affairs Jubaland state of Somalia; Mohamed Deck, Director General-Ministry of Justice and Judiciary affairs Southwest state of Somalia; Shukria Dini, Somali Women Studies Centre Executive Director; Hawo Idil Omar Mohamud, UNDP Somalia Project Officer; Virginie

Blanchard, Justice Technical Specialist-UNSOM Somalia; Abdiweli Waberi, Justice Technical Advisor-Ministry of Justice Puntland Somalia; Khowla Mohamed Addow, Alternative Dispute Resolution Coordinator-Ministry of Justice Southwest State of Somalia; Tanzania based CSOs including Msichana Initiative; Tanzania Women Judges Association (TAWJA); Tanzania Network for Legal Aid Providers (TANLAP); Kivulini; Kividea; Women Fund Tanzania (WFT); Tanzania Media Women Association (TAMWA) and Women in Law and Development Africa (WILDAF). We also appreciate Uganda participants including the Ministry of Gender Labour and Social Development, the Uganda Police and the Office of the Director for Public Prosecutions. We acknowledge Ethiopia Federal Attorney General; Ethiopian Network of Women Shelters; Norwegian Church Aid and its faith based partners in Ethiopia and the Ethiopian Ministry of Women, Children and Youth Affairs among other individuals, agencies and stakeholders who participated in the study.

EVAW Reference Group Members

We acknowledge the inputs of all Reference Group members in the conceptualisation and validation of the study. Specifically, we acknowledge Justice Fiona Mwale-Women Judges Association of Malawi; Bafana Khumalo-Sonke Gender Justice Network; Maimuna Mwakanyamwale-Kivulini Women Rights Org; Mary Balikungeri-Rwanda Womens Network; Philip Erick Otieno-Men for Gender Equality; Bil-Lene Seyoum Woldeyes-Earuyan Solutions; Tina Musuya-Centre for Domestic Violence Prevention; Nadia Uwimana-Association for women with disabilities (les Vaillantes) and Kamlaknesh Yessin-Setaweet Movement.

Design

Robert Kambo

ABBREVIATIONS

AIDS	Acquired Immunodeficiency Syndrome
CEDAW	The Convention On The Elimination Of All Forms Of Discrimination Against Women
COVAW	Coalition On Violence Against Women
CSO	Civil Society Organization
ESAR	East And Southern Africa Region
EWLA	Ethiopian Women Lawyers Association
FGD	Focus Group Discussion
FGM	Female Genital Mutilation
GBV	Gender-Based Violence
HIV	Human Immunodeficiency Virus
IDLO	International Development Law Organization
IPV	Intimate Partner Violence
JJU	Jigjiga University
LGBTI	Lesbian, Gay, Bisexual, Transgender And Intersex
NGO	Non-Governmental Organization
OCS	Officer Commanding Station
SDG	Sustainable Development Goal
SGBV	Sexual And Gender-Based Violence
VAWG	Violence Against Women And Girls

DEFINITION OF KEY TERMS

Term	Definition
Intimate partner violence	Intimate partner violence refers to behaviour by an intimate partner or ex-partner that causes physical, sexual or psychological harm, including physical aggression, sexual coercion, psychological abuse and controlling behaviour.
Violence against women	The United Nations defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” ¹
Sexual violence	Sexual violence is “any sexual act, attempt to obtain a sexual act, or other act directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting. It includes rape, defined as the physically forced or otherwise coerced penetration of the vulva or anus with a penis, other body part or object.” ²
Harmful traditional practices	‘Harmful traditional practices’ refer to traditional beliefs and customs that underscore control over women and girls and are thus “consequences of the value placed on women and girls by society.” ³
Justice	Justice is “an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Its administration involves both formal judicial and informal/customary/traditional mechanisms.” ⁴
COVID-19	COVID-19 is the disease caused by a new coronavirus SARS-CoV-2. The World Health Organization first learned of this new virus on 31 December 2019, following a report of a cluster of cases of ‘viral pneumonia’ in Wuhan, People’s Republic of China. ⁵
Access to justice	Access to justice is “the ability to approach and influence decisions of those organs which exercise the authority of the state to make laws and to adjudicate on rights and obligations.” ⁶

1 United Nations General Assembly. 1993. Declaration on the Elimination of Violence against Women. A/RES/48/104.

2 Violence Info – Sexual violence – Sexual Violence. Retrieved July 12, 2021, from <http://apps.who.int/violence-info/sexual-violence>

3 Fact Sheet No.23, Harmful Traditional Practices Affecting the Health of Women and Children available at <https://www.ohchr.org/documents/publications/factsheet23en.pdf> (Accessed 12th

4 United States Institute of Peace and United States Army Peacekeeping and Stability Operations Institute. 2009. Guiding Principles for Stabilization and Reconstruction. Washington, D.C.: United States Institute of Peace.

5 World Health Organization. 2020. “Coronavirus disease (COVID-19).” Accessed 22 June 2021. <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19>.

6 Ghai, Y. and J. Cottrell. 2008. Rule of Law and Access to Justice: Findings of an ABA Project on Access to Justice, Prepared for World Justice Forum, Vienna, 2–5 July 2008.

LIST OF FIGURES

Figure 1:	Socioecological model	11
Figure 2:	Gender of respondents (%)	13
Figure 3:	Age of respondents	13
Figure 4:	Education level of respondents	13
Figure 5:	Organizations advocating for access to justice for women	14
Figure 6:	Community practices affecting access to justice	15
Figure 7:	Awareness of places to access justice for women	16
Figure 8:	Likelihood that poor women receive legal aid in accessing to justice	16
Figure 9:	Likelihood of receiving legal aid during initial police custody	16
Figure 10:	Availability of legal assistance for women and Legal aid provided excludes court fees	17
Figure 11:	Awareness of courts and Existence of official internet sites for legal information	18
Figure 12:	Public officials normalize corruption	19
Figure 13:	Responsiveness of access to justice services	19
Figure 14:	Responsiveness of judgments to women’s needs and Compensation as per the judgment	20
Figure 15:	Do judges request bribes?	21
Figure 16:	Do traditional justice committees have women in them?	22
Figure 17:	Women’s trust in courts of law, traditional leaders, religious institutions offering justice	23
Figure 18:	Disability-friendly services and Disability-inclusive facilities	24
Figure 19:	Barrier to access to justice for women	25
Figure 20:	Capacity of the judiciary to determine cases promptly	26
Figure 21:	Does gender matter in prosecutions?	26
Figure 22:	Does the gender of a judge matter?	27
Figure 23:	Are your courts free from discrimination?	27
Figure 24:	Does the government obey court decisions?	28
Figure 25:	Various aspects of access to justice	28
Figure 26:	Map of global prevalence estimates of past 12 months physical and/or sexual intimate partner violence among ever-married/partnered women aged 15–49 years, 2018	30
Figure 27:	Women’s access to justice programming entry points	43
Figure 28:	Low- and middle-income countries’ gender gaps in mobile phone ownership for women	104
Figure 29:	Regional gender gaps in mobile ownership and mobile internet use, 2017–2019	105
Figure 30:	Barriers to accessing technology-driven justice solutions	107
Figure 31:	Circular of courts closure by Uganda Chief Justice as a result of the COVID-19 pandemic on 19 March 2020	112

LIST OF TABLES

Table 1:	Sample size distribution	8
Table 2:	Category of respondents	13
Table 3:	Dispute resolution mechanisms	20
Table 4:	Frequency of bribery	21
Table 5:	Case dissolution duration	26
Table 6:	Signatories to CEDAW	72
Table 7:	Country status on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	73
Table 8:	International and regional frameworks on access to justice	74
Table 9:	Country laws on access to justice for women	76
Table 10:	Women-friendly justice principles	79
Table 11:	Country laws on training of police and judicial officers	81
Table 12:	Country knowledge of police and courts through constant availability of relevant laws	84
Table 13:	Discrepancies and gaps between statutory and customary provisions on access to justice for women	85
Table 14:	Women-specific country courts	89
Table 15:	Country laws on establishment of gender desks	90
Table 16:	Country gender non-discrimination laws	91
Table 17:	Constitutional guarantee of gender equality	93
Table 18:	Recognition of customary laws as valid sources of law	94
Table 19:	Recognition of customary courts	95
Table 20:	Evidentiary weight of a woman's testimony	97
Table 21:	Compensation of victims of violence	98
Table 22:	Technology adoption for justice delivery in courts during the COVID-19 pandemic	108

LIST OF CASE STUDIES

Case Study 1:	Justice in the property row for women	15
Case Study 2:	Fear of reprisal hinders access to justice	35
Case Study 3:	How cultural practices can perpetuate violence against women and girls	37
Case Study 4:	Using culture to protect perpetrators of violence against women and girls	37
Case Study 5:	The dark claws of incest	37
Case Study 6:	Gender-based violence and intimidation by a male police officer in Kenya	45
Case Study 7:	Ethiopia's shelters for women and girl survivors of violence	51
Case Study 8:	Legal aid clinics in legal education institutions in Ethiopia	52
Case Study 9:	Landmark ruling for 2007 post-election sexual violence victims as per the Constitutional Petition No. 122	57
Case Study 10:	Malawi Landmark High Court ruling on compensation of victims of rape	58
Case Study 11:	Traditional court system in Zimbabwe	58
Case Study 12:	Customary justice on divorce	63
Case Study 13:	Police victimization in Ethiopia	65
Case Study 14:	The entrenched tendons of customary laws enable case manipulations in Ethiopia	66
Case Study 15:	The journey to justice for a girl with hearing and speech impairments in Malawi	68
Case Study 16:	Justice for a woman with intellectual impairments in Kenya	69
Case Study 17:	LGBTI case, Human Rights Awareness and Promotion Forum versus the Attorney General and the Commissioner General of Prisons, High Court Miscellaneous Cause No. 81 of 2020	70
Case Study 18:	Mobile call centre for COVID-19-related gender-based violence victims in Uganda	111

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

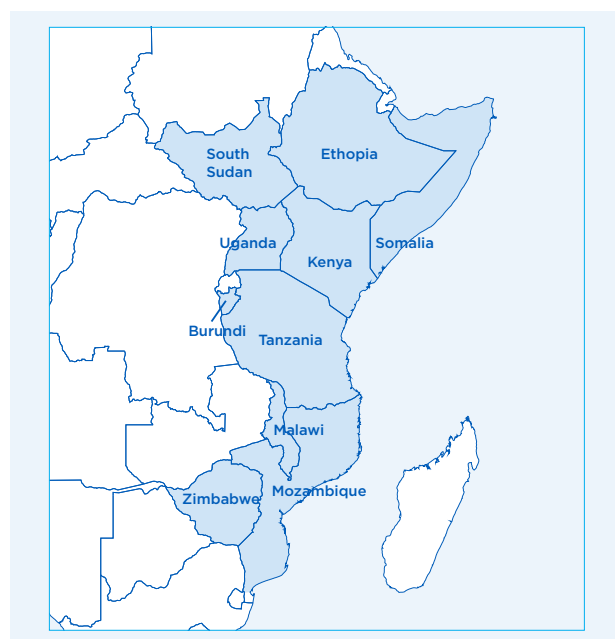
EXECUTIVE SUMMARY

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.



Study countries that data was collected

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. 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 i) survivor-centred approach; ii) legislating for the provision of funding; iii) strengthening the justice system; iv) inter-agency coordination; v) initiatives focusing on the needs of specific groups; and vi) 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.

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 in mainstreaming gender in the justice sector, while also exploring targeted initiatives such as women-only courts, where relevant. This will allow for expanded justice options meeting the specific experiences of women and girl survivors of GBV. 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 SGBV 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.

CHAPTER 1:

BACKGROUND AND CONTEXT OF THE STUDY

1.1 UN Women: background

UN Women, grounded in the vision of equality enshrined in the Charter of the United Nations, works for the elimination of discrimination against women and girls; the empowerment of women; and the achievement of equality between women and men as partners and beneficiaries of development, human rights, humanitarian action, and peace and security. Placing women's rights at the centre of its efforts, UN Women leads and coordinates United Nations systemic efforts to ensure that commitments to gender equality and gender-mainstreaming translate into action throughout the world. It provides a strong and coherent leadership in supporting Member States' priorities and efforts, building effective partnerships with civil society and other relevant actors. UN Women also contributes to gender equality and the empowerment of women and girls by addressing issues of obtaining justice for victims and survivors of violence against women.

1.2 State of access to justice for women and girls

Violence against women and girls is a global issue and is the most pervasive and widespread human rights violation. More than 1 in 3 women (36.6 per cent) globally report having experienced physical and/or intimate partner violence or sexual violence by a non-partner.⁷ Similar to many other regions, the East and Southern Africa region also faces different challenges in preventing and responding to violence against women, including weak legislation and accountability dominated by patriarchy, harmful social and traditional norms, women not knowing their entitlements and rights, discrimination, ineffective prevention initiatives, underreporting of cases, impunity, inadequate coordination and implementation of policies and laws, and limited access to essential services. Access to justice for all is a cornerstone of democracy and a predominant goal set by nations globally. Access to justice is multidimensional. It encompasses the justiciability, availability, accessibility,

quality and accountability of justice systems, and the provision of remedies for victims.

Globally, women and girls face challenges to obtaining justice in their capacities as claimants, victims, survivors, witnesses or offenders, often driven by entrenched discrimination, gender bias, stereotyping, stigma, indifference, corruption and impunity at the institutional, policy and legislative levels. Women who face multiple intersecting forms of discrimination, including women with disabilities and those affected by conflict, are often in the most disadvantaged positions because of a lack of access to high-quality, reliable and equitable justice services. For some women, access to justice is a matter of life and death and cannot be put on hold even for a day or two.

All of the study countries have adopted some legislation to address violence against women and to make justice accessible for women. Although countries have adopted laws addressing violence against women, not all forms of violence against women are criminalized and violence against women and girls

7 Devastatingly pervasive: 1 in 3 women globally experience violence. (n.d.). Retrieved July 12, 2021, from <https://www.who.int/news/item/09-03-2021-devastatingly-pervasive-1-in-3-women-globally-experience-violence>.

(VAWG) continues to be a significant problem. There is also greater awareness of newer forms of VAWG, such as technology-assisted violence (revenge porn, cyberbullying and harassment). Across the different forms of violence, however, there is a pattern of systematic impunity throughout the justice chain (from prevention, early detection and reporting, investigation, pre-trial, decision to prosecute, trial and sentencing, and correction) in cases of violence against women.⁸ This is because many of these cases are never effectively investigated and punished, or because proper redress is not provided. This is linked to the male-dominated composition of the judicial system globally, which is often influenced by politics, religion and patriarchal customary norms and discriminates against women and girls. Despite having the qualifications and capacities to preside over the formal and informal justice systems, very few women are provided with that opportunity. The impunity in these human rights violations perpetuates a social acceptance of violence against women, which in turn increases women's sense of insecurity and their mistrust in the administration of justice. Given these deficiencies, the number of trials and convictions does not measure up to the severity of the problem.⁹

The impunity in these human rights violations perpetuates a social acceptance of violence against women, which in turn increases women's sense of insecurity and their mistrust in the administration of justice. Given these deficiencies, the number of trials and convictions does not measure up to the severity of the problem.

In addition to national laws and policies, various international and regional frameworks have been adopted to ensure access to justice for people in general and women in particular. These are complemented by other documents to increase women's access to justice, such as guiding principles adopted by the International Commission of Jurists and International Association of Women

Judges, among other bodies. Existing continental frameworks provide a foundation to guide access to justice for women and girls and include: the African Charter on Human and People's Rights, also known as the Banjul Charter (1986); the African Charter on the Rights and Welfare of the Child (1990); the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, better known as the Maputo Protocol (1995, effective 2005); Agenda 2063 (2015); and the African Youth Charter (2006). Consequently, the United Nations instruments, frameworks and platforms on access to justice, including the Universal Declaration of Human Rights (1948); the International Covenant on Civil and Political Rights (1966); the International Covenant on Economic, Social and Cultural Rights (1966); the Convention on the Elimination of All Forms of Discrimination against Women (1979);

the Convention on the Rights of the Child (1989); the Declaration on the Elimination of Violence Against Women (1993); the Beijing Declaration and Platform for Action (1995); General Recommendation No. 33 of the sixty-first session of the Committee on the Elimination of Discrimination against Women (2015) on access to justice, the United Nations Security Council Resolution 1325 (2000) and subsequent resolutions; and the Sustainable Development Goals (2015).

Guided by UN Women's global strategy, its flagship programmes and the Africa Strategy, UN Women country and multi-country offices in the East and Southern Africa region (ESAR) are already working on addressing several of the key issues in women's access to justice in both formal and informal justice institutions. With regard to the informal justice system, the UN Women Regional Office for East and

8 This aligns with framing in the Essential Services Package on access to justice, which outlines the steps in the justice chain as prevention; initial contact; investigation; pre-trial/hearing processes; trial/hearing processes; perpetrator accountability and reparations; and post-trial processes.

9 UN Women, UNDP (United Nations Development Programme), UNODC (United Nations Office on Drugs and Crime) and OHCHR (Office of the United Nations High Commissioner for Human Rights). 2018. A Practitioner's Toolkit on Women's Access to Justice Programming: Module 3 – Ending Violence Against Women. New York: UN Women, UNDP; Vienna, UNODC; Geneva, OHCHR. https://www.ohchr.org/Documents/Publications/PractitionerToolkit/WA2J_Module3.pdf.

Southern Africa partnered with traditional leaders in Africa and supported the establishment of the Council of Traditional and Cultural Leaders of Africa. The Council 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, it has created a platform for intergenerational dialogue between young people and traditional leaders on matters that affect women, including poor access to justice. Other initiatives at country level include the national comprehensive mapping and analysis of national laws as a step towards the elimination of discriminatory laws in Zambia.

A number of capacity-building and training initiatives have also been implemented in a number of countries specifically for police, prosecutors, women lawyers, judges and traditional leaders to strengthen the justice system and to make justice delivery accessible and ensure that the judgments are in conformity with international and regional legal frameworks. The justice system is supported by standardized tools such as the 'Special Investigation Manual for Cases of Violence against Women and Girls' and by improving the administrative data management system.

The effective implementation of the 2030 Agenda for Sustainable Development is not possible without access to justice for women. If the commitment of 'leaving no one behind' and reaching the furthest first is to be attained, justice services must reach those who are excluded, including women. Ensuring women's rights and access to justice promotes inclusion, participation in decision-making and economic empowerment and builds sustainable peace.

1.3 COVID-19 and women's access to justice

This report cannot overlook the global shock of 2020. The study establishes that the advent and persistence of the COVID-19 crisis have seriously tested the resilience of justice systems globally. It is evident that 2020 has changed the landscape of access to justice for women and girls not only in the region but also across the world. Apart from the weak justice delivery systems that entirely depended on physical

judicial proceedings and processes in navigating the justice terrain, women and girls were 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' in order 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.

1.4 Objectives of the study

The study contributes to UN Women's work on gender equality and the empowerment of women and girls with a focus on access to justice for women and girls to ensure equality, dignity and the protection of women's rights in line with the UN Women East and Southern Africa Strategic Note (2018–2021).

The specific objectives were:

- a) Documenting the various forms of discrimination faced by women and girl survivors and victims of violence, including women and girls facing intersecting discrimination on the basis of their abilities, sexual orientation or age, in accessing both statutory and customary (legal, social, cultural, institutional, procedural) justice, drawing on both desk research and key informant meetings;
- b) Identifying and mapping good and promising practices and gaps in the legislative and policy frameworks (statutory and customary) related to violence against women and girls in research countries in ESAR;
- c) Compiling available data and practices on survivor support (which include recovery services, the number of cases reported, the number of cases taken up at various levels and disposal rates by courts); and
- d) Identifying and recommending priority areas for programming and policy support to promote access to justice for women, including in COVID-19 related emergencies, and recommending measures for increasing the number of women in the judiciary both in customary and formal systems.

1.5 Scope of the study

The scope of the multi-country analytical study on access to justice for women and girls included:

- a) Geographically:** The study covered 10 selected country offices in ESAR – Burundi, Ethiopia, Kenya, Malawi, Mozambique, Somalia, South Sudan, Tanzania, Uganda and Zimbabwe.
- b) Thematically:** The study focused on the forms of discrimination faced by women and girls, good and promising practices and existing gaps, interventions, and implementation of policies and laws undertaken to improve access to justice. The study identifies and recommends priority areas for programming in both customary and formal systems.
- c) Target population:** The study adopted a multilevel analysis that covered the formal and informal justice institutions (justice system) at community and individual levels to examine access to justice in the 10 countries. Specifically, it targeted key institutions dealing with and addressing the issues of access to justice regionally or nationally, staff of judicial offices (judges, magistrates, lawyers and prosecutors, and police officers), local government (administration officers, including chiefs and local elders), and traditional and religious leaders. To enhance cross-referencing and corroboration of the case studies, survivors and victims of gender-based violence were also interviewed in the processes of data collection. This was done with consideration for survivor-centred and ethical data collection practices.

CHAPTER 2:

STUDY METHODOLOGY

2.1 Study approach

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's and girls', as it derives qualitative contextual analysis from practical experiences. A purposive sampling approach was used to identify key representatives of organizations, magistrates, judges, women's rights organizations, United Nations staff and other stakeholders. Snowball sampling and chain referral sampling were used to identify victims and survivors of gender-based violence (GBV) in a more survivor-centred way. The study data were collected through secondary or desk review and analysis of available publications, policy frameworks, case files and traditional and cultural laws on access to justice in the 10 study countries.

This report presents an analysis of policy options and primary field visits, which were largely virtual because of the COVID-19 situation, and in some instances involved country researchers. The research methodology was guided by progressive contextualization, a problem-in-context and action-oriented research methodology developed by the anthropologist Professor Andrew Vayda in the 1980s to explain people–nature relationships and later increasingly used by social scientists to explain social changes. In this case, progressive contextualization implies a focus on the primary actors who influence access to justice and survivors, their motivations, the factors and the secondary actors that influence their social behaviour and on the secondary actors, their motivations and factors that influence their behaviour, and so on. This strategy aids understanding of the key drivers underlying access to justice for survivors and victims and good practices to enhance access to justice for women and girls in Africa. The researchers developed semi-structured interviews following the progressive contextualization method and used coding techniques to conduct the analysis of all reference documents, interview notes, group discussion transcripts and survey findings. Coded content on key research questions was produced from all lines of evidence to allow triangulation analysis. Gender analysis used sex, disability, socioeconomic status

and norms disaggregated data to explain nuances in the causes and effects of gender inequalities.

The study employed methodological triangulation to ensure that there were multiple sources of evidence for validity and reliability and to counter the shortcomings of any one data collection method. The study conducted a multilevel examination of access to justice by exploring the structural, legislative, institutional, policy and policy factors and experiences in the 10 countries. Key sources of data and information for the study were policies and players; social and cultural agents including government officers and intervention implementers at regional, country and community levels. Religious and traditional leaders and cultural institutions were also involved, as they are recognized as having a central role as agents and custodians of social change and cultural values. Where ethically possible, testimonies from GBV survivors were also documented as case studies. The case studies were a substitute for recordings of live court proceedings because of the COVID-19 restrictions on such proceedings. The study used multipronged strategies and approaches that provided several elements of data collection. These included desk review, use of online and tele-surveying methods, in-country visits, virtual meetings, virtual surveys, case studies and review of records.

2.2 Data collection tools and methods

To collect information from the selected countries, data collection tools were developed such as key informant questionnaires, online surveys and focus group discussions (FGDs). The tools were reviewed and agreed upon in conjunction with UN Women during the initial consultations. The study prioritized in-person data collection (including face-to-face interviews) because this guaranteed greater responsiveness. Due to COVID-19 regulations and restrictions on movement, the researchers subsequently had to adopt virtual interactions and tele-interviewing.

- 1. Literature review/desk study:** The desk review covered relevant documents such as court files, perusals and rulings, legislative framework, policies and legislation of the various countries with regard to access to justice for women and girls. The review involved other relevant documents and literature available on access to justice for women. It provided secondary data on existing documented information on countries' status in relation to access to justice and strategic interventions. Desk review of court processes and proceedings where publicly available, policies, legislation, statistical analysis and data references, and household survey data was used to assess cultural practices, and the reasons for lack of and factors mitigating against access to justice. This extended to a review of existing studies on access to justice in the 10 countries, relevant organizational policies and reports, public court reports and files, police reports, strategic plans, government policies, strategies and laws. Court files were reviewed on a case-by-case basis to extract and determine proceedings and judgments. This entailed a review of the documents, journals and reports on access to justice and the data used for comparative purposes and established lists and trends. All such data and records are appropriately referenced in the study report.
- 2. Stakeholder consultation:** The study engaged various stakeholders working on access to justice at national and regional levels to understand the regional initiatives on access to justice for women and girls, investment options regarding policy and customary laws for access to justice

and policy imperatives. These included national non-governmental organizations (NGOs), government ministries, women lawyers' and judges' associations, and community organizations and employed various methods to gain their insights and experiences. These included:

- (i) Online questionnaires and surveys:** The study used Microsoft forms online survey techniques by constructing a multilingual survey on SurveyMonkey that was circulated to various stakeholders through emails and other virtual streams. The snowball sampling method was used to randomly circulate the questionnaire as widely as possible among the key informant interviewees and their networks. The survey was distributed to 10 countries and reached 780 people, of whom over 60 per cent were women.
- (ii) Virtual meetings:** Emails, skype calls, webinars or Zoom meetings and telephone interviews, among others, were largely used to obtain data from stakeholders, including United Nations agencies in view of COVID-19 movement restrictions and remote working arrangements. Recordings were made with consent to help in understanding and following up in cases.
- (iii) Case studies:** Case studies were documented to understand the diversity in relation to the implementation of access to justice policies and identified good and promising practices that could be replicated. These were premised on the fact that an adequate storytelling exercise contains four elements: i) a 'good story'; ii) a rigorous reflection on that story; iii) an extrapolation of usable knowledge; and iv) use of the learning or experience to improve practice. They were critical in identifying and examining the process of typical cases filed by women or girl victims or survivors in a court of law and how the case is handled to the end of the process. They also gave examples of real-life experiences of women and girl victims or survivors of violence in their efforts to pursue justice.

- (iv) **FGDs:** These were conducted with purposively identified and selected community gender champions and activists, chiefs, traditional and religious leaders, parents and victims or survivors who were privy to matters of GBV in their communities. Each FGD had an average of 8–12 participants, and a total of 30 FGDs were conducted for the whole study.
- (v) **Key informant interviews:** Key individuals were identified and selected based on their knowledge and experience of access to justice and related issues through UN Women country contacts. This targeted the United Nations agencies (United Nations Children’s Fund, United Nations Population Fund, UN Women, United Nations Development Programme, and United Nations Office on Drugs and Crime), government representatives, judges, magistrates, court clerks, regional civil society, national NGOs, women’s organizations and women lawyers’ associations, among others. Through interviews, key informants gave their opinions on legislation, policy, practices, gaps and cultural issues that relate to women’s and girls’ access to justice and suggestions that can be leveraged to enhance or promote access to justice for women and girls in the East and Southern Africa region.

2.3 Sampling and collection of data

All 10 countries were included in the virtual data collection due to COVID-19 and related travel restrictions. In addition, Kenya, Mozambique, Somalia, South Sudan, Tanzania and Uganda had in-country researchers to conduct primary data via key informant interviews, FGDs, case narrations and interviews with GBV victims and survivors and corroborate the findings and recommendations from the literature review and virtual conversations. This increased opportunities for engagement with relevant stakeholders and data collection points. In addition, comprehensive secondary data and correspondence-based data collection complemented virtual data collection in all 10 countries. The sampling frame for selecting the respondents was based on the hybrid statistical sample size formula proposed by Cochran (1963)¹⁰. This was helpful in

identifying the number of respondents for particular strata in the selected 10 countries. Alongside the sampling frame, a multistage sampling technique was used to identify respondents in the individual interviews, which included stratifying individuals according to control /duty-bearers (judges and police) and treatment/ rights holders (victims and survivors) groups. This selection was helpful in stratifying categories for sufficient abstraction, identifying the right respondents for the study and reducing serial correlation in the data set.

Furthermore, the study used purposive sampling and snowball sampling. In this case, purposive sampling was seen as judgmental, selective or subjective sampling, a form of non-probability sampling in which researchers rely on their own judgment when choosing members of the population to participate in their study. The selection was based on characteristics of the study population and the objectives of the study, and individuals selected identified other relevant respondents who could give information relevant to the study, such as victims or survivors of violence. Purposive sampling ensured that specific conditions that were important in shaping the findings were considered (e.g. selection of respondents based on key information needs). This included FGD participants, key informants and key stakeholders. On the other hand, snowball sampling was used to identify those who have undergone court processes or have tried to access justice through any other means and organizations working on access to justice in the 10 countries.

In addition, snowball sampling was used to identify the survivors and women at risk of violence. However, the study fully observed the ‘Do No Harm’ principle, which always emphasizes respecting people’s privacy and confidentiality, particularly by letting those being interviewed know who will have access to their information and how it will be used. This principle also gave the respondents the option to provide their information anonymously. Moreover, the study observed the ‘Leave No One Behind’ principle, which emphasizes inclusion of all categories of respondents, especially those who are marginalized, including elderly people, people with disabilities and people with HIV. The study worked with the relevant UN Women country focal people to select and organize the data collection points and sources.

10 Cochran, W. G. 2007. *Sampling Techniques*. Hoboken: John Wiley & Sons.

Table 1 summarizes the distribution of the specific data collection processes in each country.

Table 1: Sample size distribution

Activity	Target	Number administered per country
FGDs	Traditional and religious leaders, women and girls, community-based organizations	3
Stakeholders' consultations	Civil society, women's rights organizations, women lawyers' associations and NGOs, government	2
Key informant interviews	United Nations (United Nations Children's Fund, United Nations Population Fund, UN Women, United Nations Development Programme), magistrates and judges, law enforcement agencies (the police, traditional authorities and religious institutions, prosecutors, government representatives, Ministry of Gender, regional civil society, the African Women's Development and Communication Network	18
Victim/survivor interviews¹¹	Victims/survivors	10
Community leader interviews	Community leaders and traditional leaders, including chiefs and local administrators	3
Surveys	General population from the country	78

2.4 Data analysis

The data were analysed to address concerns at regional and national levels, with in-country and comparative analyses conducted. Key findings were discussed with the field team and presented to stakeholders for feedback and contextual outlining of the key findings. Qualitative data, including case studies, were used to triangulate and deepen the analysis by giving and comparing country specifics with people's actual stories. Quantitative data were analysed using various statistical tools such as Stata and SPSS to test emerging hypotheses regarding the state of policy and legal implementation of interventions.

2.5 Quality assurance, data management and reporting

- **Pre-testing the tools:** Pre-testing of the tools is a vital component of the test development processes that ensures the relevance and reliability

of the tools. The study involved conducting a comparative analysis of the proposed draft tool with existing tools that may have been used in similar studies. The study tools were also piloted in different environments, such as rural and urban set-ups, and improved as appropriate.

- **Training of the research team:** The research team underwent a week of training on the expectations of the study. This involved comprehensive training on the ethics of data collection from survivors, and gaining an understanding of the study tools and questionnaire administration, including telephone interviews and online survey tools, to ensure that researchers were competent in administering tools to interviewees.
- **Data recheck:** The researchers conducted a data recheck on every country, court and community visited to monitor the nature and type of data captured by the researchers. This presented an

11 These were all women aged 18 years and over.

opportunity to check quality, learn about and improve on the study processes.

- **Data management:** The study used a data management system, including NVivo qualitative software and CSPro database with unique identifiers to avoid duplicates and minimum and maximum values.
- **Preparation of dummy tables:** Blank data tabulation templates containing the variables and information that was prioritized for interpretation were prepared. These tables ensured that data collection tools collected the data that were envisaged for analysis and were consistent across the countries of study. Each country prepared its country-specific tables, which were integrated to inform the regional level analysis.
- **Validation:** After completion, an extensive validation exercise was undertaken with diverse stakeholders, including UN Women country focal points in all study countries and reference group members, other United Nations agencies, government counterparts and other external stakeholders.
- **Analysis:** The analysis was undertaken in such a way that it addressed concerns at country, and regional levels. These data were compared and analysed as appropriate. Their comparison presents a possibility for the region and countries within it to gauge their own standing in relation to others. Key findings were discussed with the study team and UN Women to get their interpretation of the findings and to add further qualitative inputs to the study. Cross-country analysis and comparisons were undertaken to ensure that the study had a regional outlook. Quantitative data were analysed using SPSS and as per specific objectives. Thematic analysis of qualitative data was coded using NVivo software to establish convergent or divergent views.

2.6 Research quality and ethics of the study

The Research Quality Plus Assessment Framework tool, developed by the International Development Research Centre in Canada, was used to evaluate the quality of the access to justice study based on its originality, integrity, legitimacy, gender responsiveness, engagement with local knowledge, position for use and research importance.¹² This study ensures that the technical quality of the findings is standard for use by research partners and that UN Women are free to influence the uptake of the findings by stakeholders. Consequently, all the appropriate ethical considerations were also undertaken in the study, including seeking consent for conducting interviews, safe use of data, use of acceptable language and seeking consent for recording of face-to-face and virtual interviews.¹³

2.7 Limitations of the study

The study was immensely constrained by the impact of COVID-19 and the resulting restrictions on movement and requirement to work from home in all the study countries. This slowed the responses and coordination between some country offices, which affected the response rate and submission of the study within the planned timelines. For example, political tensions in Tanzania during general elections delayed the start of data collection. Likewise, Ethiopia and Uganda experienced political tensions during the period of the study, which widely affected the collection of data. However, the study team made efforts to overcome the challenges by instituting different mechanisms, including using virtual meetings and tele-interviews to collect data from the respondents.

12 Peña-López, I. 2017. "The Research Quality Plus Assessment Instrument."

13 World Health Organization. 2016. "Ethical and Safety Recommendations for Intervention Research on Violence Against Women (VAW)." Accessed 23 June 2021. <https://www.who.int/reproductivehealth/topics/violence/intervention-research-vaw/en/>.

2.8 Theoretical framework

This study is anchored in radical feminist theories that argue that gender-based and sexual violence are better understood when scrutinized against the backdrop of patriarchy. Patriarchy has been defined as a system of social structures and practices in which men dominate, oppress and exploit women. Radical feminism views patriarchy as an independent social system. Indeed, patriarchal attitudes manifested in religion, tradition and culture have over centuries been used to control women's sexuality. To understand the non-egalitarian traditions and norms, it is important to scrutinize patriarchy.¹⁴

Patriarchy seeks to appropriate social roles and manipulate them for the benefit of men. Women's sexuality is often a key area where power and manipulation are at play. Patriarchy restricts women's autonomy through the regulation of their sexuality. Women's sexuality is a source of power that patriarchy finds threatening and hence it feels the need to control or subjugate it. As a result, often, though not exclusively, women emerge as subordinate. Traditional attitudes to gender roles, inequitable power relations and overall unequal gender relations continue to tilt the balance of heterosexual relations.¹⁵

Perhaps the most popularized expression of the radical feminist theory of patriarchy has been in the interconnected realms of reproduction, sexuality and violence. The feminist analysis of rape radically re-conceptualizes men's sexual assault on women as a tool for political violence that regulates and punishes women and therefore maintains power. Similarly, the concepts of wife-battering and sexual harassment emerge as politically connected because feminists identify them as tactics that effectively keep women subordinate in the home and uncomfortable in the public sphere. The translation of these feminist discoveries into gender-neutral policies about 'spousal abuse' or inappropriate displays of sexuality at work have, however, erased these radical origins.¹⁶

Therefore, the radical feminist theory of patriarchy was deemed relevant to advancing a clearer understanding of the power relations and ethos that women operate in that 'allow' them to succumb to sexual and gender-based violence.¹⁷

2.9 Conceptual framework

This study drew on the ecological model to understand violence against women and girls in African societies. The model conceptualizes violence as a multifaceted phenomenon grounded in the interplay between personal, situational and sociocultural factors. Violence against women exists at societal, community, relationship (household) and individual levels, as do its costs. Clearly, GBV is a serious violation of human rights in all its forms and governments must do much more to make the fight against it a reality for the benefit of citizens. Protecting citizens must be enshrined in law and most African countries have ratified and enacted various instruments such as constitutions, acts of parliament (e.g. the Protection Against Domestic Violence Act, the Children Act and the Sexual Offences Act), and through various policies and institutions. The model looks at structures, norms and practices at societal, institutional and individual levels defining examples of structures, norms and practices that increase the probability of violence against women at different levels of the social ecology (Figure 1).

The model also defines the failure of systems, institutions, policies and legislation to promote economic, legal and social autonomy or to adequately address violence against women. It questions institutions and community systems that fail to sanction gender inequality, stereotyping, and discrimination and violence against women. Lastly, the model concludes that individual adherence to rigid gender roles and identities, weak support for gender equality, and male dominance and controlling behaviours against women all contribute to the increased rate of GBV.¹⁸

14 Walby, S. 1997. *Theorizing Patriarchy*. Cambridge: Polity Press.

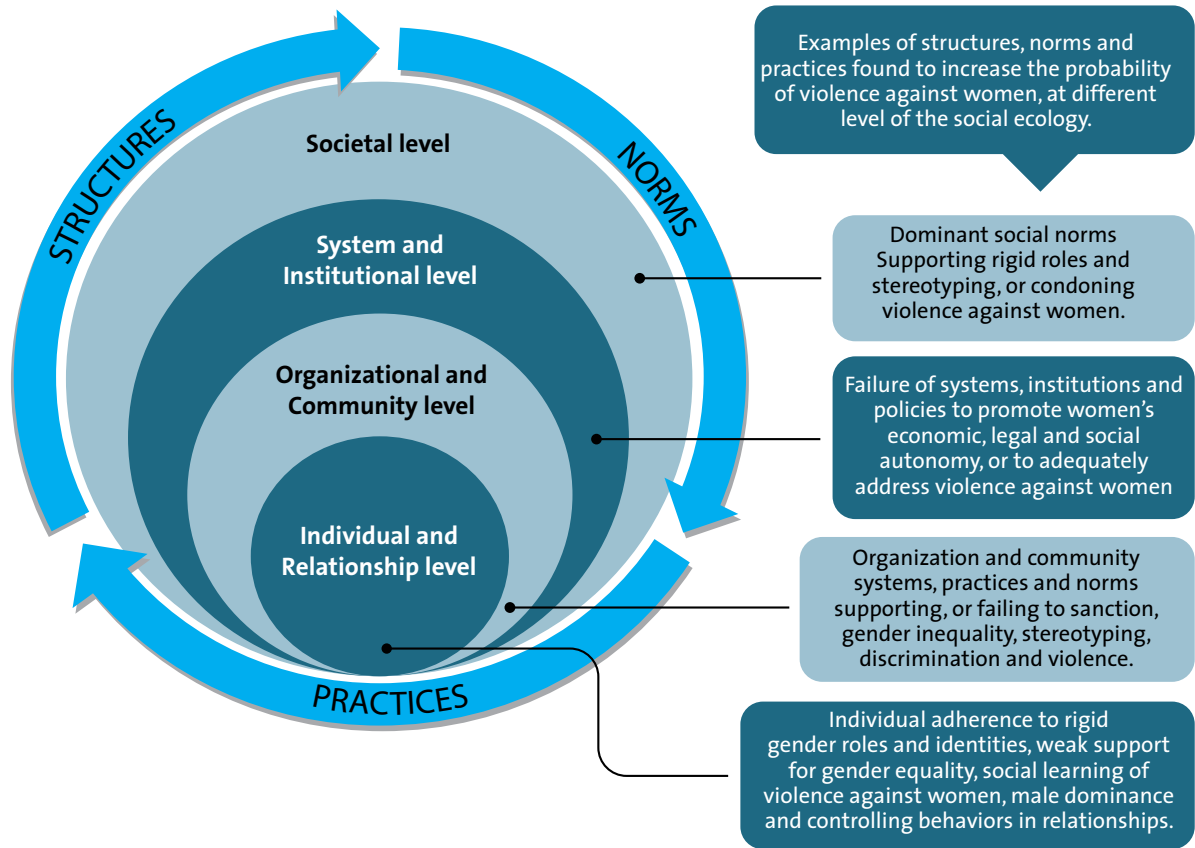
15 Tamale, S. 2008. "The Right to Culture and the Culture of Rights: A Critical Perspective on Women's Sexual Rights in Africa." *Feminist Legal Studies* 16 (1), pp. 47–69.

16 Ibid.

17 Ibid.

18 Louth, J. and W. Skinner. 2018. *Power to End Violence Against Women: Programme Evaluation Report*. Adelaide: Australian Centre for Community Services Research, Flinders University. https://www.researchgate.net/profile/Jonathon_Louth/publication/329802124_Power_to_End_Violence_Against_Women_Program_Evaluation_Report/links/5c1b6d7a458515a4c7eb2762/Power-to-End-Violence-Against-Women-Program-Evaluation-Report.pdf.

Figure 1: Socioecological model



Source: Louth, J. and W. Skinner, 2018.

CHAPTER 3:

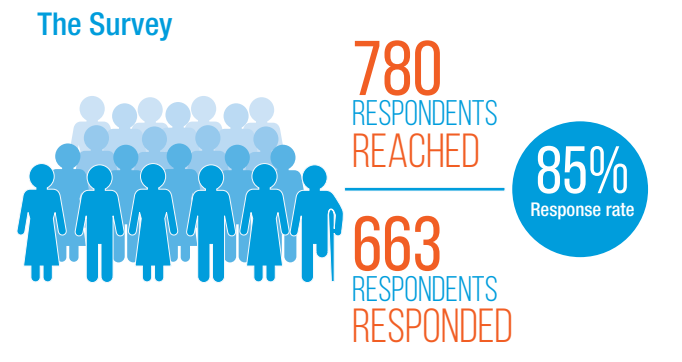
FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

3.1 Introduction

This chapter presents the findings of the multi-country study on access to justice for women and girls', including survivors of violence. The chapter is presented in six sections. The first section focuses on the global and regional context of gender-based violence (GBV), with contextual and analytical analysis of national data on VAWG from the 10 countries. The second section analyses the response rate to the survey. The third section draws on both desk research and key informant interviews to highlight the various forms of discrimination faced by women and girl survivors of violence, including women and girls facing intersecting discrimination on the basis of their abilities, sexual orientation or age, in accessing both statutory and customary (legal, social, cultural, institutional, procedural) justice. The fourth section presents findings on the good and promising practices and gaps in the legislative and policy frameworks (both statutory and customary) related to VAWG in the selected countries, which includes data and information on practices in survivor support (from recovery services, the number of cases reported, cases taken up at various levels and disposal rates by courts). The fifth section is on priority areas for programming and policy support to promote access to justice for women, including in response to COVID-19, and recommended measures for increasing the number of women in the judiciary in both customary and formal systems. The last section presents findings on potential partners, key institutions and organizations, including regional civil society organizations, that represent women and girls with disabilities, providing access to justice for women in the ten countries to support programming and advocacy.

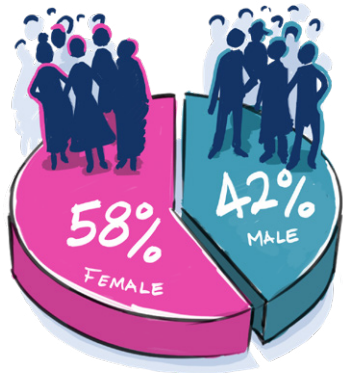
3.2 Response rates

The survey reached 780 respondents, which equates to 78 per country in the study. The response rate was 85 per cent, with 663 people responding to the survey. This high response rate was achieved thanks to wider socialization and mobilization by country offices and the regional office complemented by the consulting efforts.



3.3 Gender of respondents

Figure 2: Gender of respondents (%)



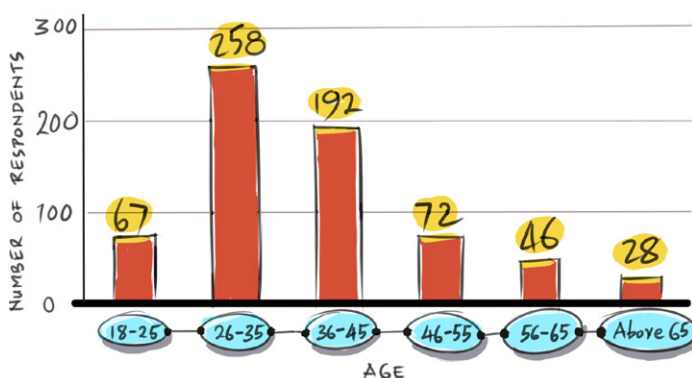
Source: Field data.

Out of the 663 people responding to the survey, 58 per cent were female and 42 per cent were male (Figure 2). This is attributed to the fact that the survey specifically targeted women as the primary victims of violence in the study countries.

The majority of the respondents (approximately 68 per cent) were aged between 25 and 45 years, with a few (11.2 per cent) more than 56 years old (see Figure 3).

Figure 3: Age of respondents

Source: Field data.



Over 60 per cent of the respondents were employed and the rest were attending school, housewives or unemployed, as shown in Table 2.

Table 2: Category of respondents

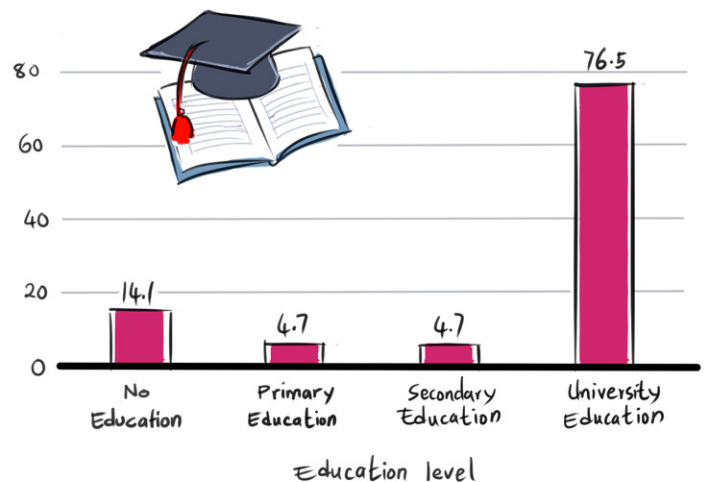
Category responding	Percentage (%)	Number
Attending school	7.1	47
Self employed	17.6	117
Work (employed)	61.2	406
Housewife	7.1	47
Unemployed	7.1	47

Source: Field data.

In terms of level of education, the majority of the respondents reached by the study had at least a bachelor's degree and a few (4.7 per cent) had both primary and secondary education (Figure 4).

Figure 4: Education level of respondents

Source: Field data.



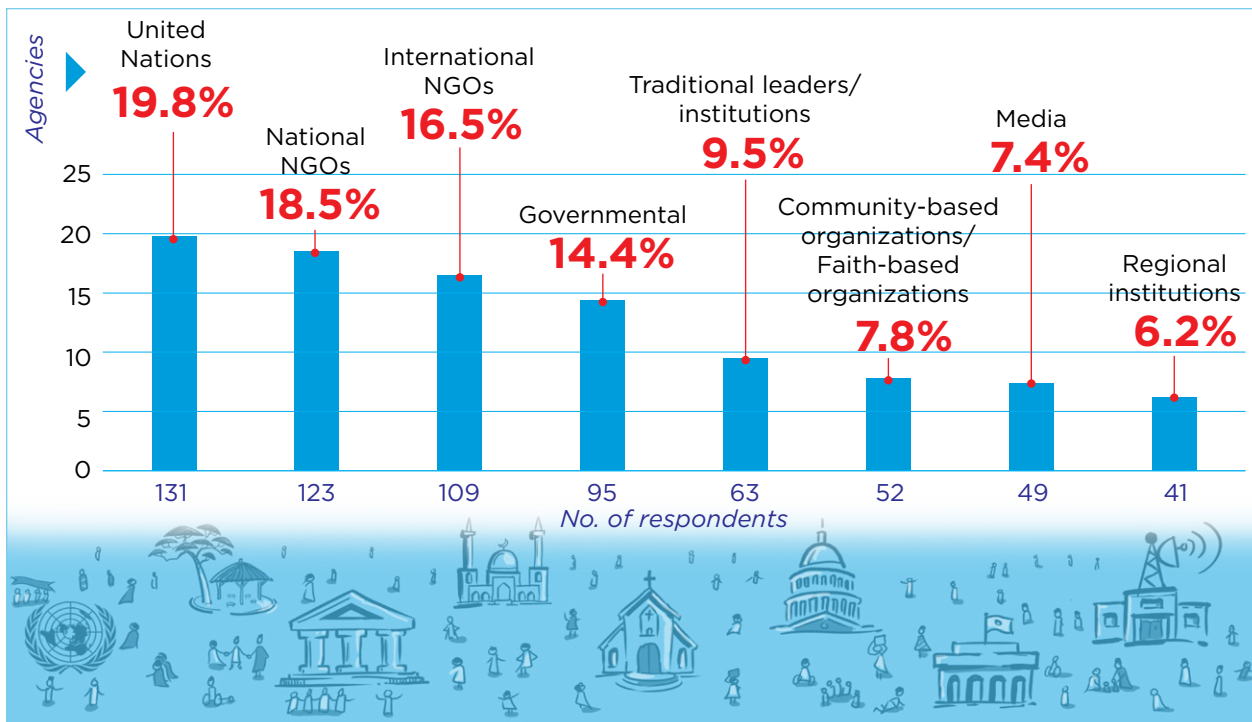
3.4 Organizations at the forefront of advocating for access to justice for women

Respondents cited the United Nations, regional institutions, government agencies, non-governmental organizations (NGOs) (both national and international), traditional leaders and cultural institutions, community-based organizations, faith-based institutions and the media as major agents

of advocacy for access to justice for women in all of the study countries. Respondents perceived the United Nations, national and international NGOs and government institutions as the major agencies advocating for access to justice for women, with

fewer respondents identifying traditional leaders and cultural institutions, community-based organizations, faith-based institutions and the media as key agents of advocacy (Figure 5).

Figure 5: Organizations advocating for access to justice for women



Source: Field data.

3.5 Types of justice systems for women in the study countries

Existence of parallel justice systems: The study countries all feature customary, community or informal/traditional justice mechanisms and formal justice systems. The existence of traditional and customary systems is described using various tags, such as indigenous, informal, non-formal, non-state and non-official justice systems, and is attributed to the fact that they are well-established within communities, are perceived as more accessible and can administer reconciliation and justice quickly.

Alignment between customary justice systems and state courts: Formal alignments between state-run justice systems and customary laws were found to vary from one country to another. For example,

in Burundi, there is the informal justice system *bashingantahe*, which works alongside the formal justice system in determining the outcomes of cases. Importantly, customary laws are widely recognized for their ability to settle civil disputes and family-level cases. In most instances, state courts are responsible for resolving criminal cases.

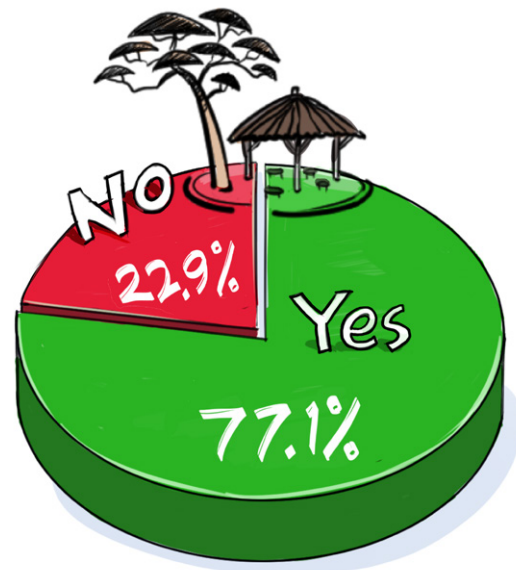
Forms of customary and religious justice institutions (informal justice mechanisms): Forms of the informal system comprise tribal chiefs, religious leaders, family elders and other local figures of authority. The set-up of customary justice systems mainly favours parties that are close to one another, as they are set within convenient communal knowledge. They are

also readily accessible, involving no travel expenses, and in most instances, there is no cost for launching cases. The customary system offers some comfort to those seeking justice, as they have a knowledge of who is handling their cases and they speak a language similar to that used in the conversations. The religious justice system tends to be intertwined and embedded, especially in sharia (Islamic law) in which customary justice is used to settle land and inheritance disputes and family cases.

3.6 Community practices that hinder access to justice for women

The study affirms the role of traditional leaders and cultural institutions in enhancing opportunities for access to justice for women, with 77 per cent confirming that community practices are important drivers of or hindrances to access to justice, depending on how they are leveraged (Figure 6).

Figure 6: Community practices affecting access to justice



Source: Field data.

Case Study 1: Justice in the property row for women¹⁹

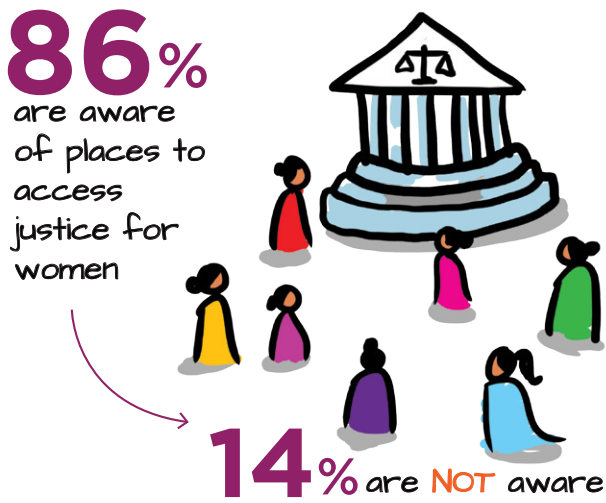
James (not his real name), who is 35 years old, left his family of four for a second wife. He went to live with his second wife in a different town, completely ignoring his first family. At the time James left his first family, they had taken a house loan and had started building their family home; he left halfway through the project. James's first wife struggled to put their four children (three girls and one boy) through school and even finished building their family home. James decided to come back to his first family 17 years later, maintaining that he had started building the house and, by that fact, the house belonged to him. He even became violent, and his first wife reported the matter to the authorities. The matter was taken to court and James was ordered out of the property. The court maintained that he could not claim ownership of the property because he left halfway through its construction. This is one of the successful landmark cases in Burundi.

3.7 Awareness of places where women in the community seek justice

Eighty-six per cent of the respondents reported that they had knowledge of places in their communities where women can access justice, while 14 per cent denied any knowledge of such places in their communities because they did not exist in their local communities (Figure 7). Some of the places and people listed included village elders, who constitute the traditional justice system; chiefs; the religious community; community-based organizations/ women's groups; civil society at community level (for example the International Federation of Women Lawyers in Kenya and Uganda); district forums; police stations; children's affairs offices; churches; community victim support units; village mediators or tribunals; and family members of victims and survivors of GBV. Most respondents confirmed the role of the traditional justice system and alternative dispute resolution in the administration of justice for women, with some respondents raising reservations about their fairness and alignment with the mainstream justice systems. This was attributed to the fact that corruption, gender and clan bias can be manifested during the proceedings and rulings in favour of a particular side.

19 Victims interview in Burundi on 11 November 2020.

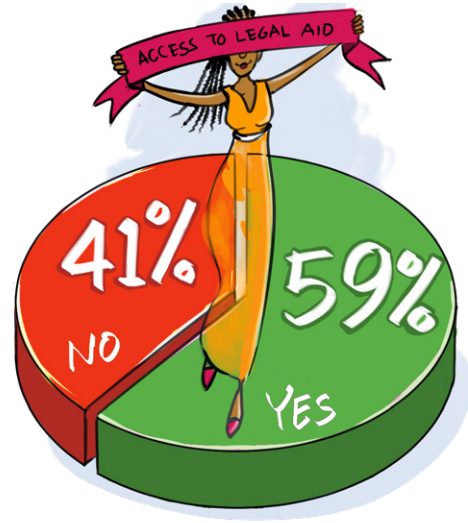
Figure 7: Awareness of places to access justice for women



Source: Field data.

The study establishes that there is a likelihood that poor women receive legal advice from lawyers, paralegals or legal aid centres, chiefs or traditional leaders in the study country, with 59 per cent of the respondents confirming that poor women are likely to receive legal advice, although 41 per cent felt that poor women are not likely to receive such advice, as it entails a cost, which they cannot afford, forcing them to shift their priorities (Figure 8).

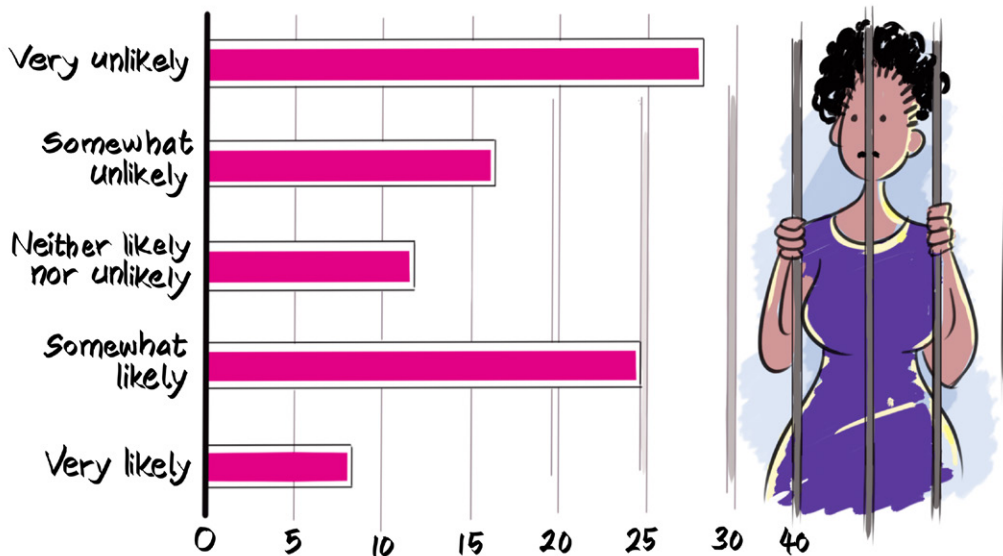
Figure 8: Likelihood that poor women receive legal aid in accessing to justice



Source: Field data.

The study also looks at the likelihood that detained female suspects who request access to legal counsel receive adequate legal counsel from a public defender during initial police custody, pre-trial detention or trial, with the majority of the respondents asserting that they are unlikely to receive adequate legal counsel from a public defender during initial police custody, pre-trial detention or trial (Figure 9).

Figure 9: Likelihood of receiving legal aid during initial police custody



Source: Field data.

3.8 Availability of free legal assistance for women

Seventy per cent of the countries studied provide free legal assistance for women accessing justice, while 30 per cent of the countries do not have free legal assistance (Figure 10). This is one of the biggest obstacles to women's access to justice in the countries studied, as women are not able to afford legal assistance for their cases because they have limited resources.

Even where legal aid for access to justice is provided, 60 per cent of respondents stated that it does not include court fee waivers (Figure 10). Court fees are one of the primary obstacles that prevent women from accessing justice; they increase the cost of access to justice for women, denying poor women the opportunity to realize justice. Therefore, providing exemption from court fees will make progress towards achieving access to justice for women in the study countries and beyond.

Figure 10: Availability of legal assistance for women and Legal aid provided excludes court fees



Source: Field data.

Knowledge of courts that adjudicate on violence is a critical entry point for accessing justice. Sixty-seven per cent of respondents reported that they were aware of such institutions (Figure 11). This suggests that 33 per cent of respondents are potentially excluded from seeking justice.

In terms of the availability of official internet sites or portals (e.g. ministry of justice) through which women may access legal texts (e.g. codes, laws, regulations), case law of the higher court or courts

and other documents (e.g. downloadable forms, online registration) free of charge, 18 per cent of the respondents shared their frustration at the lack of these platforms (Figure 11). Eighty-two per cent reported that their countries have these platforms, which are critical information points. Some of the sites listed by respondents included Kenya Law,²⁰ a Kenyan site for case law and other legal issues, the Malawi Human Rights Commission portal and library, and Abyssinia Law, an Ethiopian site.²¹

20 National Council for Law Reporting. 2020. .

21 Abyssinia Law. 2020. "Abyssinia Law." Accessed 24 June 2021. <https://www.abysiniainlaw.com/>.

Figure 11: Awareness of courts and Existence of official internet sites for legal information



Source: Field data.

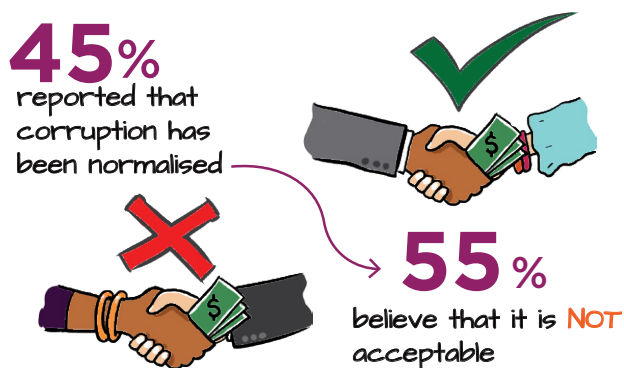
Respondents stated that in all of the study countries, both women who have experienced physical violence and those who have experienced pressure and threats can report it to the authorities and access justice. This was noted by 56 per cent of the respondents, although 44 per cent said otherwise. The opportunity to report all forms of violence, including threats, is a milestone that will deter potential perpetrators, reduce future violence against women and provide access to justice for women, with the potential to address their issues. The study finds that threats are reported to police stations and adjudicated in courts of law in most of the countries investigated. Some respondents, however, reported disturbing trends that featured in all 10 of the study countries, where women are more likely to report cases when they have experienced physical violence and injuries. This increases the risks to the women affected. Some respondents from Ethiopia, Kenya, Malawi and Tanzania noted that threats and pressure are not taken seriously by the justice institutions. They said that often justice institutions tell victims that there is nothing that can be done, which

often restricts access to justice for the women affected. In Somalia, it was reported that some women even go as far as accessing justice from Al-Shabaab courts, which are run by an extremist group.

3.9 Corruption in the justice chain

The study examined whether respondents believe that it is acceptable for public officials to ask for additional payments beyond those legally allowed in exchange for access to justice. Nearly half of respondents (45 per cent) reported that corruption has been normalized, while the other half (55 per cent) of the respondents believe that it is not acceptable for public officials to ask for additional payments beyond those legally allowed in exchange for access to justice (Figure 12). Although fewer respondents believe that it is normal to ask for additional payments, considered as corruption, the high percentage who believe that this unacceptable practice has become normalized can affect access to justice for women. This practice is perceived in all 10 countries studied.

Figure 12: Public officials normalize corruption



Source: Field data.

3.10 Gender-responsive access to justice

The study finds that access to justice services is not responsive to the needs of women. This was reported by almost 70 per cent of the respondents from the 10 countries under study (Figure 13). Only 30 per cent of the respondents believe that their countries have access to justice services that are responsive to the needs of women. This calls for interventions focusing on improving the options for women to access justice, including traditional justice systems and national justice systems (also covering the courts), to ensure they respond to the needs of women.

Figure 13: Responsiveness of access to justice services



Source: Field data.

3.11 Who do women trust most to resolve their disputes?

The study finds that family members, neighbours and friends are whom women trust most to resolve disputes in the study countries. This was reported by 27.9 per cent of the respondents. These were followed by traditional leaders (including village elders, chiefs and cultural institutions), who resolved the majority of the disputes among women, as stated by 26.9 per cent of the respondents (Table 3).²² The formal justice system resolved 17.5 per cent of the disputes through the court system and 13.5 per cent through the police in various countries.²³ Other stakeholders who support access to justice include the religious community (reported by 5.8 per cent), legal aid groups and NGOs (reported by 4.8 per cent) and governmental dispute resolution services, involving government officers (local governments, ombudspersons, etc.), reported by 3.8 per cent of the respondents. This affirms the critical role of the family unit and the traditional justice system in women’s access to justice, despite the barriers of harmful traditional and cultural practices and the lack of gender sensitivity in resolving those disputes, as reported in all survey countries. Apart from being considered closer to the community and the women victims and survivors of violence, family and traditional leaders were mainly preferred by respondents due to their cost. The formal justice system was viewed as inaccessible and expensive, requiring a lot of finance to access justice. For example, the Malawi chiefdom system appeared to be more geared towards responding to the needs of women, and it mentioned its engagement with UN Women in the fight against child marriage. This opportunity could be expanded to integrate the traditional justice system not only in Malawi but also in other countries studied. This study confirms that traditional justice systems led by women, and those in which women are part of decision-making, proved more gender sensitive in issuing their judgments and were more responsive to the needs of women and girls who accessed justice in response to GBV. In addition, less time was taken to expedite cases sitting before committees with women representatives than those cases taken before male-dominated panels of judges,

22 UN Women, UNICEF (United Nations Children’s Fund) and UNDP (United Nations Development Programme). 2013. Informal Justice Systems: Charting a Course for Human Rights-based Engagement. New York: UN Women, UNICEF and UNDP. <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2013/1/informal-justice-systems-charting-a-course-for-human-rights-based-engagement.pdf?la=en&vs=5500>.

23 Field data, 2020.

who showed patriarchal tendencies that disregarded women's needs, which resulted in biased judgments favouring the male perpetrators of the violence.

Table 3: Dispute resolution mechanisms

Who resolved your dispute?	Percentage of respondents (n = 663)
Family member/neighbour/friend	27.9
Traditional leaders	26.9
Court	17.3
Police	13.5
Priest/pastor	5.8
Legal aid group/NGO	4.8
Government	3.8

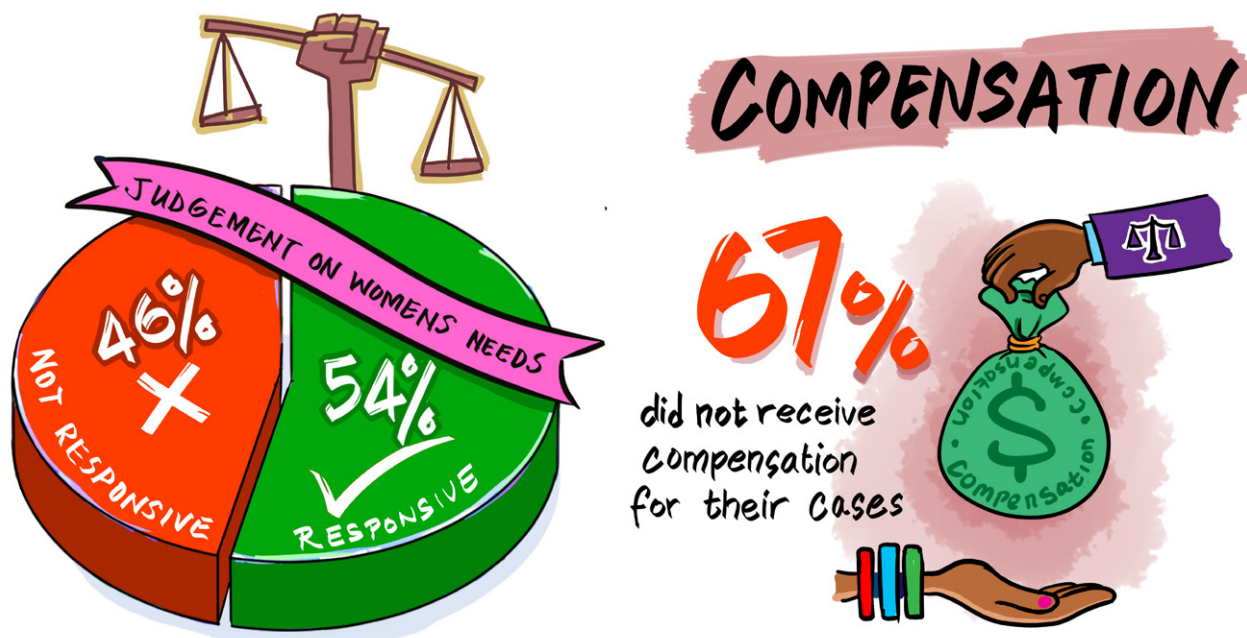
Source: Field data.

In terms of biased judgments, at least 54 per cent of the respondents believe that the judgments made

by different justice institutions had put the women's needs or wishes or the gravity of the problem according to the women into consideration when ruling on the cases, while 46 per cent felt that the judgments did not consider women's experiences when ruling on the cases (Figure 14). Informal justice institutions, the police and the court system were mentioned as being insensitive to the needs of women, which decreases the opportunities for women to access justice in the study countries.

It is also worrying that more than half of the respondents (69 per cent) reported that in addition to the biases they face in their attempts to access justice, they did not receive any compensation for their cases; only 31 per cent had received compensation for their cases (Figure 14). Legally, only Burundi, Ethiopia and Uganda had no clear constitutional provision for compensating women and girl victims of violence. A respondent from Kenya explained how it is difficult to realize compensation even if it is awarded by a court of law. Recovery is a challenge, and women have to get an auctioneer to recover compensation, which in most cases is stopped by the same courts.

Figure 14: Responsiveness of judgments to women's needs and Compensation as per the judgment



Source: Field data.

3.12 Women’s trust in courts of law

The study sought to establish whether women had trust in their own courts of law and the results show that 54 per cent of the respondents have little or no trust in their courts of law, and only 46 per cent have trust in their courts of law. This affirms why many women prefer to have their case resolved by informal dispute mechanisms – traditional leaders, family members or friends and religious leaders – as opposed to formal courts. They consider formal courts inaccessible because of the high costs of filing cases, the complex procedures and having to hire a lawyer, which many women who responded to the survey cannot afford.

Respondents from Ethiopia, Kenya, Malawi and Tanzania cited the slow nature of their courts and the tactics of advocates delaying cases by requesting their adjournment in addition to postponements by judges and magistrates. The limited number of judges is another issue that delays cases in courts, in addition to corruption, called Kitu Kidogo (something small), it is referred to in Kenya. Respondents also mentioned that their courts handle women based on their wealth and their political connections. This means that wealthy women receive timely justice while poor women have their cases thrown out of courts because of corruption. Such scenarios were reported from Kenya, Malawi, Tanzania and Uganda. Another respondent from Malawi mentioned that its courts lack sufficient resources and knowledge to deliver gender-sensitive justice mechanisms for women, a situation noted in several other study countries. In most countries, judges remain largely male and have limited or no training on gender-related issues, which presents a challenge for their handling of the cases. State organizations and law enforcement institutions were also perceived as corrupt, with bureaucratic procedures that delay justice and a lack of gender knowledge limiting their contribution to access to justice for women. Fifty-nine per cent of those responding to the survey mentioned that judges in their countries request bribes to deliver cases, which makes access to justice expensive and lacking in integrity (Figure 15).

Figure 15: Do judges request bribes?



Source: Field data.

3.13 How often do women have to pay bribes, informal payments or other inducements to expedite a court process in your country?

Table 4: Frequency of bribery

Frequently	Percentage	Number of respondents (n = 660)
Never	17.0	113
Seldom	6.8	45
Sometimes	37.5	248
Frequently	26.1	173
Always	12.5	83

Source: Field data.

The findings show that over a third of respondents (37.5 per cent) noted that women are sometimes asked to pay bribes, informal payments or other inducements to expedite a court process, with 26.1 per cent reporting this is frequent, which shows how corruption has been normalized in the study countries (Table 4). Only 17 per cent of the respondents reported that women are never asked to pay bribes, informal payments or other inducements to expedite

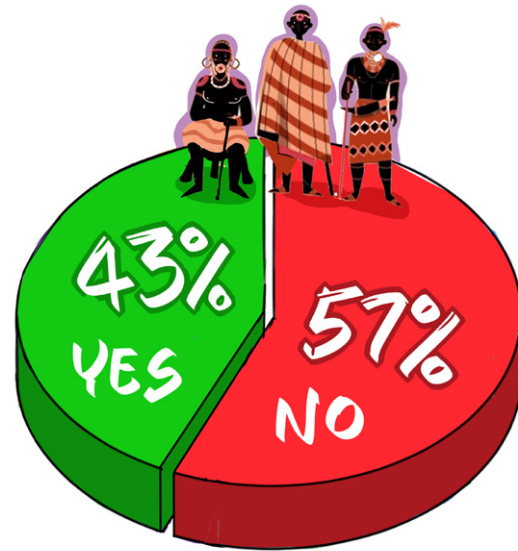
a court process, and 6.8 per cent asserted that women are seldom asked to make such payments. A modest proportion (12.5 per cent) said that they are always asked to pay bribes, informal payments or other inducements to expedite a court process. The trends are worrying and affect the credibility of the justice system as well as women's access to justice.

3.14 Women's trust in traditional leaders for dispute resolution

Similarly, women who were interviewed and who responded to the survey said that they did not fully trust traditional leaders and cultural institutions when it comes to accessing justice for women. In fact, only 41 per cent had confidence in traditional leaders and cultural institutions in administering justice for women (Figure 17). Those who showed trust said that they trusted them because they do not request as much in bribes as the formal justice system. This shows the level of institutionalized corruption in the countries studied. Those who trusted them also pointed to their accessibility in the community and the fact that their fees for service are lower and their procedures are less complicated, resulting in a shorter lead time for justice for women and girls. The leaders were also seen as part of the community and as understanding the culture of that community. Therefore, they could create more sustainable peace and harmony among the victims and survivors of violence than the formal justice system, which they feel aggravates relationships in the community. They are also respected in the community, are widely listened to and accessible, creating the potential for conflict resolution. Those who did not trust them cited gender-blind justice principles that largely rely on outdated cultural practices and negative forms of masculinity. They do not have any women leaders on their committees and therefore are not sensitive to women's needs.

The study also reports that the structure of informal justice systems, especially traditional justice systems, does not reflect gender sensitivity (inclusivity of women in the structure or on the committee), which makes their decisions gender-blind. Fifty-seven per cent of the respondents held this view, as shown in Figure 16. This presents an opportunity for improving the gender diversity within the informal justice systems and aligning them with the needs of women in the communities.

Figure 16: Do traditional justice committees have women in them?



Source: Field data.

n = 663

3.15 Trust in the religious community in offering justice for women

Trust in religious institutions was more than in all other institutions, including the formal justice systems across the study countries. Interviews and the online survey corroborated this, with 72 per cent of the respondents having confidence in achieving justice through religious institutions, while 28 per cent lacked confidence (Figure 17). The reasons given for the lack of trust included the fact that religious institutions preach for women in violent situations and relationships to persevere. Some respondents, such as those in Malawi, asserted that religious institutions lack enforcement mechanisms for their decisions in cases, hence the lack of trust.

Two respondents from Ethiopia and Uganda said that a focus on reconciliation and mediation does not provide justice for women. Respondents emphasized that the majority of the religious leaders are men who do not believe in the ideals of gender sensitivity and still hold women as second-class citizens, which is a negative perception that must be overcome. A respondent from Kenya during a focus group discussion remarked that "Religion is not a true reflection of law and justice." Another respondent from

Tanzania reiterated that the “religious community and traditional systems are patriarchal institutions that always try to resolve issues by asking women to risk their security and sacrifice their well-being,” which undermines the welfare of women accessing justice in these institutions. This position was repeated in several key informant interviews from

the countries studied. One key informant asserted that religious institutions have a biased view of women in which they reinforce traditional gender roles, blame women for their problems and expect women to be submissive and more patient in violent relationships, which perpetuates GBV and increases the vulnerability of women in those situations.

Figure 17: Women’s trust in courts of law, traditional leaders, religious institutions offering justice



Source: Field data.

3.16 Do the courts have disability-inclusive access to justice services for women with disabilities?

Article 9 of The Convention on the Rights of Persons with Disability mandates Member States to create environments in which people with disabilities can live independently and participate exhaustively in all dimensions of life. Accordingly, Member States should facilitate their access to all aspects of life on an equal basis. In all countries studied, the courts were reported to lack disability-inclusive access to justice services for women with disabilities. This was reported by 79 per cent of the respondents and

was corroborated by key informant interviews and focus group discussions in the 10 study countries (Figure 18). Only 21 per cent of the respondents in the study said that their courts have disability-inclusive access to justice services for women with disabilities.

These services include court sign interpretation, braille services, physically inclusive access to the court facilities, availability of assistants and support mechanisms while in court and disability-friendly judges. The huge percentage of respondents reporting

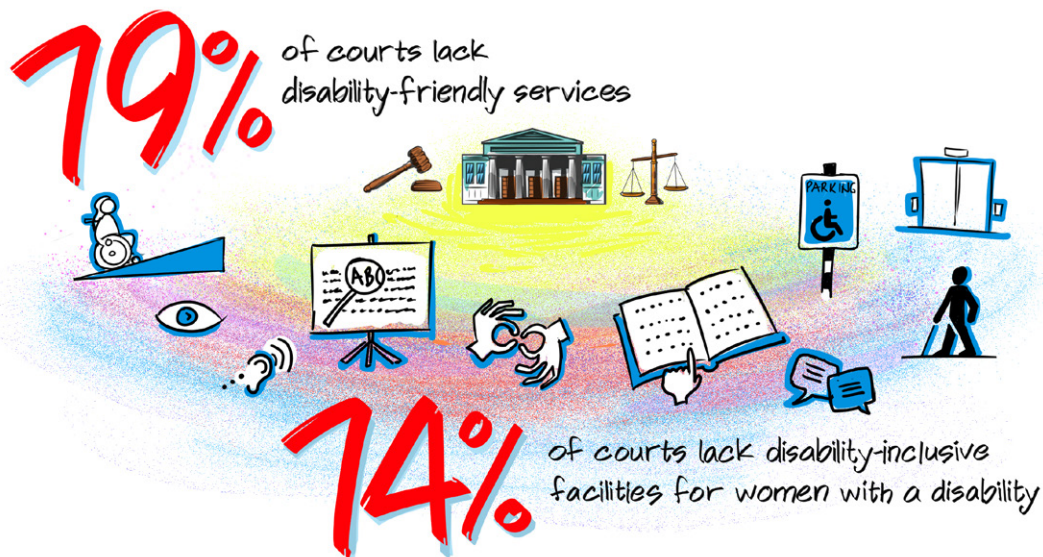
Only 21 per cent of the respondents in the study said that their courts have disability-inclusive access to justice services for women with disabilities.

that their countries lacked these services means that governments and other stakeholders have a duty to prioritize this to accelerate progress towards access to justice for women with disabilities. In addition, it was noted that Kenya has a female judge with a disability, with representation of justice personnel with disabilities seen as accelerating progress towards disability-inclusive access to justice for women. Ninety per cent of the countries studied do not intentionally deploy female judges and magistrates with a disability. This requires targeted and intentional interventions that create opportunities for recruitment and career progression for female justice personnel with disabilities.

The lack of disability-inclusive infrastructure remains a major challenges reported in the study and a

majority of courts do not have ramps, sign language interpreters, do not use Braille and do not have arrangements to enable people with visual impairments to be supported and guided appropriately. Many key informants and 74 per cent of respondents (Figure 18) highlighted these gaps, with only 26 per cent reporting that some courts in their countries provide such facilities for people with disabilities. The study concludes that justice in the courts in the countries studied are not disability-inclusive and do not meet the needs of women with disabilities. A respondent in Kenya remarked “Stairs everywhere! For example, Milimani courts! Lifts are few. Just getting to them you go up some stairs!” This shows the level of frustration experienced by women with disabilities in Kenya in accessing court premises.

Figure 18: Disability-friendly services and Disability-inclusive facilities



Source: Field data.

3.17 Are court fees hindering women’s access to justice?

The study concludes that court fees are prohibitive for women’s access to justice, including justice for women with disabilities. This was corroborated by 54 per cent of respondents in addition to key informants from all of the countries studied, who said that these fees make it difficult for women to access justice, as they struggle with making a living and paying for

travel to court sessions and for court fees to access justice (Figure 19). The remaining respondents (46 per cent) felt that the fees are low enough that they do not affect the ability of women to access justice. Respondents from Kenya and Zimbabwe felt that the fees are a recipe for corruption, as court clerks still request user fees. In Kenya, P3 forms²⁴ are charged against the set norm, and women have to pay to obtain the forms for onward processing of their cases. This poses a challenge for access to justice for poor women and encourages corruption.

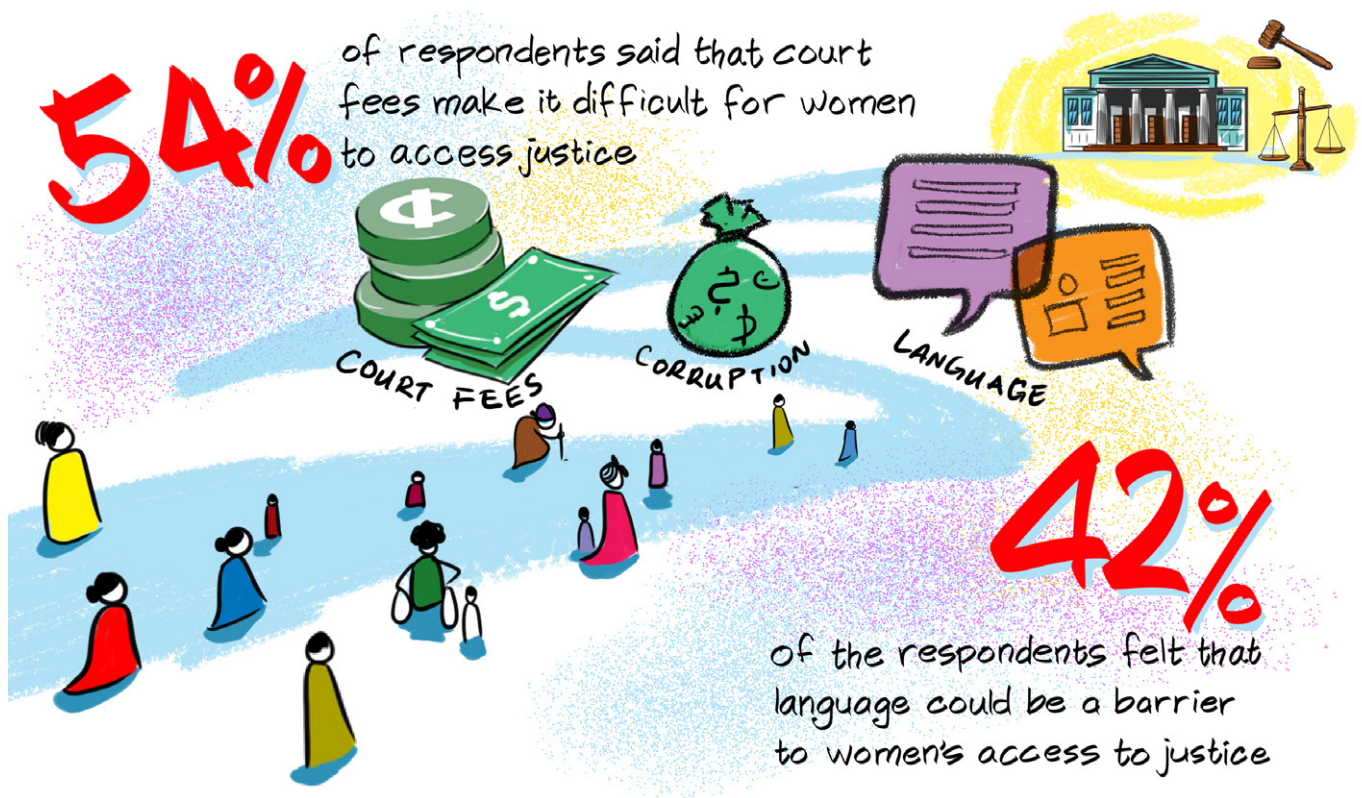
24 In Kenya, a P3 form, a legal document which is produced in court as evidence in cases which involve bodily harm (e.g. rape or assault).

3.18 Language as a barrier for women's access to courts

In all 10 countries studied, language interpreters are available for all court users, although 42 per cent of the respondents felt that language could be a barrier to women's access to justice (Figure 19). Fifty-eight per cent said that, as they have language interpreters in their countries, language is not a barrier to

accessing justice for women. These views were also held by key informants in Burundi, Ethiopia, Kenya, Malawi, Tanzania and Zimbabwe. The study also found that language interpretation is available to women detainees and to women with disabilities without any form of discrimination.

Figure 19: Barrier to access to justice for women



Source: Field data.

3.19 The length of time it takes to resolve a case

Key informant interviews and online survey respondents reported that GBV cases can take from 6 months to more than 24 months to be processed. During the survey, 33.8 per cent of respondents said that their claims had been handled and justice delivered in less than 6 months (Table 5). Furthermore, 31.3 per cent said that their cases lasted for a period of more than 24 months, while 18.8 per cent said that their cases had taken between 6 and

12 months to deliver justice to them. Ten per cent mentioned that their cases took between 12 and 18 months to resolve, and only a few cases were settled in between 12 and 24 months. Most of the respondents said that they understood their courts' legal procedures, which creates an opportunity to mitigate any delay in delivering justice, as they can follow through the court procedures without causing unnecessary delays.

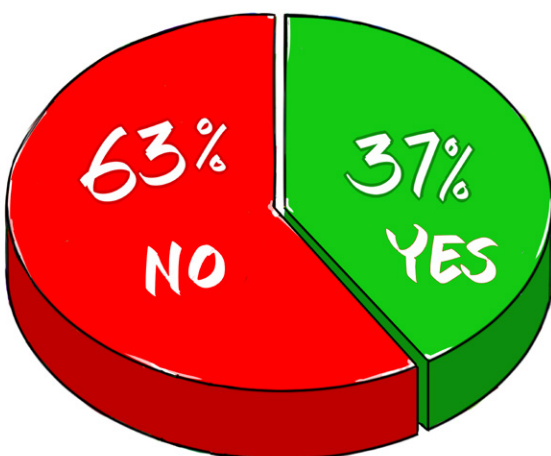
Table 5: Case dissolution duration

Average duration of a case	Percentage of respondents	Number of respondents
Less than 6 months	33.8	211
6–12 months	18.8	117
12–18 months	10.0	62
18–24 months	6.3	39
More than 24 months	31.3	195

Source: Field data

Over 60 per cent of the respondents felt that the judicial system does not have the capacity to hear and conclude criminal cases without undue delay, as evidenced by the period that cases take in all courts in the study countries. The study findings also highlight a worrying observation that the civil/criminal justice systems of the study countries are not free from undue government influence. This affects the independence and decisions of the system in delivering access to justice for women (see Figure 20).

Figure 20: Capacity of the judiciary to determine cases promptly

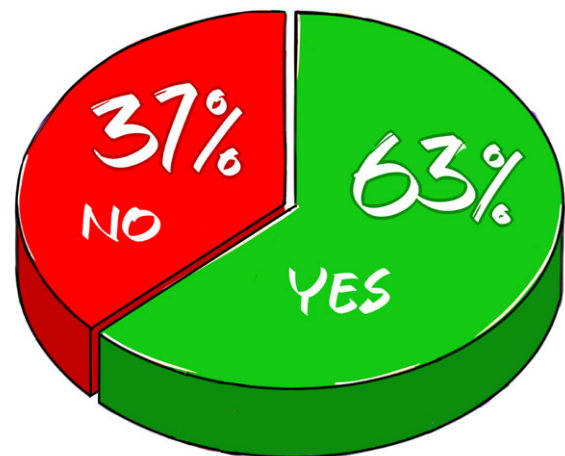


Source: Field data.

3.20 Gender considerations in prosecuting matters on gender-based violence

The study finds that a person’s gender affects the delivery of justice and prosecution of matters in all of the countries studied. Although legislation in all 10 countries prohibits discrimination on the basis of gender or sex, gender still plays a very visible role in court processes. Sixty-three per cent of the respondents thought that gender mattered in prosecutions, with only 37 per cent believing otherwise (Figure 21). Key informants mentioned gender biases as a top inhibitor of delivering justice for women who are survivors and victims of GBV. These biases occur in the community, in courts, among security agencies, in church and in families.

Figure 21: Does gender matter in prosecutions?

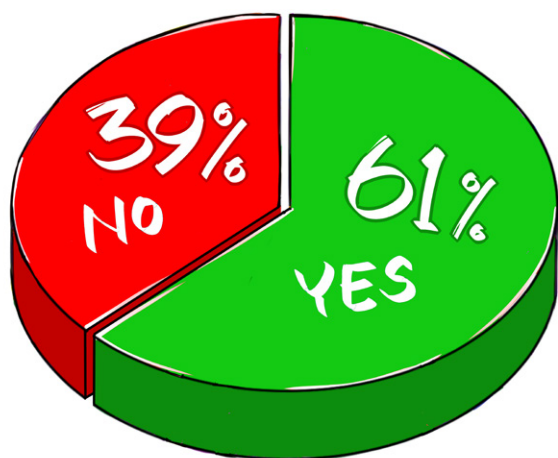


Source: Field data.

The study finds that the gender of the advocate representing a woman survivor or victim of violence matters because advocates face the same biases as ordinary women, as reported by 63 per cent of respondents.

The study also found that the gender of the judge dealing with the cases involving women also matters (Figure 22). Respondents from Ethiopia, Kenya and Uganda cited examples in which female judges had made milestone judgments favouring women in cases of violence against women compared with male judges. Male judges were reported to apply patriarchal views that women are inferior to men.

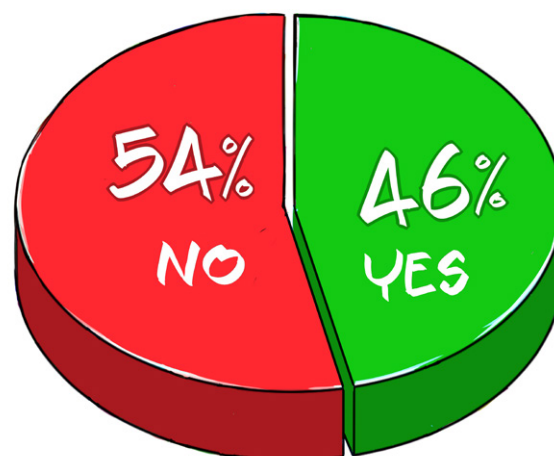
Figure 22: Does the gender of a judge matter?



Source: Field data.

The study finds that justice in the courts of the countries studied is characterized by discrimination based on income, gender, ethnicity, religion, nationality, abilities, sexual orientation, and social and economic status (marginalization). This situation is worse for women with disabilities, rural or poor women. This is reported by 54 per cent of the respondents (Figure 23) and respondents felt that rich people were always treated leniently; hence, when they are perpetrators of violence against women, they are often favoured with minimal penalties or consequences. The issue of 'haves' and 'have-nots' featured prominently as an element of discrimination in all courts in the 10 countries studied. For example, a respondent from Kenya gave an example of how tribalism has affected the fairness of judgments obtained for GBV survivors and victims. Another respondent averred that "Sexist and corrupt judges, some of whom are perpetrators of GBV, are a barrier to addressing gender discrimination." This aspect was echoed by key informants and our literature review on the subject matter.

Figure 23: Are your courts free from discrimination?

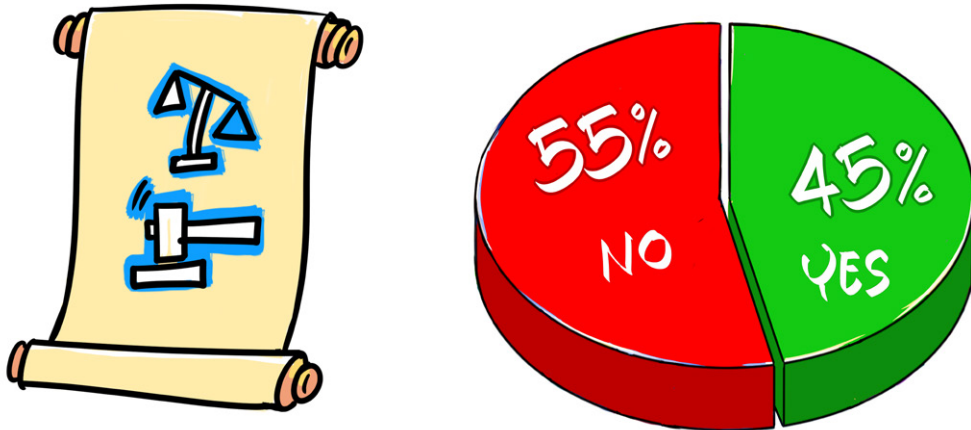


Source: Field data.

The study concludes that there is no equal application of the law by judges in the sense that they impose different punishments for the same type of crime based on a defendant's or victim's personal or gender characteristics (women vs men), which has been confirmed by previous data and information from respondents in the survey. Hence, judicial decisions in the study countries are affected by gender bias, which constrains access to justice for women.

Even when the justice system has tried its best, respondents reported that their governments do not always obey the decisions of the courts. This was the view of 55 per cent of the survey respondents, who stated that their governments do not obey their court decisions (Figure 24). Only 45 per cent said that their governments obey court decisions, especially on issues touching on the government's obligations. A key informant from Uganda stated that "The government has always turned a blind eye to the decisions made previously and [this] is evident in our government of Uganda where the government is authoritative." A Somali respondent mentioned a changing situation in which courts have increasingly gained authority and impose decisions taken on government, affecting court judgments. Some respondents were frustrated by government influence and felt that the government has a direct influence and controls the court so that decisions are reached by the government, not the courts.

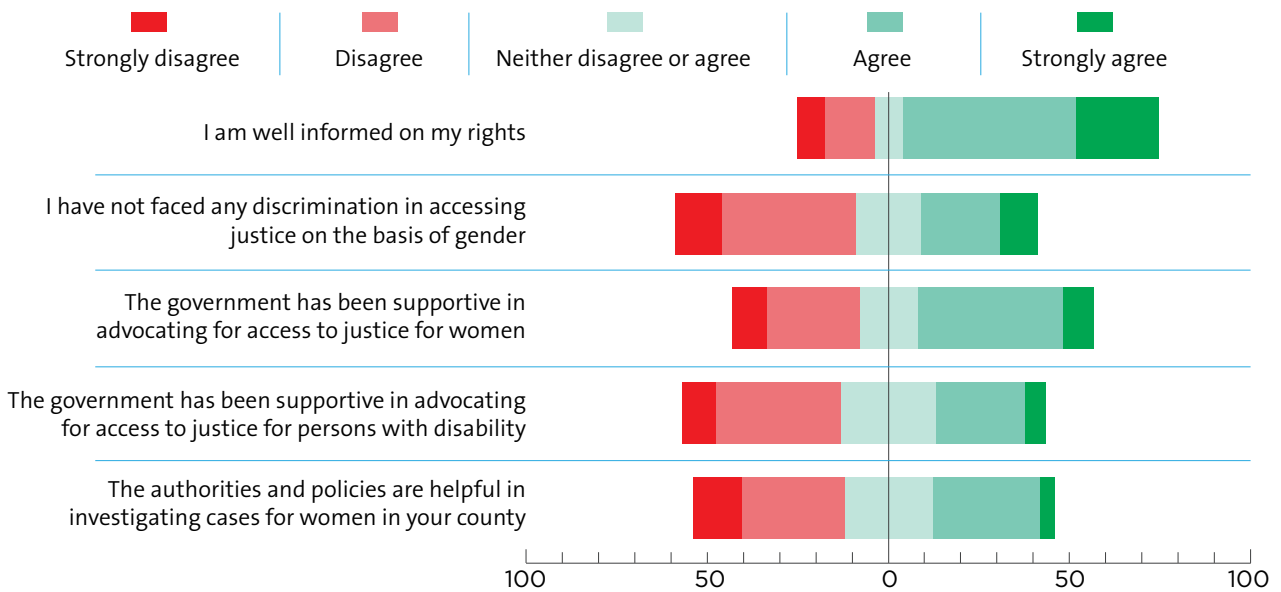
Figure 24: Does the government obey court decisions?



Source: Field data.

The study also gauged the level of agreement of respondents with the statements shown in Figure 25.

Figure 25: Various aspects of access to justice



Source: Field data.

From the above analysis, most of the respondents agreed that they were well informed on their rights, although fewer strongly agreed with the statement. Most of the respondents also highlighted that they have faced discrimination in accessing justice based on their gender. The majority of the respondents also

disagreed that the government has been supportive in advocating for access to justice for women. The majority of the respondents also did not feel that the authorities and the police are helpful in investigating cases for women.

GENDER-BASED VIOLENCE AND ACCESS TO JUSTICE FOR WOMEN AND GIRLS

4.1 Global and regional gender-based violence analytical review

Historically, the unequal power balance between women and men has led to violence and discrimination against women, most often by men. Globally, 243 million women and girls aged 15–49 years have been subjected to sexual and/or physical violence perpetrated by an intimate partner in the previous 12 months.²⁵ Manifestation of violence against women and girls (VAWG) is rooted in gendered social networks and structures that traverse socioeconomic spheres, age, geographical boundaries, employment and educational spaces. Notably, VAWG is regarded as a widespread human rights violation that creates systematic obstacles to ending discrimination globally and ending gender inequality. The United Nations Declaration on the Elimination of Violence against Women, adopted by the General Assembly in 1993, defined violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”²⁶

The United Nations further described violence against women as “a manifestation of historically

unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”²⁷

VAWG is the most widespread form of gender-based violence (GBV), which is derived from gender discrimination, unequal power relations and gender inequality in society. Studies by the United Nations system and other organizations clearly demonstrate that VAWG remains an urgent global challenge of alarming proportions. Similarly, research highlights that unless effective measures are put in place to curb widespread VAWG in the coming decade, an increased number of women and girls will experience violence in Africa, the Middle East and South-East Asia because of population growth.²⁸ This requires a wider focus on the root causes of violence founded in gender-based discrimination and gender-based power inequalities.

25 UN Women. 2020. Policy Brief: The Impact of COVID-19 on Women. New York: UN Women. <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/policy-brief-the-impact-of-covid-19-on-women-en.pdf?la=en&vs=1406>.

26 Sida (Swedish International Development Cooperation Agency). 2015. Preventing and Responding to Gender-based Violence: Expressions and Strategies (SIDA61848en). Stockholm: Sida, Department of International Organisations and Policy Support. <https://www.sida.se/contentassets/18786ccobfae45a58b07bebfoaa634e3/preventing-and-responding-to-gender-based-violence.pdf>.

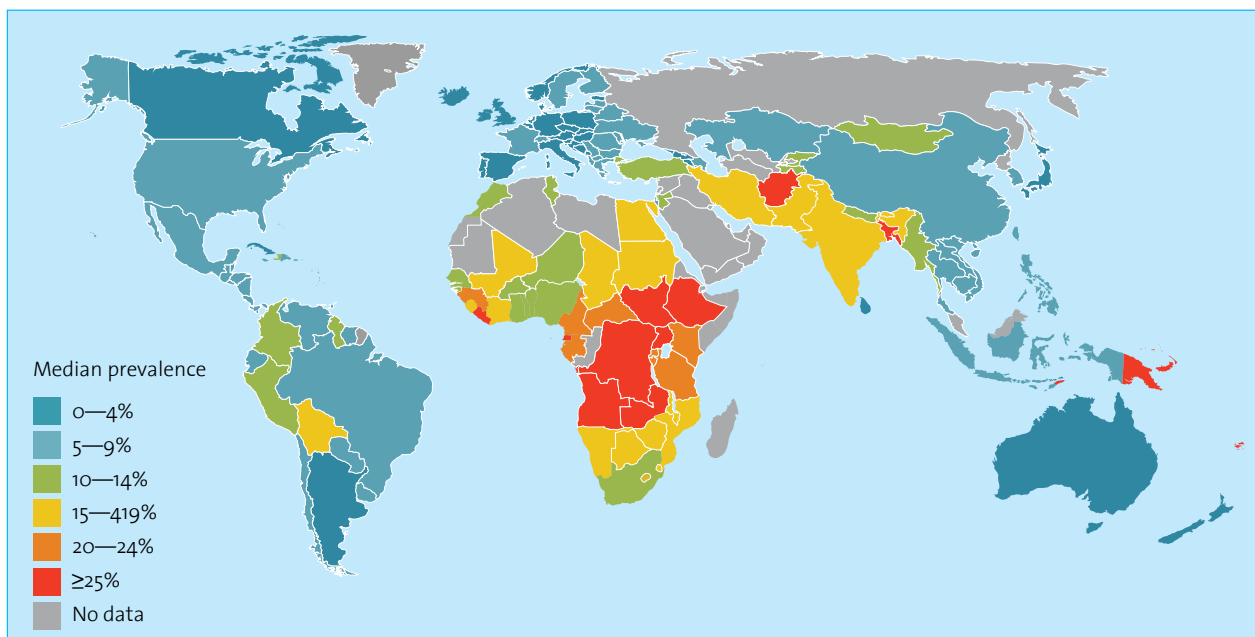
27 Ibid.

28 United Nations Human Rights Council. 2014. Report of the Working Group on the Issue of Discrimination against Women in Law and in Practice. A/HRC/26/39.

Globally, at least one third of all women having experienced some form of violence in an intimate relationship (Figure 26). VAWG is reflected in the Convention on the Elimination of All Forms of Discrimination against Women and was emphasized as a key area of concern at the United Nations Fourth World Conference on Women in Beijing in 1995. Because violence against women is the most common manifestation of GBV, the words are often adopted interchangeably. However, men and boys can also be affected by GBV, which is perpetuated by gender inequality and harmful gender norms that promote negative forms of masculinity and the use of power over others. GBV creates major obstacles to the achievement of gender justice and is a serious threat to economic and democratic

development, peace and sustainable development. It is also evident that GBV is a global health issue that spans across settings. According to the World Bank Group Voice and Agency report, the global costs of GBV are enormous, estimated to be approximately \$1.5 trillion. GBV accumulates huge economic consequences at household, community and societal levels. It is estimated that, in Peru, the economic cost of interpersonal violence is more than 3.5 per cent of gross domestic product.²⁹ GBV is not limited to individuals from a particular socioeconomic status, religion, ethnicity, region, sexual orientation, age or culture. The interplay between root causes of GBV and contributing factors, such as other forms of discrimination and marginalization, influences the prevalence of GBV.

Figure 26: Map of global prevalence estimates of past 12 months physical and/or sexual intimate partner violence among ever-married/partnered women aged 15–49 years, 2018³⁰



Source: World Health Organization, on behalf of the United Nations Inter-Agency Working Group on Violence Against Women Estimation and Data (United Nations Children’s Fund, United Nations Population Fund, United Nations Office on Drugs and Crime, United Nations Statistics Division and UN Women), 2021.

29 World Bank Group, 2014. Voice and Agency: Empowering Women and Girls for Shared Prosperity. Washington, D.C.: World Bank Group.

30 WHO (World Health Organization). 2021. Violence Against Women Prevalence Estimates, 2018: Global, Regional and National Prevalence Estimates for Intimate Partner Violence against Women and Global and Regional Prevalence Estimates for Non-partner Sexual Violence against Women. Geneva: WHO, on behalf of the United Nations Inter-Agency Working Group on Violence Against Women Estimation and Data (United Nations Children’s Fund, United Nations Population Fund, United Nations Office on Drugs and Crime, United Nations Statistics Division and UN Women).

4.2 The multiple forms of gender-based violence

GBV includes various forms of violence, from intimate partner violence (IPV) and sexual violence by non-partners to harmful practices (such as child marriage or female genital mutilation), femicide and human trafficking.³¹ GBV can occur in public and private spaces, and it occurs in development settings as well as in crises and conflict settings. Women and girls with disabilities; those affected by conflict and war; lesbian, gay, bisexual, transgender and intersex persons; migrant and refugee women and girls; female sex workers; elderly women; and women belonging to minority and indigenous groups experience higher rates of GBV due to the multiple forms of discrimination they face in society.

4.2.1 Intimate partner violence

IPV is a global concern and is a form of violence that has more statistical evidence than other forms of violence. However, it is important to note that numbers often underrepresent women's experiences because many cases are not reported. Data from 30 countries indicate that only 4 in 10 women seek help at all and only 6 per cent seek help from authorities including police and informal and formal courts.³² The gravity of IPV is reflected in the fact that around 870,000 women were intentionally killed in 2017 by a family member or intimate partner.³³ It has also been estimated that one third of women have faced some form of violence from their partners, although many countries have passed laws and policies to address men's physical violence towards their partners. Similarly, most violence against women is perpetrated by close family members, and during epidemics, including COVID-19, and in times of crisis, the number of cases tends to increase. In domestic spaces where this 'invisible monster' lives, a range of

abuses can occur, including, in the most severe cases, domestic homicide, which is a form of femicide. The distorted dynamics of power in the homes of controlling or abusive individuals can easily intensify during a pandemic, as the abuser has more liberty to act, while the victim's movement is controlled, and continued exposure to violence limits the victim's capacity to manage or seek justice. There are also fewer police interventions and fewer options for accessing the justice system during quarantine and where there is restricted movement, which makes reporting more difficult. Perpetrators may also use the restricted movement to exert more control over their partners' access to mobile phones and social media. Factors such as unemployment, situational stress, substance abuse and generally limited resources can further contribute to an increased risk of domestic violence and femicide.³⁴

IPV has many forms (economic, emotional, physical, psychological, sexual). It can occur throughout women's lives,³⁵ and some women experience multiple forms of violence across their life span, throughout the prenatal period, infancy, childhood, adolescence, adulthood and old age. Instances of violence can be sporadic, but in most cases, and especially when the perpetrator knows the victim, the violence is both systematic and repetitive.

According to the World Health Organization (WHO)'s 2013 statistical report on non-partner violence against women and IPV, approximately one third of all women who have been in a relationship have experienced violence by their intimate partner, and 38 per cent of all murders committed against women are by intimate partners.³⁶

4.2.2 Sexual violence by non-partners

Sexual violence by non-partners includes sexual harassment, sexual assault, gang rape and rape. WHO statistics estimate that globally 7 per cent

31 See details on these forms at: <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence>.

32 Swedish International Development Cooperation Agency (Sida). 2007. Action Plan for Sida's Work Against Gender-based Violence 2008–2010 (SIDA38656en). Stockholm: Sida, Department for Democracy and Social Development.

33 National Council for Law Reporting. 2020. "Kenya Law: Home Page." <https://kenyalaw.org/kl/>.

34 Telles, L. E., A. M. Valenca, A. J. Barros and A. G. da Silva. 2020. "Domestic Violence in the COVID-19 Pandemic: A Forensic Psychiatric Perspective." *Brazilian Journal of Psychiatry* 43 (3), pp. 233–234.

35 WHO (World Health Organization) and PATH (Program for Appropriate Technology in Health). 2005. *Researching Violence against Women: A Practical Guide for Researchers and Activists*. Washington, D.C.: WHO and PATH. http://www.path.org/publications/files/GBV_rvaw_complete.pdf.

36 WHO. 2017. "Violence against Women." Accessed 29 June 2021. <https://www.who.int/mediacentre/factsheets/fs239/en/>.

of women have been exposed to sexual violence outside an intimate relationship, although numbers may not be representative of the actual prevalence because some cases are not reported. According to WHO, lifetime prevalence of non-partner sexualized violence in Africa is 6 per cent.³⁷ Recent studies in Asia and the Pacific region have revealed men self-reporting that they raped a woman who was not their partner.³⁸ Gang rape is a violent crime in which many men use sexualized acts to deliberately harm mostly women and girls, although men and boys can also be victims. In South Africa, for example, lesbian women have been gang raped with the intention of “correcting their sexual orientation” so that they would become heterosexual.³⁹ These acts are expressions of xenophobic, misogynistic, homophobic and racist norms that reproduce socialization processes that oppress and devalue women and femininity. UN Women has been at the forefront of addressing sexual VAWG by non-partners, especially in public spaces, through its global initiative ‘Safe Cities and Safe Public Spaces’.⁴⁰



4.2.3 Conflict-related gender-based violence

Conflict-related GBV includes sexual violence and remains prevalent across the world. It has been reported in conflict-affected areas, including northern Uganda, the Democratic Republic of the Congo, Liberia, Libya, Rwanda, Sudan and Syria.⁴¹ In

most instances, state forces are reported to be perpetrators of sexual violence rather than rebels.⁴² Conflict-related sexual violence is used as a weapon of war when non-state and state armed actors use forced pregnancy and rape to degrade and humiliate women or girls, and use them as instruments of ethnic violence.⁴³ Similarly, women face a higher risk of sexual violence, including perpetrated by humanitarian personnel. According to the report of the Secretary-General to the Security Council

(S/2020/487) issued on 3 June 2020, and findings by the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, there has been an increase in instability in eastern parts of the Democratic Republic of the Congo. The findings documented 1,409 cases of conflict-related sexual violence, which represents an increase of 34

37 Violence against women prevalence estimates, 2018: global, regional and national prevalence estimates for intimate partner violence against women and global and regional prevalence estimates for non-partner sexual violence against women. Geneva: World Health Organization; 2021. Licence: CC BY-NC-SA 3.0 IGO.

38 World Bank Group. 2014. Voice and Agency: Empowering Women and Girls for Shared Prosperity. Washington, D.C.: World Bank Group.

39 Girls Not Brides. 2021. Promoting Healthy Masculinities is Key to Gender Equality. But How do we Achieve This? London: Girls Not Brides. <https://www.girlsnotbrides.org/healthy-masculinities-and-gender-equality/>.

40 UN Women’s safe cities global initiative in New Delhi has generated a number of innovative results. Through partnerships with mayors’ offices, public transport, the police, the media and women’s groups, communities in New Delhi have started to conduct extensive safety audits, spreading awareness and advocating with authorities for better lighting and pavements. See http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2013/12/un%20women-evaw-safecitiesbrief_us-web%20pdf.ashx.

41 International Trade Union Confederation. 2011. Violence against Women in Eastern Democratic Republic of Congo: Whose Responsibility? Whose Complicity? Brussels: International Trade Union Confederation. https://www.ituc-csi.org/IMG/pdf/ituc_violence_rdc_eng_lr.pdf.pdf.

42 Field data, 2020.

43 Ilkkaracan, P. and S. Jolly. 2007. Gender and Sexuality: Overview Report. London: Institute of Development Studies BRIDGE.

per cent since 2018. In Burundi, similar incidents of conflict-related sexual violence against women were reported by the Commission of Inquiry on Burundi (A/HRC/42/49).⁴⁴ These cases were attributed to the security and intelligence forces and to members of the Imbonerakure, the youth wing of the ruling party.⁴⁵ The United Nations Assistance Mission in Somalia also verified cases of conflict-related sexual violence perpetrated against 220 girls and 19 women, which were attributed to Al-Shabaab (26), the Galmudug police (5), Jubbaland forces (18), south-west forces (4), clan militias (19), the Puntland police (2) and unknown armed actors (120). The report further indicates that the Somali police force was implicated in 14 incidents, and 32 cases involved members of the Somali National Army. Out of these cases, 78 cases (46 per cent) took place in the Jubbaland State.⁴⁶

4.2.4 Harmful practices

In international human rights discussions during recent decades, the concept ‘harmful practices’ has been used with reference to traditional beliefs and customs that underscore control over women and girls as “consequences of the value placed on women and girls by society.” Globally and yearly, approximately 15 million girls are married before the age of 18 across countries, religions and cultures.⁴⁷ Historically, there has been a focus on child marriage and female genital mutilation. In recent years, violence perpetrated ‘in the name of honour’, which is often femicide, has gained attention. This concept and the discussions and agendas that have developed around it have been helpful in recognizing survivors and in prompting action (including in the justice sector) against forms of violence that had not previously been given adequate consideration.

4.3 Overview of country good practices on gender-based violence response systems

Many approaches and interventions for addressing GBV have been tested and initiated throughout the world. There is no single best and most effective approach, as interventions must be effective in their own specific contexts. Combining two or more approaches is the best strategy for addressing GBV at national levels. In addition, addressing GBV requires integrated actions by international, regional, national and local organizations, with governments making multi-sectoral strategies and interventions to address the problem. From the analysis, there are examples of some promising practices for implementation of GBV legislation and efforts that together create a ‘GBV response system’. The practices include key elements (although not exhaustive) across a range of categories which should all be applied to providing more comprehensive responses. These include i) a survivor-focused approach; ii) legislating the provision of funding; iii) strengthening the justice system; iv) inter-agency coordination; v) initiatives focusing on needs of specific groups; and vi) monitoring and evaluation of implementation of legislation or policies.

In Kenya, the Wangu Kanja Foundation, a local GBV organization, developed the first-ever police application called ‘SV_Case Study’, which is readily available from the Google Play store. This application is used to enhance support, documentation, tracking and monitoring of sexual violence cases in Kenya. It is thought that the app will improve the responses of different stakeholders in the access to justice referral pathway, including by reducing incidences of corruption.

44 United Nations Human Rights Council. 2019. Report of the Commission of Inquiry on Burundi. A/HRC/42/49. <https://undocs.org/pdf?symbol=en/A/HRC/42/49>.

45 United Nations Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict. 2020. “Burundi.” Accessed 29 June 2021. <https://www.un.org/sexualviolenceinconflict/countries/burundi/>.

46 United Nations Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict. 2020. “Somalia.” Accessed 29 June 2021. <https://www.un.org/sexualviolenceinconflict/countries/somalia/>.

47 Girls Not Brides. 2021. Promoting Healthy Masculinities is Key to Gender Equality. But How do we Achieve This? London: Girls Not Brides. <https://www.girlsnotbrides.org/healthy-masculinities-and-gender-equality/>.

The Kenyan non-governmental organization Centre for Rights Education and Awareness (CREA), through its advocacy initiatives, has supported the county governments of Kilifi and Meru, the Kenyan police service and the Kenyan judiciary to strengthen their mechanisms for implementing existing GBV laws, policies and reporting. Notably, the Centre for Rights Education and Awareness has extended its partnership with the Teachers Service Commission in expanding the Teachers Service Commission Circular No. 3 of 2010, which describes administrative steps to ensure a safe learning environment in schools and outlaws sexual violation of students by teachers.

The government of Burundi has streamlined court procedures since 2007 through construction and rehabilitation of 33 resident courts in eight provinces, including Bubanza, Cibitoke, Cunkunzo, Makamba, Muramiya, Mwaro, Ngozi and Rutana. The

government further engaged in capacity-building for court mechanisms and surveyed public opinion on judicial enforcement of laws. They provided training for staff in the judicial sector, including prisons, on matters related to advancement of access to justice for women, which has led to improvements in the handling of cases. The Ministry of Justice also created training for staff in the judicial sector on separating prisons for children and adults and men and women. Furthermore, the Ministry of Justice met with local governments, including area chiefs, to create awareness at grass-roots level on judicial and best practices to be adopted. The 2020 report of the Secretary-General to the Security Council (S/2020/487) noted that the “Government of Burundi has established four one-stop centres to provide comprehensive assistance to survivors of sexual and gender-based violence.”⁴⁸

4.4 Country findings, review and situational analysis of gender-based violence

- **Tanzania:** In Tanzania, data on cases of violence show that the lifetime prevalence of domestic violence among women aged 15–49 years is more than 45 per cent. This includes physical violence (25 per cent) and sexual violence (7 per cent), and 14 per cent of the women have experienced both. Nine per cent of pregnant women reported physical abuse. The report also showed that 60 per cent of women in Tanzania had experienced controlling behaviour exhibited by a partner or husband at some point. There is considerable regional variation in the prevalence of physical violence. The reports indicate that violence is highest in Dodoma (71 per cent) and lowest in Tanga (16 per cent). In the case of sexual violence, the highest prevalence was in Rukwa (32 per cent) and the lowest was in Shinyanga (5 per cent). The perpetrators of sexual violence against ever-married women were current husbands or partners (48 per cent), former husbands or partners (21 per cent), and current or former boyfriends (7 per cent).⁴⁹
- **Kenya:** The 2014 Kenya Demographic and Health Survey⁵⁰ reported 45 per cent of women and girls aged 15–49 years have experienced physical violence. Fourteen per cent have experienced sexual abuse or violence,⁵¹ defilement, sexual assault, rape, compelled or induced indecent acts with children or adults, gang rape, child pornography, child trafficking, child sex tourism, exploitation of prostitution, child prostitution, incest by men and women, forced sexual acts for cultural or religious reasons, sexual harassment, deliberate transmission of HIV or other life-threatening sexually transmitted diseases, and stupefying with sexual intent, among others. The lack of access to land rights

48 United Nations Security Council. 2020. Conflict-related Sexual Violence: Report of the United Nations Secretary-General S/2020/487.

49 The United Republic of Tanzania Ministry of Health and Social Welfare. 2011. National Management Guidelines for the Health Sector Response to and Prevention of Gender-based Violence (GBV). Dodoma: The United Republic Of Tanzania Ministry Of Health And Social Welfare. http://www.healthpolicyplus.com/archive/ns/pubs/hpi/Documents/1466_1_MANAGEMENT_GDLINES_TO_MOHSW_SEPT_FINAL_acc.pdf.

50 Kenya National Bureau of Statistics. 2014. Kenya Demographic and Health Survey 2014. Nairobi: Kenya National Bureau of Statistics. <http://www.nutritionhealth.or.ke/wp-content/uploads/Downloads/Kenya%20Demographic%20and%20Health%20Survey%20KDHS%20Report%202014.pdf>.

51 Ibid.

Kenyan women face, despite a progressive legal framework increases their risk of violence.⁵²

Case Study 2: Fear of reprisal hinders access to justice

In Bungoma County, Kenya, a woman expressed fears that her neighbour would be subjected to repeated assault and abuse by the husband should he resurface after escaping from Bungoma Police Station. The neighbour's husband had been convicted of repeated abuse of his wife, including cutting her with a panga (machete). He was among the 11 prisoners who had escaped from the police cell by digging a tunnel when they were waiting to be tested for COVID-19 after attending court sessions over the assault charge.

- **Burundi:** In Burundi, there is also a serious problem with physical and sexual violence against women and girls, and cases are rarely reported.⁵³ A heightened risk of GBV still remains in 2020 and is used as a strategy to punish women with political affiliations.⁵⁴ Conflict and poverty in several areas in Burundi led to men who were heads of households getting killed or imprisoned, leaving women and girls in families vulnerable and exposed to both physical and sexual violence.⁵⁵ The volatile nature of peace and security in Burundi causes women and girls to seek asylum in other areas of the country or other neighbouring countries.⁵⁶ This leaves the women vulnerable to sexual and gender-based violence as a form of punishment, with security personnel being some of the perpetrators. The lower social and economic position of women in Burundi society is the leading factor contributing to GBV. Women and girls continue to face rape, abduction and exposure to sexually transmitted diseases in their daily lives. This has occurred

both during and after the conflict, which has reduced their access to their right to bodily autonomy.

Despite the slow advance towards stability in Burundi, there is a new threat involving proliferation of arms, causing high levels of violence, insecurity and creating fear among women.⁵⁷ Armed rape using home-made weapons was rampant, especially during attacks on and armed robbery of farms and homes.⁵⁸ Furthermore, women suffer with the burden of rape, which itself is a taboo. The act of discussing an experience of rape openly is shunned, making it difficult for survivors of rape to seek justice and treatment. The numbers of armed rape incidents in Burundi surpasses those reported, registered or treated, making it even more difficult to provide treatment for survivors of rape and monitor / respond to HIV infection rates.⁵⁹

Before 2006, most instances of rape and physical abuse were attributed to the conflict era in Burundi. However, post-2006, rape and physical violence continue in families and communities where women who have been raped are shamed and blamed as victims. Girls who are raped are sometimes forced to get married to the perpetrator, as families considered this less shameful, without regard to how the girl feels. This makes the victim's pain worse. Families often negotiate settlements in which the victims are not included in decision-making. The families and relatives of the girls are usually paid, including the parties who conduct the negotiations. With regard to inheritance rights, widowhood rights and land security rights, security of tenure and access to land rights are often enjoyed by men more than women, owing to the patriarchal nature of communities in Burundi. In addition to scarce land and resources in Burundi, which

52 FIDA-Kenya (International Federation of Women Lawyers Kenya). 2009. Women's Land and Property Rights in Kenya. Nairobi: FIDA-Kenya.

53 Immigration and Refugee Board of Canada. 2013. Burundi: Protection and Resources for Women of Spousal Abuse (2010–June 2013). Canada: Immigration and Refugee Board of Canada. <https://www.refworld.org/docid/530372e54.html>.

54 Ibid.

55 Trial International. 2018. "Sexual Violence: The Hidden Face of the Burundian Crisis." Trial International.

56 Davis, S. and J. True (Eds.). 2019. The Oxford Handbook of Women, Peace and Security. New York: Oxford University Press, p. 324.

57 Rackley, E. B. 2005. "Armed Violence against Women in Burundi." Humanitarian Practice Network. Accessed 29 June 2021. <https://odihpn.org/magazine/armed-violence-against-women-in-burundi/>.

58 Ibid.

59 Walby, S. 1997. Theorizing Patriarchy. Cambridge: Polity Press.

leads to frequent conflict and disagreements over inheritance, women face marginalization and discrimination in land ownership and inheritance. The situation is worsened by the belief that girls and women⁶⁰ traditionally do not inherit anything from their fathers, and in other cases are barred from inheriting from their husbands.⁶¹ Women's right to inherit land in Burundi faces a triple threat compared with other jurisdictions in sub-Saharan Africa, with the majority of Burundians supporting women's rights in general, but rejecting women's land inheritance rights.⁶²

Results from the analysis of violations against adolescents and child marriage reveal that 1 in 5 girls in Burundi are married before the age of 18 years and 3 per cent are married before their 15th birthday.⁶³ Article 88 of the Code of Persons and the Family (Codes des Personnes et de la Famalia, 1993) provides that the legal age for marriage for boys is 21 years, while for girls it is 18 years. Additionally, Article 38 of the Law of Protection of Victims and the Prevention and Punishment of Gender-based Violence provides that anyone who abducts a girl to marry her or to have her married can face between 3 and 5 years' imprisonment. However, in practice, girls can be married before they are 18 years old with a waiver from the provincial government and parental consent.⁶⁴ This is driven by gender inequality and the belief that boys are superior

to girls, where girls are referred to as *omukobwa*, meaning 'intended for becoming a bride,'⁶⁵ making child marriage a serious concern for girls between the ages of 15 and 18 years.

- **Uganda:** Uganda has a high rate of reported cases of violation of women's rights and higher rates of inaccessibility to justice for victims of affiliated crimes. A recent report indicated that 56 per cent of women experienced physical violence, 27.7 per cent experienced sexual violence and 42.9 per cent for spousal emotional violence. Sexual violence reports steadily declined from 39 per cent in 2006 to 28 per cent in 2011.⁶⁶ The traditional belief and cultural view that women and girls are vulnerable in nature means that, in some ways, they are considered to have fewer human rights than men in Uganda. Consequently, women and girls are subjected to various forms of abuse and blatant misrepresentation because of their gender. While most countries merely turn a blind eye to the discrimination against women and children because of stereotypical information, cultural practices actively discriminate against women.⁶⁷ Uganda's status as a neighbour to war-torn countries worsens the problem, with refugees almost subjected to another set of rules and laws. See Case Study 3 for an example of discriminatory practices against Ugandan women and girls.

60 Ndikumana, A. 2015. Gender Equality in Burundi: Why does Support not Extend to Women's Right to Inherit Land? Policy Paper No. 22. Accra: Afrobarometer. <https://afrobarometer.org/publications/pp22-gender-equality-burundi-why-does-support-not-extend-womens-right-inherit-land>.

61 Ibid.

62 UN Women.

63 Girls Not Brides. "What's the Child Marriage Rate? How Big of an Issue is Child Marriage?" Accessed 29 June 2021. <https://www.girlsnotbrides.org/child-marriage/burundi/>.

64 Burundi Code of Persons and the Family, Article 88.

65 Ibid.

66 Ibid.

67 Baines, E. and C. Oliveira. 2020. "Securing The Future: Transformative Justice And Children 'Born Of War.'" *Social & Legal Studies* 30 (3), p. 341–361.

Case Study 3: How cultural practices can perpetuate violence against women and girls

Lomoe Nakoupuet was charged in a court of law with rape, contrary to sections 123 and 124 of the Penal code Act in Uganda, by Loballa Sunday. According to Loballa, the accused met her at her father's home and expressed interest in her. He bought a lot of potent gin (waragi) for her father and brothers. They entertained him from 5pm until 2am. The accused then forcefully abducted her to his home. She managed to escape and returned home. She opposed her parents and relatives on the marriage arrangement. The next morning her family forced her to go with the accused as his wife. She refused but was dragged by her brothers to the home of the accused. She fought off the accused but was held to the floor by her brothers, who pinned her on the rough floor and enabled the accused to have forceful sexual intercourse with her. She sustained a lot of bruises on her back and felt disrespected for being forced to have sex in front of her brothers. She is still traumatized. The accused forced her into marriage without her consent.

Case Study 4: Using culture to protect perpetrators of violence against women and girls

In his mitigation, Leonard Otte on state brief argued:

"There are no known previous records of the accused. The court must treat him as a first offender. The accused is remorseful. He indeed attempted cultural reconciliation while at Kotido Police Station. It is unfortunate that it failed. Note that the accused was led on by the parents and brothers of the survivor. They negotiated and accepted the dowry. The brothers actually dragged her to the home of the accused. The accused is of advanced age. Given the experience that the accused has had, there is no chance that he will do it again. He has been on remand from 11 February 2016. That is two weeks shy of three years. We diligently submit that both the accused and the victim, Loballa Sunday, have suffered a wrong. The Karimojong cultural rape has existed for centuries. They have grown up in this culture. I agree with the court that this culture is backwards. But if it did not exist, then the accused would not have followed it. Both the victim and the survivor are victims of cultural entrapment. The solution does not only lie in a heavy sentence. It lies in appropriate legislation and sensitization to change the culture. Let us not target the person now in the dock but the culture. Temper justice with mercy and hand down an appropriate sentence. We so pray."

- **South Sudan:** Reports indicate that most of the GBV survivors in South Sudan were victims of physical assault, currently estimated at 45 per cent. Cases of emotional abuse are estimated at 18 per cent, while those denied resources, opportunities and services were estimated to account for 11 per cent of the crimes committed against women and girls. Women in South Sudan have continued to experience widespread rape and other forms of GBV. The extent and nature of these abuses and victimization against women and children in South Sudan call for more serious attention.

Case Study 5: The dark claws of incest⁶⁸

A 17-year-old victim from Beza Werku, a student at an Ethiopian public school, narrates her ordeal.

"It was one day when I was in our house and was terrified by dark forces of incest. I am here to tell what my own father did to me when I was young at the age of 17, only if you can make it anonymous and agree to use it after I become a stable mother," she said. I agreed to her preconditions and gave her my word. Then she told me her story, the secret that has darkened her life, after a week of dilemma.

She was so nervous that the counsellor had to help her at some point; she was not sure where to begin her story. I told her to take time and comfort herself first, and after taking a deep breath she started narrating: "My mum abandoned me when I was just a baby and left me with my father and little sister. At that time, I was in 8th grade. I was her eldest child. Our happiness didn't last long. Things started to change as my father

68 The data were collected during an in-depth interview on 18 November 2020. The interview was conducted in a private environment, with the counsellor hosting the victim in the shelter Ethiopia. The victim's name was concealed to protect her anonymity. A digital voice recorder was used in the virtual interview.

turned against me by making love with me, and that led to my pregnancy. My father totally changed and made drinking his day-to-day habit. He started coming home late and even sometimes spent the night out. It was up to me to sit and wait for him. Thus, I couldn't sleep until he got home. Sometimes, I was up all the night because he was chaotic and making annoying sounds. He took out his anger by breaking any material he found, but he never touched me as I was obedient and always took care of him. My sleepless and stressful nights made it difficult to actively attend school. As a result, my school performance declined dramatically. I tried to cope with things, but I had never suspected that there could be worse things in life until that night." She explained,

"It was a dark moment when my father one day came to my room where I was sleeping and stripped my pants and raped me. I tried to resist but the force was just too much and I could not manage. This incident happened to me when I was 16 years old. I reported the ordeal to the police, who took up the matter and even forwarded it to the court where the matter is being handled, but with a lot of laxity. The rape led to my pregnancy and I gave birth 2 weeks ago in a nearby health centre. I was then taken by some organization here in Ethiopia that hosts girls who face challenges like mine. The organization is called AWSAD [Association for Women's Sanctuary and Development], and they give psychosocial support to women and girls who have experienced gender-based violence (health, counselling and skills training), but they do not get involved in legal cases. How I pray that I get justice out of this traumatizing act in my life. It is now almost 3 months since this organization took me in, but the case is very slow, almost like the culprit will not be punished, despite evidence reports that have been made to both the police and the courts. Life was very tough for me; we lived alone for many years."

- **Somalia:** Somalia is among the countries in the sub-Saharan region dominated by patriarchal beliefs, making women vulnerable to GBV, including physical abuse, rape, abduction, child and forced marriages, and female genital mutilation. Moreover, some traditional customs allow physical violence against women, which is perceived as a disciplinary method for women. IPV has also been prevalent, whereby women are subjected to violence, yet they are expected to persevere with the relationship. Conflict-related sexual violence is also an issue in Somalia due to its history of war.⁶⁹ The most common forms include sex trafficking, forced marriage and rape by militia. Rape against women and girls is still used as a weapon of war and mass rape against women and girls is usually rampant during conflict, where traditional norms are disregarded and various forms of sexual violence are normalized. These forms of violence against women are closely attributed to unequal gender power relations and social exclusion.⁷⁰ The high prevalence of GBV is promoted by factors such as poverty, illiteracy and illicit cultural norms, whereby women are seen as a minority.
- **Zimbabwe:** The maternal mortality rate in Zimbabwe is high at 581 per 100,000 live births,⁷¹ and 1 in 4 girls aged 15–19 years is married, with 48 per cent of marriages occurring early or due to pregnancy. A United Nations Educational, Scientific and Cultural Organization report adds that 7 per cent of the population have disabilities, and most of them remain excluded and face challenges in accessing jobs, education, health care and justice.⁷² Culturally, disability is associated with witchcraft and is considered a curse or bad omen. Furthermore, women and girls with disabilities are twice as likely to experience sexual abuse as men or women without disabilities. In accessing justice, people with disabilities lack information on where or

69 El-Bushra, J. and J. Gardner. 2016. "The Impact of War on Somali Men: Feminist Analysis of Masculinities and Gender Relations in a Fragile Context." *Gender & Development* 24 (3), pp. 443–458.

70 International Committee for the Development of Peoples. 2015. *The Complexity of Sexual and Gender-based Violence: Insights from Mogadishu and South Central Somalia*. Rome: International Committee for the Development of Peoples. https://www.international-alert.org/sites/default/files/Somalia_ComplexitySexualViolence_EN_2015.pdf.

71 United Nations Children's Fund Zimbabwe. 2020. "Gender Focus." Accessed 29 June 2021. <https://www.unicef.org/zimbabwe/gender-focus>.

72 United Nations Educational, Scientific and Cultural Organization Zimbabwe. 2020. "Advancing the Rights of Women and Girls with Disabilities in Zimbabwe." Accessed 29 June 2021. <https://en.unesco.org/fieldoffice/harare/unprpddisabilityrights>.

how to access justice, and police stations are not equipped to support people with disabilities in reporting crimes. In addition, there is often victim-blaming, which denies them justice.⁷³

A 2017 Human Rights Watch report documented that widows in Zimbabwe are routinely evicted from their land and their property taken by relatives, often their in-laws.⁷⁴ Gender stereotypes also subjugate women to household responsibilities such as raising children and household chores, limiting their participation in public spheres. Women in public spaces are viewed as loose and immoral.⁷⁵ According to the Zimbabwe Demographic Health Survey (Zimbabwe National Statistics Agency and ICF International, 2016) more than one third (35 per cent) of women aged 15–49 years have ever experienced physical violence since age 15.⁷⁶ The most common form of abuse is spousal abuse, with only 21 per cent reporting violent incidents.⁷⁷ GBV is reported to thrive because of social, cultural and religious practices that subordinate women. In most communities, it is unacceptable for men or women, or girls or boys, to step outside socially assigned gender roles (including people who identify as lesbian, gay, bisexual, transgender or intersex). As a result of patriarchy, women suffer spousal abuse, including sexual, physical, emotional and psychological violence.

- **Malawi:** In Malawi, inequality and discrimination affects mostly women and young people as well as people with disabilities. Harmful

practices and traditions that violate women's rights are deeply entrenched in communities. Forty-two per cent of married women have experienced spousal violence⁷⁸, while boys, girls, women and men with albinism continue to be abducted and often killed. The Demographic and Health Survey estimates the gender gap in agricultural productivity between women and men to be at 7.3 per cent.⁷⁹ While women make up 75 per cent of the agricultural labour force, they produce 70 per cent of household food and their access to productive resources such as land, entrepreneurship and credit is constrained.⁸⁰ In terms of access to justice, the judiciary is plagued by inadequate judicial officers, insufficient court infrastructure, insufficient financial resources, and lengthy distances between the population and the courts.⁸¹ Malawi remains among the least developed countries, with a ranking of 170 out of 188 on the Human Development Index.⁸² The United Nations Children's Fund estimates that 46 per cent of girls marry before the age of 18 and 9 per cent marry before the age of 15, while 65 per cent of girls experience child abuse compared with 35 per cent of boys. Of girls aged 15–19 years, 29 per cent have begun bearing children and cumulatively 152 out of every 1,000 women aged 15–19 years have a child. The widespread experiences of GBV are closely linked to women's slow progress compared with men's in literacy, education enrolment and completion, political participation, wage equality and land control.

73 The Ministry of Health and Child Care. 2013. "Living Conditions Among Persons with Disability Survey: Key Findings Report." MEDBOX. Accessed 29 June 2021. <https://www.medbox.org/pdf/5e148832db60a2044c2d51ae>.

74 Human Rights Watch. 2017. "Widows Deprived of Property Rights." Human Rights Watch, Zimbabwe. Accessed 29 June 2021. <https://www.hrw.org/news/2017/01/24/zimbabwe-widows-deprived-property-rights>.

75 Citizens Manifesto. n.d.. Women's Rights Situation in Zimbabwe in the Context of Reigning Environment (Are We There Yet?). <http://citizens-manifesto.org/2019/09/24/womens-rights-situation-in-zimbabwe-in-the-context-of-reigning-environment-are-we-there-yet/>.

76 Ibid.

77 ZIMSTAT (Zimbabwe National Statistics Agency) and ICF International. 2016. 2015 Demographic and Health Survey: Key Findings. Harare: ZIMSTAT; Fairfax: ICF International. <https://www.dhsprogram.com/pubs/pdf/SR234/SR234.pdf>.

78 Ibid.

79 Ibid.

80 Ibid.

81 Ntaba, Z. n.d. Sustainable Development Goal 16 and Access to Justice: The Case of Lay Magistrates in Malawi. Johannesburg: Southern Africa Litigation Centre. <http://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/GOAL-16-Book-Ntaba2.pdf>.

82 UNICEF Malawi (United Nations Children's Fund Malawi). 2020. "The Situation of Children and Women in Malawi: Facts and Figures." Accessed 29 June 2021. <https://www.unicef.org/malawi/situation-children-and-women-malawi>.

- Mozambique:** According to a 2016 Jhpiego report,⁸³ 37 per cent of women in Mozambique have experienced GBV in their lives. At least 12 per cent are forced to have sex during their lifetime. Violence is both a cause and consequence of HIV and AIDS. A 2019 UN Women report estimated that 1 in 4 women in Mozambique suffers one type of violence.⁸⁴ The lifetime physical and/or sexual intimate violence rate stands at 22 per cent. The rate of women being subjected to physical or sexual violence by an intimate partner or a non-partner during their lifetime is at 55 per cent.⁸⁵ Patriarchy restricts women's rights, including access to land. In some regions with matriarchal systems, women only have rights through their male relatives such as brothers or maternal uncles.⁸⁶ Communities still practice 'purification', in which a widow is forced to have sexual relations with a relative of her deceased husband. The tradition forces a woman to marry another man from her deceased husband's family (usually one of his brothers) to ensure that she still belongs to that family and to secure the livelihood of the children.⁸⁷ In addition, widows are accused of being sorcerers in an effort to take away their land and matrimonial property. Culturally, in matrilineal families, men still retain control of family property, and it is considered obligatory to 'care' for what should be shared with female family members. In patrilineal communities, women are not allowed to own property or inherit property because they do not allow asset transfer in case a widow remarries. This denies women access to justice in property, even when they have worked on matrilineal land.

In the northern provinces of Cabo Delgado, Nampula and Niassa, ethnic groups such as the Kimwanes, Macaus, Macondes and Nyanjas are matrilineal. The maternal uncle (mwene) is the head of the household, while all women, including sisters, nieces and mothers (pyamwene), have no role apart from being recognised by the ancestral lineage. Initiation rites of passage from adolescence to adulthood for girls are regarded as sufficient education to prepare girls for their roles as wives and mothers. This perpetuates early marriages in the rural areas. Single women are marginalized. In Cabo Delgado in particular, women and girls have been facing violence such as rape, sexual exploitation and decapacitation following violent attacks conducted by non-state armed insurgents since 2017. These actions, perpetuated by the armed conflict, have led to the disruption of essential services such as psychosocial support, the police and justice. In the central provinces of Manica Tete, Sofala and Zambèzia, communities such as the Chuabos Ndaus, Lomuès, Senas and Shonas are also matrilineal; the husband can move into his wife's home but has no land rights. In the event of dissolution of the marriage, the wife has custody of the children and owns the land. Women still perform the household chores, while the men control the household expenses. The southern provinces of Gaza, Inhambane and Maputo are home to the Bitongas, Changanas and Chope Rongas are patrilineal communities in which men control resources, although they are known to migrate out of the communities in search of work. Women can own property, but it is often smaller than that owned by male relatives. Catholic and Muslim religions are predominant, with polygamy being widely practised by

83 Betron, M. 2015. Recognizing Gender-based Violence as a Clinical and Multi-sectoral Issue: A Case Study of Jhpiego's Support to the Ministry of Health in Mozambique. Baltimore: Jhpiego. <https://www.jhpiego.org/wp-content/uploads/2015/08/Mozambique-Case-Study.pdf>.

84 UN Women. 2019. "Facts and Figures: Ending Violence against Women." Accessed 29 June 2021. <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>.

85 Ibid.

86 Food and Agriculture Organization of the United Nations. 2019. "Customary Norms, Religious Beliefs and Social Practices that Influence Gender-differentiated Land Rights." Accessed 29 June 2021. https://www.fao.org/gender-landrights-database/country-profiles/countries-list/customary-law/customary-norms-religious-beliefs-and-social-practices-that-influence-gender-differentiated-land-rights/en/?country_iso3=MOZ.

87 Save the Children and FAO (Food and Agriculture Organization of the United Nations). 2009. Children and Women's Rights to property and Inheritance in Mozambique: Elements for an Effective Intervention Strategy. London: Save the Children; Mozambique: FAO. <http://www.fao.org/3/al131e/al131e00.pdf>.

Muslims under sharia law. Lobolo⁸⁸ is paid in most communities as 'bride price', and this signifies the authority given to men to administer assets, including land. Customary norms encourage sons to protect women, especially widows and elderly people, and widows can only access income and land if they marry their brother-in-law. Men have control and authority over decisions regarding economic activities and benefits.

Child marriage is a serious problem, with 48 per cent of girls in Mozambique married before their 18th birthday. The United Nations Children's Fund places Mozambique as the country with the ninth highest child marriage prevalence rate and fifteenth highest absolute number of child brides. The country has committed to eliminating the practice by 2030 as part of Target 5.3 of

the SDGs. The country signed the 2014 Human Rights Council resolution to end child, early and forced marriage, signed the Convention on the Rights of the Child and acceded to the CEDAW to ensure free and full consent to marriage. The country has also ratified the African Charter on the Rights and Welfare of the Child (with Article 21 on child marriage and other harmful practices), as well as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (where Article 6 prohibits child marriage and sets the age of consent at 18 years). Domestically, the country has a National Strategy to Prevent and Eliminate Child Marriage (2016–2019) that seeks to engage in a campaign against the practice and improve access to education and reproductive health services, while supporting those already affected by the practice.

88 Lobolo or dowry; designation varies from country to country.

CHAPTER 5:

ACCESS TO JUSTICE FOR WOMEN AND GIRLS IN EAST AND SOUTHERN AFRICA

5.1 Global context and overview of access to justice for women and girls

The study affirms that access to justice is an important part of reducing discrimination against women and girls. Globally, it is estimated that 4 billion people are excluded from access to justice and the benefits of rule of law, and as a result they are underprivileged in terms of the means to live in dignity and prosperity devoid of poverty.⁸⁹ The 2030 Agenda for Sustainable Development⁹⁰ affirms the urgency to reverse this trend. Specifically, Sustainable Development Goal (SDG) 16 seeks to promote “peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, inclusive and accountable institutions at all levels.” Target 16.3 focuses on the extent to which equal access to justice for all and the rule of law are being promoted at the international, regional and national levels.

The 2030 Agenda reinforces the Committee on the Elimination of Discrimination Against Women General Recommendation No. 33 on Women’s Access to Justice,⁹¹ which was one of the first formulations of the intersection between SDG 5 and SDG 16: “The right to access justice for women is essential to the realization of all the rights protected under the Convention on the Elimination of All Forms of Discrimination against Women. It is a fundamental element of the rule of law and good governance, together with the independence, impartiality, integrity and credibility of the judiciary, the fight against impunity and corruption, and the equal participation of women in the judiciary and other law implementation mechanisms. The right to access to justice

is multidimensional. It encompasses justiciability, availability, accessibility, good quality, the provision of remedies for victims and the accountability of justice systems.”

Globally, women remain and continue to face discrimination throughout the course of their lives, which needs to be considered for justice to be ‘equal for all’. In this regard, the root causes of discrimination (corruption, official bias, indifference, system failures, impunity and stigma) in access to and delivery of justice must be addressed. To enhance laws so that they are more effective and to improve justice systems for delivering justice for women, there need to be stronger mechanisms for transforming societies, eliminating abuse of power and creating

89 United Nations. n.d. “Four Billion People are Excluded from the Rule of Law.” United Nations in South Africa. <https://www.un.org.za/four-billion-people-are-excluded-from-the-rule-of-law/>.

90 United Nations. 2015. The 2030 Agenda for Sustainable Development. A/RES/70/1. <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>.

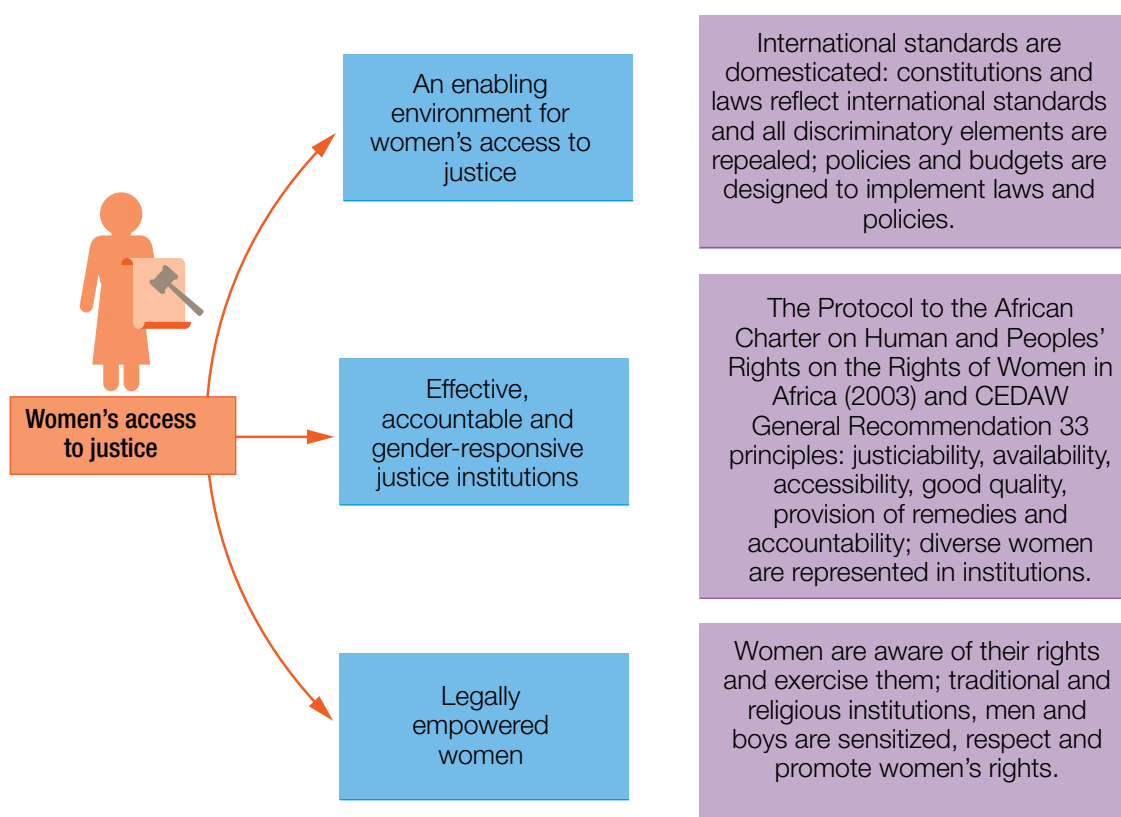
91 United Nations, Committee on the Elimination of Discrimination against Women. 2015. General Recommendation No. 33 on Women’s Access to Justice. CEDAW/C/GC/33.

institutions that uphold equal rights. Despite efforts to advance legislative and constitutional adjustments that recognize women’s equal rights, the transformative power of constitutions cannot be realized without consistent reforms, as discriminatory laws advance inequalities in societies.⁹²

This study notes that access to justice for women is embedded in all nations, cultures, customs, tribes and traditions. It is closely connected to equity,

accountability, fairness and impartiality, as viewed by the United Nations in the fortification and exoneration of rights and the prevention and punishment of wrongs.⁹³ This is corroborated by the 2018 High-level Meeting of the United Nations General Assembly on Peace building and Sustaining Peace, which highlighted that the rule of law and access to justice for women are key to sustaining peace (Figure 27).⁹⁴

Figure 27: Women’s access to justice programming entry points



Sources: *UNDG (United Nations Sustainable Development Group). 2017. United Nations Development Assistance Framework Guidance. New York: UNDG, pp. 9–12; Committee on the Elimination of Discrimination against Women, 2015.*

92 Sustainable Development Goal 16, Target 10.3.

93 Office of the United Nations High Commissioner for Human Rights. 2020. "Universal Periodic Review". Accessed 29 June 2021. <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.

94 As used by UN Women. See <http://www.unwomen.org/en/news/in-focus/csw61/women-in-informal-economy>.

5.2 Regional overview on access to justice for women in Africa

In Africa, the study notes that women have consistently suffered pervasive attitudinal, structural and systemic challenges in the pursuit of access to justice. Considerable international and regional initiatives have been ratified over the past decades with the objectives of promoting gender equality and women's right to access justice. The Convention on the Elimination of All Forms of Discrimination against Women notes that socially and systemically fashioned patterns of exclusion prevent women from accomplishing their full potential in all spheres of life.

Many countries in the East and Southern Africa region 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. Countries such as Mozambique, Rwanda, South Africa and Uganda have documented progressive constitutional protections and provisions for the rights of women conveyed in subordinate law, but, in reality, women still lack equality and equity with men.⁹⁵ Despite these laws and policies, the trends in the region reveal that there is still a big gap between the *de jure* rights of women and their *de facto* rights.⁹⁶ For example, where standards, codes and gender-sensitive laws and policies exist in the study countries, there seems to be undue reservations of provisions in the area of personal laws upholding women's rights, undue delays in legislative ratification processes, and weak institutional and resource frameworks to enforce them. With regard to monitoring these

discrepancies, it is notable that most governments in the region have established ministries, departments and directorates for women's and gender affairs, and institutions and processes for driving gender policies, action plans and strategies.⁹⁷

5.3 Manifestations of discrimination faced by women and girl survivors and victims of violence in accessing justice

The study reports various forms of violence and discrimination faced by women, largely driven by patriarchy, harmful masculinities and cultural norms. In all the study countries, sexual abuse, physical violence, including murder or femicide, emotional violence (which may include divorce and child custody breaches), female genital mutilation, child marriage, economic abuse of inheritance rights, widowhood rights and land security rights constitute some of the most common forms of violence directed against women and vulnerable groups, such as women and girls with disabilities. Across sub-Saharan Africa, an estimated 33 per cent of women have experienced violence by a partner in their lifetime,⁹⁸ and 21.5 per cent had experienced this in the previous 12 months.⁹⁹ Young women are among the groups that face high levels of violence. In Tanzania, for example, statistics show that 3 out of 10 or 30 per cent of women between the ages of 13 and 24 have been victims of one of these forms of violence in their childhood and teenage years.¹⁰⁰ The factors contributing to the high prevalence rates of gender-based violence (GBV) in the country vary, ranging from poverty to harmful cultural beliefs and social conditioning. Regardless of the reasons, the prevalence of violence against women and girls (VAWG) remains unacceptably high.

95 UN Women and UNDP (United Nations Development Programme). 2014. *Improving Women's Access to Justice: During and After Conflict – Mapping UN Rule of Law Engagement*. New York: UN Women and UNDP, p. 68.

96 See United Nations, General Assembly, United Nations Economic and Social Council, Report of the Secretary-General: *Repositioning the United Nations Development System to Deliver on the 2030 Agenda – Ensuring a Better Future for All*. A/72/124-E/2018/3.

97 *Pathfinders for Peaceful, Just and Inclusive Societies*. 2017. *The Roadmap for Peaceful, Just and Inclusive Societies: A Call to Action to Change Our World*. New York: Center on International Cooperation, p. 12.

98 World Health Organization. 2021. *Violence against Women Prevalence Estimates, 2018: Global, Regional and National Prevalence Estimates for Intimate Partner Violence against Women and Global and Regional Prevalence Estimates for Non-partner Sexual Violence against Women*. Geneva: World Health Organization, on behalf of the United Nations Inter-Agency Working Group on Violence Against Women Estimation and Data (United Nations Children's Fund, United Nations Population Fund, United Nations Office on Drugs and Crime, United Nations Statistics Division and UN Women), p. 24.

99 UN Women. "Women Count: Thematic Area Dashboard on Violence against Women." Accessed 29 June 2021.

100 *Ibid.*

Globally, 26 per cent of women experience physical or sexual violence by an intimate partner in their lifetime.¹⁰¹ In 2018, it was reported that more than 1 billion women lacked legal protection from sexual violence by an intimate partner.¹⁰² In all countries, major threats to women's lives and livelihoods have increased to alarming levels during the COVID-19

pandemic, which has reduced even further their access to justice institutions. Evidence reveals that even where legislation exists, enforcement may be weak because of inadequate police and judicial responses, a lack of protection orders and serious gaps in national laws.

Case Study 6: Gender-based violence and intimidation by a male police officer in Kenya

Mueni (not her real name) stayed with her boyfriend, a police officer at Mlolongo Police Station, for 2 years and 7 months. They both live in Mlolongo. On 30 October 2019, the police officer assaulted her in their house using a hammer, and she sustained two fractures on her left hand. She reported the matter to the Mlolongo Police Station on 31 October 2019, but the Officer Commanding Station (OCS) has never taken any action against the officer to date.

On 31 October 2019, she sought medical attention at Kitengela Health Centre, where she said she was treated very well, and plaster was put on to keep the bones in her hand in place for a month and a half, while she awaited further treatment. On 26 December 2019, the accused called the survivor to his house for a mutual agreement on how he could take up the cost of treatment to avoid going to court. As the discussion was going on, a female bar attendant walked in and confronted the survivor, asking what she wanted in that house. The survivor did not answer, and the bar attendant left. After a few minutes, she returned with another female police officer (known to the survivor), who was also based at Mlolongo Police Station. They then started beating her until her clothes were torn, insulting her and calling her names. When she shouted for help, they all left. As the female police officer was leaving, she hit the survivor with her gun.

Mueni reported the matter to the same police station (OB/10/2B/12/2019) on 30 December 2019. After that, she went to Katani Health Centre for treatment and then went to see the OCS about the cases. She had been going to the OCS for help, and it had not done anything up to date. She had also gone to the Officer Commanding Police Division and the Machakos County Commander. When she had been to the County Commander, the accused (her boyfriend) approached her with KSh 25,000 for treatment. The female police officer has never been summoned.

Since then, she has received threats from the two police officers, and they told her to move away from Mlolongo or they would kill her. They said that there is nowhere that she can take the cases because, as she can see, the cases are not going anywhere. Because of the broken bones in her hand, she has suffered a lot of pain, and she has been unable to do most things that she used to. In addition, she cannot provide for her child. She has gone from the police station to the OCS, the Officer Commanding Police Division, the County Commander, the Kenya Police Service Headquarters, the Internal Affairs Unit and the Independent Policing Oversight Authority, but she is yet to receive any help. The threats against her have increased. People have been sent to harm her, sometimes she is threatened with police guns and now she lives in fear with her injured hand.

101 As used by UN Women. See <http://www.unwomen.org/en/news/in-focus/csw61/women-in-informal-economy>.

102 High-level Group on Justice for Women. Inaugural Meeting Background Paper, p. 3. <https://www.idlo.int/sites/default/files/pdfs/events/HLGJ4W%20The%20Hague%20-%20BACKGROUND%20PAPER.pdf>, citing Tavares, P. and Q. Wodon. 2018. Ending Violence Against Women and Girls: Global and Regional Trends in Women's Legal Protection Against Domestic Violence and Sexual Harassment. Washington, D.C.: World Bank.

5.3.1. Discrimination faced by women in accessing justice

Informal and customary resolution of violence against women is a form of discrimination faced by women in accessing justice. Mozambican law does not outlaw mediation and/or reconciliation, even where criminal cases are handled at community level. This means that most of the cases of VAWG are solved through this method, which results in lenient sentences and enables perpetrators to repeat the offences. Civil society organization (CSO) reports from various countries in the study have decried the fact that the highest penalties for crimes of VAWG are rarely applied in practice, while the severe stigma and taboo associated with rape and incest mean that such crimes are rarely reported. Many families prefer to settle rape allegations outside the formal justice system by accessing informal community courts and tribunals and/or settling the case with financial compensation.¹⁰³

Discrimination against women at work is another manifestation reported by respondents in the study. Ninety per cent of economies have at least one law that is discriminatory against women, with 943 legal gender differences across 170 economies.¹⁰⁴ Apart from gender-based discrimination, many women in the informal sector or living in poverty in the 10 countries studied face restrictive and punitive public laws, including complex rules, legislation and enforcement practices. The World Bank estimates that over 2.7 billion women are legally restricted from having the same choice of jobs and work-related rights as men.¹⁰⁵

Discriminatory family laws including discriminatory practices in family life, codified into law, in equality of access to justice, remain a major obstacle to justice for women in all of the study countries.

Notably, religious and secular laws and practices remain discriminatory towards divorce in the region.¹⁰⁶ Security of tenure and access to land rights are often enjoyed by men more than women owing to the patriarchal nature of the communities in the 10 study countries. In addition to scarce land and resources in countries such as Burundi, Kenya, Tanzania and Uganda, there are frequent conflicts and disagreements in which women are marginalized and face discrimination with regard to land ownership and inheritance. The situation is worsened by the belief that girls and women¹⁰⁷ traditionally do not inherit anything from their fathers or may be barred from inheriting from their husbands.¹⁰⁸ Women's rights to inherit land in Burundi face the triple threat of land scarcity, discriminatory customary practices and legal barriers, compared to other jurisdictions in sub-Saharan Africa.¹⁰⁹

Bias and exclusion in divorce and child custody have been documented in the study countries as another area in which women are subjected to discrimination. This is because of a lack of independence and access to land, which reduces their ability to support themselves and their children after their divorce. This can increase the vulnerability of women because they engage in sex work to take care of their children, including when the fathers of their children do not take responsibility as required by law. In Burundi, Article 122 of the Code of Persons and the Family diminishes the position of women in their family, while giving men the responsibility of making decisions. This has an impact on several factors, including children's education and where the family lives. In parts of rural Mozambique, women tend to seek divorce as a way of resisting their spouse's desire to enter into a polygamous marriage. During key informant interviews with CSOs, it was noted that access to justice is somehow used as a way of

103 Ibid.

104 World Bank. 2018. Women, Business and the Law. Washington, D.C.: World Bank.

105 Only UN Member States are included. A total of 173 countries are included in the Women, Business, and the Law 2016 report, but three countries are not UN Member States (Kosovo, Puerto Rico and Taiwan). Data are from World Bank. 2016. Women, Business and the Law 2016: Getting to Equal. Washington, D.C.: World Bank Group. <http://pubdocs.worldbank.org/en/810421519921949813/Women-Business-and-the-Law-2016.pdf>.

106 Idris, I. 2020. Justice Systems in the Sahel. K4D Helpdesk Report 765. Brighton: Institute of Development Studies.

107 Ndikumana, A. 2015. Gender Equality in Burundi: Why Does Support not Extend to Women's Right to Inherit Land? Policy Paper No. 22. <https://afrobarometer.org/publications/pp22-gender-equality-burundi-why-does-support-not-extend-womens-right-inherit-land>.

108 Ibid.

109 UN Women.

scaring partners who fear large divorce settlements that are economically disempowering and subject couples to years of unhappy relationships, especially for poor women. Domestic violence is considered a valid reason for seeking a divorce; however, women living in poverty who have few alternative options for economic and social support remain with the abuser for stability.¹¹⁰ Women fear seeking redress through divorce, as settlements may not favour them in the property division (which often favour men), leaving women with meagre resources.

Gaps in identification and legal identity also feature in the study. In the global context, the Global ID4D Dataset estimates that 1 billion people face challenges in proving their identity as per the national and international identification systems. Approximately 45 per cent of women in low-income countries lack ID, compared with 30 per cent of men. This is exacerbated by gender gaps and punitive nationality laws that prevent some women and their families from accessing legal identity.¹¹¹ Although such laws were not a dominant factor in the study, they are a factor to consider as a potential barrier to women's access to justice.

Exclusion of women from decision-making was identified in all the countries studied which observe both formal and informal justice systems. These are widely characterized by the lack of women in decision-making roles. By 2017, only 24 per cent of constitutional court justices globally were women, with the North Africa and Middle East regions having the lowest levels of representation.¹¹² In the study countries, there are few female judges, which constrain women's access to justice.

Small arms and insecurity lead to fear among women. Despite slow progress towards stability in some study countries, such as Somalia and Burundi, there is a new threat involving proliferation of arms among Al-Shabab militants and other extremist groups. In Burundi, these groups are causing high levels of violence and insecurity and are creating fear among women.¹¹³ Armed rape using home-made weapons is frequent, especially during attacks on and armed robbery of farms and homes.¹¹⁴ Social taboos make it difficult for rape survivors to seek justice and treatment. As with all forms of VAWG, the number of survivors of armed rape in Burundi surpasses those reported, registered or treated. This also affects HIV infection rates, which are undercounted, and challenges efforts to provide treatment for survivors of rape.¹¹⁵

Environmental, attitudinal and institutional barriers against women and girls with disabilities were identified in the study as another challenge to accessing justice. This affirms the finding by the Commonwealth People's Forum 2018 Series, which described the forms of discrimination faced by people with disabilities and noted that people with disabilities face unfair treatment and discriminatory attitudes from personnel in the court system. This includes unfair treatment by translators, court attendants and lawyers, the absence of disability-inclusive access provisions such as ramps, appropriate facilities inside and outside courts, and the structure and processes of the justice system, which exclude and further marginalize women and girls with disabilities.

110 U.S. Department of State. 2017. "2016 Country Reports on Human Rights Practices." Accessed 29 June 2021. <https://www.state.gov/reports/2016-country-reports-on-human-rights-practices/>.

111 In Afghanistan, for example, twice as many men as women have ID. Other countries with big gender gaps in ID coverage include Chad, Ethiopia, Niger and South Sudan. See Insights from ID4D-Findex Survey data at id4d.worldbank.org.

112 Georgetown Institute for Women, Peace and Security (GIWPS) and the Peace Research Institute Oslo (PRIO). 2017. *Women, Peace and Security Index 2017/18: Tracking Sustainable Peace through Inclusion, Justice, and Security for Women*. Washington, D.C.: GIWPS and PRIO.

113 Rackley, E. B. 2005. "Armed Violence Against Women in Burundi." Humanitarian Practice Network. Accessed 29 June 2021. <https://odihpn.org/magazine/armed-violence-against-women-in-burundi/>.

114 Ibid.

115 Walby, S. 1997. *Theorizing Patriarchy*. Cambridge: Polity Press.

5.4 Mapping access to justice interventions and initiatives for women in East and Southern Africa

The promising practices noted from the countries studied include the use of legal aid clinics, paralegal deployment to support women survivors of violence, and explicit policy and legal statements on equality before the law, among other mechanisms that can be replicated in other African countries to increase opportunities for women to access justice. The interventions mapped include community efforts, covering mediation, engagements with traditional or customary and alternative dispute resolution mechanisms and committees, and national interventions, which were primarily policy focused or involved national coordination on ending violence against women.

For example, the government in Ethiopia coordinated comprehensive prevention and response processes to combat violence against women and children and to ensure child justice. This followed an effort to collect national statistics on violence against women, recognizing the critical role of gender statistics. For the first time ever, Ethiopia introduced data on violence against women in the country's 2016 Demographic and Health Survey. This intervention provides the latest data for the country, has informed various subsequent initiatives that would not have been possible because of the underreporting of VAWG, which contributes to enhancing access to justice for women.

Burundi has also improved legal frameworks and law enforcement responses in matters of violence against women and provides better support mechanism for survivors. Specifically, projects have assessed the impacts of land tenure registration of women's land rights and engaged in a series of local capacity development, legal awareness and community dialogue activities to strengthen women's land rights. In addition, the government has established the Bureau of the United Nations in Burundi, which oversees recovery processes and has established transitional justice mechanisms, including a commission to investigate violations against men and women during the conflict period.

Under coordination, respondents from Ethiopia reported the establishment of a national coordination body that helped justice sector institutions in five regional states to establish various victim referral mechanisms for cases involving violence against women and children. These coordination efforts are anchored in the National Legal Aid Strategy, which aims to harmonize the fragmented legal aid provision in the country and to increase opportunities for access to justice for victims of GBV.

Collaboration with traditional and cultural institutions and religious leaders was also reported in several study countries. For example, in Ethiopia, millions of people were reached through awareness-raising and mobilization campaigns on GBV, harmful practices, and trafficking in women and children. These campaigns worked closely with traditional and cultural institutions and religious leaders, community elders, and women's associations and other grass-roots associations to influence community attitudes and actions against harmful practices and the justice procedures, bearing in mind that the traditional and religious leaders are the custodians of culture and are influential in the community. In addition, in Ethiopia, some customary arbitration involves women. For example, the Oromo culture's Gada system has women's groups called Hadha Siinqee who take part in dispute resolution when conflicts between tribes happen. Such women are respected in the community and also participate with the local elders in arbitrating in disputes between couples. A woman whose rights are violated can report to her peers, seeking their intervention. Women in the area take their siinqee (a stick symbolizing a socially sanctioned set of rights exercised by Oromo women) to fight for their rights. They thoroughly investigate the truth of her claims through their representatives, called shanee, a committee of five members, whenever necessary.¹¹⁶

Capacity development efforts featured as a promising practice, with some stakeholders offering training and developing specific tools for use in increasing women's access to justice. Respondents from Ethiopia reported that the problems of social discrimination and malpractice in courts are being tackled by the Hawassa project area of the Addis Ababa University Project to Support the

116 The Ethiopian Chapter of OSSREA. 2001. Conflict in the Horn: Prevention and Resolution: Report of Ethiopia National Workshop. Addis Ababa: The Ethiopian Chapter of OSSREA. <https://media.africaportal.org/documents/ethiopia-2002-2.pdf>.

Human Rights Teaching, Research, and Community Engagement of the Centre for Human Rights. The Centre focuses its efforts on promoting and protecting the rights of women, children, workers, migrants and refugees, and people with disabilities. It has trained local government officials, the judiciary, the police and community rights promoters selected from community elders, local unions and other members of civil society on the rights of these marginalized groups and relevant international, regional and domestic laws. In Kenya, the Bench Book¹¹⁷ points out the unique needs of children, elderly people and people with intellectual disabilities when it comes to the length of court procedures. It calls upon the judiciary to take the duty arising from Article 38 (4) of the Persons with Disabilities Act seriously, as some individuals may have problems remembering information over long periods of time or may not be able to endure a lengthy trial. While this is an important factor included under the duty to provide reasonable accommodation, the Bench Book failed to include the full suggestions provided by the Kenyan Coalition on Violence Against Women (COVAW) and partners in their submission to the draft book. Specifically, the submission outlined that some people with disabilities would need more time between court dates to be able to carry out all tasks required from them. Kenya also offered training to police, prosecutors and the judiciary. In Uganda, the National Union of Women with Disabilities¹¹⁸ paralegal programme has provided training on GBV, sexual and reproductive health and rights, and the rights of women and girls with disabilities in addition to offering peer support when reporting violations and conducting the necessary follow-up to ensure that justice is achieved.¹¹⁹ Zimbabwe developed an access to justice programme implemented by the Leonard Cheshire Disability Zimbabwe Trust, which includes sign language communication training for police

officers, and logistical and communication support for victims and survivors.¹²⁰ The project has also developed community awareness campaigns around access to justice, which, along with the general population, specifically target community leaders, community-based organizations, and women and girls with disabilities and their caregivers.

Legal aid is another major intervention that was reported in Burundi, Ethiopia, Kenya, Malawi, Mozambique, Uganda and Zimbabwe. Article 14 of the International Covenant on Civil and Political Rights urges states to offer free legal services and assistance to those who are not in a position to represent themselves.¹²¹ In Kenya, the Legal Aid Act 2016 established the National Legal Aid Services with the mandate, *inter alia*, “to provide legal aid services to indigent, marginalized and vulnerable persons.” It is, however, not able to meet the needs of the population due to various challenges. Accordingly, several organizations have been on the front line, offering legal aid services to vulnerable and poor women in society who are GBV victims so that they can access justice. In Kenya, the CSO International Federation of Women Lawyers Kenya (FIDA-Kenya) hosts weekly free legal aid clinics in all its offices. Through mediation and partnership with the traditional justice system, FIDA-Kenya continues to advocate for out-of-court settlements. In 2019, FIDA-Kenya’s mediation programme attracted about 2,000 mediation requests that have been made in the three regional offices of Kisumu, Mombasa and Nairobi. Of these, the organization has recorded a 70 per cent success rate. This is complemented by capacity development with women on self-representation, which is one of the most innovative interventions equipping women with skills to represent themselves in court with the remote help of a lawyer. This programme has efficiently helped more women access justice while honing their skills in presenting their cases.

117 The Judiciary of the Republic of Kenya. 2018. Criminal Procedure Bench Book. Nairobi: The Judiciary of the Republic of Kenya; Coalition On Violence Against Women and partners. 2017. Input on the Criminal Procedure Judicial Bench Book from the Perspective of Persons with Disabilities.

118 “National Union of Women with Disabilities of Uganda.” Accessed 30 June 2021. <https://nuwoduganda.org>.

119 Women Enabled International. 2019. Submission to the Special Rapporteur on the Rights of Persons with Disabilities: Good Practices for Increasing Effective Access to Justice for Women and Girls with Disabilities. Washington, D.C.: Women Enabled International.

120 *Ibid.*

121 UN General Assembly. 1966. International Covenant on Civil and Political Rights, Article 14.

FIDA-Kenya,¹²² COVAW¹²³ and Kituo Cha Sheria¹²⁴ have been offering legal aid clinics and ensuring women have access to justice across the country on rape and other forms of violence, land rights and inheritance cases. Furthermore, it is noted that, through legal aid representation, marginalized and vulnerable women gain access to equal representation in law and fair trial. In addition to legal aid clinics, there are several community-led paralegals who are sponsored by larger organizations to undertake the role of aiding marginalized women in accessing courts and navigating the legal procedures to present strong cases. The main concern with these efforts has been the sustainability of financing the paralegals throughout the process to ensure legal representation in accessing justice. In Uganda, the National Union of Women with Disabilities' paralegal programme uses well-trained paralegals to increase access to justice for women and young people with disabilities. In Somalia, the Ministry of Women has initiated talk shows and television programmes on legal aid awareness to improve access to justice for women. In Ethiopia, the Project to Support the Human Rights Teaching, Research, and Community Engagement of the Centre for Human Rights has established legal aid branches in four courts in the Sidama zone. It has selected fourth and fifth-year law students as paralegals and has trained them to provide legal advice, write statements and provide information and referrals to volunteer lawyers provided by the Attorney General's office. Over 5 months, from December 2018 to April 2019, the legal aid centres assisted close to an equal number of female and male clients, with some 80 cases, including 26 family cases, 24 criminal cases, and various others relating to contracts, succession and property.

Other interventions documented involved compensation of women victims and survivors of violence. In Malawi, Disabled Women in Africa worked with the communities to provide compensation in addition to the remedies issued by court, based on an understanding of the community supporting victims and taking responsibility.¹²⁵ In yet another good practice showcasing inclusivity for access to justice for the most marginalized women in Malawi, Disabled Women in Africa trained court clerks, prosecutors, magistrates and judges in sign language interpretation and communication.¹²⁶ They report that the training has made other judges consider pursuing further long-term training on sign language.

In terms of community mobilization, the Mozambique local non-governmental organization Association of Disadvantaged Women has adopted an innovative model in which it holds parliamentary sit-ins to lobby and support gender justice and gender-responsive legislation and policy developments and take a variety of steps in communities to promote change. For example, it makes home visits to carry out trial sessions to help survivors prepare their presentations for in court, works with men and boys to challenge patriarchal power relations, develops women's self-confidence, works with schools for the early detection of cases of violence and explores alternative safety strategies for domestic violence survivors who are unable to find shelter away from home.

Policy interventions that are promising include Malawi's Constitution, which provides for equal status for all citizens before the law in Section 12. Section 41 provides for the right of access to justice and provision of legal remedies without favour. The country has a Legal Aid Act, under which eligible

122 FIDA-Kenya has assisted women through various programmes and initiatives, including training women to represent themselves in court. The primary areas of law that they cover are succession and inheritance, family law, employment cases and land disputes involving discrimination on the basis of sex, cases involving gender-based violence and other public interest cases. See <https://fidakenya.org/site/workcategory?id=1>.

123 COVAW address challenges linked to limited access to information by women and girls about their rights, difficulty in obtaining legal services and financial insecurities that affect their access to legal support, leading to difficulty in navigating court systems. See <https://covaw.or.ke/our-initiative/access-to-justice/>.

124 Kituo Cha Sheria is a national membership-based non-governmental organization founded by lawyers committed to helping disadvantaged and poor people who cannot afford the cost of legal services. See <http://kituochasheria.or.ke/>.

125 Humanity & Inclusion. 2018. Promoting a Safer, Gender-based Violence Free Environment for Women and Girls with Disabilities in Lilongwe, Malawi. Lyon: Humanity & Inclusion. <https://www.makingitwork-crpd.org/our-work/good-practices/promoting-safer-gender-based-violence-free-environment-women-and-girls>.

126 Kamchacha, R. 2019. Submission to Mrs Catalina Devandas-Aguilar, Special Rapporteur on the Rights of Persons with Disabilities. Malawi: Disabled Women in Africa.

people in the community are allowed to provide legal aid as legal assistants. These people are not legal practitioners but have attained the requisite level of education prescribed by the Council of Legal Education to enable them to provide services as envisaged in the Legal Aid Act. In addition, Malawi created a Paralegal Advisory Service in 2000, which is an institution that trains paralegals and deploys them to communities to provide legal education, advice and assistance throughout the criminal justice processes (from arrest to appeal), which complements and facilitates the work of lawyers. It also ensures that people living in poverty, including women and children who struggle to access justice because of the prohibitive costs of legal advice, are supported. It provides advice, assistance, mediation and referral services.

Malawi also features interventions urging communities to use alternative dispute resolution mechanisms. The Paralegal Advisory Service has a presence in police stations, courts and communities

to provide affordable services to those who are not able to access them. Such support has reduced the proportion of people awaiting trial in prison in Malawi to 18 per cent, which is seen as low compared with other countries in Africa.¹²⁷ The Service also focuses on research-based advocacy to influence policy change and law reform while encouraging networking and collaboration between different justice actors. There is an opportunity to improve the unit's gender balance and ensure that its activities are gender-responsive and prioritize the needs of women in accessing justice, not only in Malawi but also in other countries in the region.

Some courts, including those from Burundi, Ethiopia, Kenya and Uganda, were reported to have taken steps to strengthen their judiciary to expand access to justice for women. Actions reported include aligning their procedures and training judicial personnel, police officers and prison staff on matters related to improving access to justice for women.

Case Study 7: Ethiopia's shelters for women and girl survivors of violence

The Ethiopia Network of Women Shelters is a network established by eight civil society organizations and one governmental organization that provides shelter and medical, psychological, legal and other essential services to women and girl survivors of violence in Ethiopia. It was established by nine organizations following training on the Global Essential Services Package in November 2016, provided with the support of UN Women. The leaders of the organizations identified the need to establish the network to strengthen the accessibility and quality of services. This covered the creation and strengthening of referral linkages, addressing emerging needs, the introduction of a management information system to organize data and records of survivors, experience-sharing, on-the-job training support and harmonizing services throughout Ethiopia through the development of standard operating procedures. The organizations agreed to establish the Ethiopia Network of Women's Shelters and formalized it by signing a memorandum of understanding. The organizations have a common understanding of violence, identifying violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life" and the root cause of violence against women as "a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men." This is in line with the United Nations Declaration on the Elimination of Violence against Women (1993).

127 Oyieke, A., M. Jain, E. Durojaye and E. Gumboh. 2017. African Centre of Excellence for Legal Empowerment in South Africa Feasibility Study: Field Visit Report. <http://kituochasheria.or.ke/wp-content/uploads/2017/09/Field-Report-on-African-Centre-of-Excellence-for-Legal-Empowerment-in-South-Africa-Feasibility-Study.-2016.pdf>.

Location	Shelter organization
AWSAD – Addis Ababa, AWSAD – Oromia, AWSAD – Adama, AWSAD – Dessie, AWSAD – SNNPR, AWSAD – SNNPR	Association for Women’s Sanctuary and Development (AWSAD)
Agar Safe House – Amhara region, Agar Shelter – Addis Ababa, Agar Training Centre – Dukem	Agar Ethiopia Charitable Society
OPRIFS – Addis Ababa, OPRIFS – Bahir Dar	Organisation for Prevention, Rehabilitation and Integration of Female Street Children (OPRIFS)
Good Samaritan – Addis Ababa, Good Samaritan – Gonder and Good Samaritan Clinic – Addis Ababa	Good Samaritan Association
IFSO Girls’ Shelter – Addis Ababa, IFSO Girls’ Hostel – South Wollo, Wuchale Zone Ambasel Woreda	Integrated Family Service Organization (IFSO)
MCRC – Addis Ababa, MCRC Training Center	Mother and Child Rehabilitation Centre (MCRC)
MLW – Benshangul, MLW – Assossa	Mujejeguwa-Loka Women Development Association (MLW)

Source: Ministry of Foreign Affairs of Denmark. “Ethiopia: Supporting Women and Girls Survivors of Violence.” Accessed 30 June 2021. <https://um.dk/en/danida-en/results/stories/ethiopia-support-to-survivors-of-gender-violence/>.

Since 2015, the women’s shelter in Adama has also provided training to police in handling cases of violence against women and girls. This training programme has helped 764 police officers and 1,115 police academy cadets to improve their ability to handle cases of gender-based violence and offer counselling to women survivors of violence, their families and the local community.

“We are seeing a major change in the local community. When the population is well-informed, they can change society. They have no interest in being a society with rampant crime, but in the past, they didn’t know how to respond to the violence. Now we get more help from the community, and this is what society must be built on,” said Deputy Superintendent Ms Sintayhew Botela, who heads the local police division for the protection of women and girl survivors of violence. The cooperation with the local police has improved their ability to investigate violent crimes, and with coaching at the shelter, women and girls are more confident when testifying against perpetrators in court”.

Case Study 8: Legal aid clinics in legal education institutions in Ethiopia

The provision of free legal assistance and education has received significant support in Ethiopia through university legal centres. All higher education learning institutions in the country are obliged to offer community-based legal services in addition to teaching and research roles. Law schools steadfastly transformed themselves and embraced innovation between 2005 and 2018, when the legal institution was experiencing oppressive legislation, strict restrictions on the media and incorporating anti-terrorism strategies. This resulted in some CSOs, such as the Ethiopian Women Lawyers Association (EWLA), opting to reduce their staff in their regional offices. Forty-three examples from two university legal assistance centres working in deprived areas provided an overview of their achievements and the problems they experienced while providing much-needed legal aid.

Professionals, such as the Dean of the Jigjiga University (JJU) Law School, Mr Salahadin Towfik, has offered professional legal assistance in various levels of judicial systems such as the region’s Supreme Court, High

Court and Woreda (district) Court, among others. The institution has attempted to expand its training and enhance access to legal clinics for individuals and groups that have had little or no legal assistance in the past. They have included partnerships with the Federal Human Rights Commission, the United Nations Children's Fund, the Danish Refugee Council, and the United Nations High Commissioner for Refugees as platforms. The JJU Legal Aid Center serves people and has worked on various reports of human rights violations, such as violence, maltreatment, unlawful detention and GBV against women (including rape).

The JJU Legal Aid Center's primary focus is the urban population, as legal professionals cannot serve the large areas affected, with an estimated population of about 4 million. Another challenge is that the conventional justice system is being used to guide behaviour in society as elders frequently resolve disputes at the community level. Salahadin stresses the importance of research and incorporating the customary laws so that the current administration in Ethiopia can reform and overturn the initial rules and practices that have hindered statutory systems in the region, which has led to adverse impacts on Jijiga. Good progress has been witnessed, although human rights violations and other series of problems, including population displacement, require urgent responses to avert their impacts. Without making perpetrators account for their actions, people can use extrajudicial approaches to resolve cases using the customary courts.

Paralegals and the teaching staff at the Hawassa University Legal Aid Center in the Southern Nations Nationalities and Peoples' Region have also experienced similar hardship while responding to human rights abuses. The accessibility of the statutory courts in these areas is a problem regardless of whether they are functional. There are also Islamic sharia laws, which are relatively popular, just like the customary laws and Orthodox Church courts. Nonetheless, for economic and social reasons, people have often opted to rely on community leaders to solve disputes between family members, such as marriage problems, inheritance issues and divorce. As most women use customary tribunals in such instances, efforts have been made to have more comprehensive consultations with the authorities, such as public leaders responsible for women and children's issues at various levels including the police, judges and elders. Moreover, the affected women are always economically reliant on their partners and require urgent assistance to get basic needs, such as shelter and their children's security. Where lawyers do not have the ability to provide the necessary support, they may not pursue cases.

This demonstrates that state officials or community leaders can hinder lawyers' efforts to sustain women's and girls' rights in society. Instead of prosecution, elders prefer dialogue on the cases and payment of fines, which are often shared among the victims and the perpetrators as the parties involved. Effective intervention requires a deeper understanding of the culture. Owing to her activeness in the Ethiopian Orthodox Church Assefa, and because of her understanding of local cultural practices and beliefs, people often turn to her. Her social network and membership in the local ethnic groups are attributed to her understanding of the law. However, insufficient materials and resources to carry out her roles have hindered her work. The culture of patriarchy in which women feel obliged to follow the rules that favour men has also placed them in a disadvantaged position at the community level.

The project's combination of legal aid and education is challenging patriarchal beliefs and judgments in the courts. Helen Abele, a lecturer in law and human rights, the project area manager, gave an example of an inheritance case that a 20-year-old woman brought to the Loka Abaya First Instance Court in August 2018. The young woman had filed a suit against her father asking for her share of her inheritance from her deceased mother's property, a plot of land and a house, which was administered by her father. The court ruled that women could not own property in the local Sidama culture, so it determined that the property must belong to the father. The father denied the young woman's paternity, so the court ruled that she would need to prove his paternity to pursue the case further. The legal aid team took the case to Sidama Zone High Court's President, arguing that the decision discriminated against women, violating their constitutional rights to equality and property ownership. The High Court President accepted their complaint and allowed the centre to take the

client's appeal to the Sidama Zone High Court. The centre then supported the young woman to successfully appeal the case.

University legal aid clinics fulfil several interrelated functions. They provide free legal representation or assistance to people who cannot afford a lawyer or legal advice. In so doing, they put the courts under scrutiny and challenge them to administer the law fairly. At the same time, they facilitate the broader processes of legal and human rights education, research and engagement with influential community representatives, including local authorities, religious leaders and elders. They support institutions that are training new cohorts of lawyers and provide practical learning experiences for law students. By monitoring and keeping track of cases, they assemble information about human rights violations and courts' workings and alternative dispute resolution mechanisms. They can also facilitate networking between actors engaged in the law administration, including lawyers, judges, paralegals and community elders. However, even in established law schools in Ethiopian universities, underfunded law clinics struggle to cope with demand; indeed, a recent study found that many were barely functioning and were "hindered by lack of expertise and commitment of law schools to run clinical programs and financial problems." Moreover, a fundamental limitation of law firms, and even the most well-established university legal aid clinics, is their location in urban centres and their distance from the most marginalized groups in rural areas. This underlines the need for community-based legal empowerment initiatives.

The EWLA is the only prominent association that provides legal aid services to women GBV victims. EWLA was founded in 1995 to defend the rights of women and achieve equality between men and women using the legal framework as well as raising awareness. EWLA's major area of focus includes research and law reform advocacy, legal aid services and public education. Free legal aid is the central activity that EWLA has been delivering to disadvantaged women and those living in poverty. The provision of legal assistance includes counselling and representation before a court of law by volunteer members of the association.

5.5 Existing justice delivery institutions in East and Southern Africa

Justice delivery institutions varied in the countries studied, but largely included formal courts, traditional justice systems, religious justice systems, justice support institutions (including civil society and non-governmental institutions), community courts, specialized courts (which primarily favoured labour issues, corruption, commercial and administrative cases) and local justice administration, comprising chiefs and other government officials. The courts documented included supreme courts, which were the highest courts in all of the study countries, namely Burundi, Ethiopia, Kenya, Malawi, Mozambique, Somalia, South Sudan, Tanzania, Uganda and Zimbabwe.

The supreme courts in the countries have both original and appellate jurisdiction, as well as the jurisdiction to give advisory opinions. In Kenya, for example, the court has exclusive original jurisdiction to hear and determine disputes relating to the

elections to the Office of the President arising under Article 140 of the Constitution of Kenya.¹²⁸

Courts of appeal with appellate jurisdiction also featured in the study countries, followed by high courts in most countries. The high courts have a common jurisdiction over all matters, but usually hear serious criminal cases. They also hear any appeals or reviews from magistrates' courts and other lower courts.

Magistrates' courts featured in all of the study countries and are the lowest level of the court system. They deal with criminal and civil matters. Some countries, such as Ethiopia, have federal courts that are still structured along the same line as other countries in terms of functionalities.

Traditional and community courts featured in Ethiopia, Malawi and Somalia. In Ethiopia, for example, criminal cases such as homicide and inter-ethnic and interreligious conflicts can be and are being resolved through customary dispute resolution

128 The Republic of Kenya. 2010. The Constitution of Kenya.

mechanisms in many regions of the country.¹²⁹ Surprisingly, people also opt for customary dispute resolution mechanisms for reconciliation even after a verdict, be it conviction or acquittal, is given by the formal criminal justice system. This serves to avoid the cultural practice of revenge by the victim or their relatives.¹³⁰ This continues the application of customary dispute resolution mechanisms to criminal cases as a de facto process in many regions of Ethiopia. In Kenya, community, traditional and customary justice systems have been described as informal, non-official, non-state or non-formal justice systems. Over time, they have operated at the behest of formal justice systems. Customary law and the traditional justice system are explicitly anchored and recognized in formal laws in Kenya.¹³¹ However, Article 159 (3) of the Constitution in Kenya limits the use of traditional dispute resolution mechanisms using a repugnancy clause.¹³² For example, in relation to customary marriage disputes under the Marriage Act 2014, there is a provision for the application of customary and traditional courts over disputes. Some of the customary courts in Kenya include the Njuri Njeke council of elders from the Ameru community, who are responsible for receiving summons and complaints from the community. In cases where there is a deadlock, they may refer the complainant to a court of law or perform the Kithiri curse or Nthenge oath. The Giriama people of Kenya also have two main dispute resolution institutions, namely the oracles and the Council of Elders. The two sets of traditional elders are known as kambi, which consist of senior elders in the community, and vaya, which is a secretive sect of elders in the community. Other examples of councils of elders include the Nabo of the Samburu, kokwo of the Pokot and Marakwet, tree men of Turkana and kiama of Kikuyu.¹³³

Article 223 (2) of the Mozambican Constitution recognizes community courts and its framework is set by Law 4/92. The courts operate across the county in different communities and deal with minor disputes and small crimes. Punishments given can last for only 30 days, and all other crimes that warrant longer periods are referred to the judiciary. Sometimes, punishment takes the form of financial payments. Therefore, they often focus on reconciliation and mediation for family disputes. Communities assume that the decisions of the courts adhere to the principles of equity, good sense and justice.¹³⁴ In most communities, traditions and customary norms vary in villages.

Customary courts in Somalia mainly focus on solving customary disputes in which women are more often the victims. The courts engage in negotiation, mediation and arbitration. This form of justice is perceived to facilitate reconciliation and enhance restorative justice. Arbitration has been recognized as an effective way of solving disputes in contemporary Somalia. Generally, the success of customary dispute resolution is contingent on the involvement of the offender, the victim(s) and the community.¹³⁵ Traditional and cultural justice systems constitute clan courts in Somalia. Usually sitting in the form of a council or xeer, clan courts typically have jurisdiction over minor offences and carry out punitive sentences. The crimes for which they punish people range from theft to infidelity and disobeying elders. Despite their ability to mete out corrective actions to offenders, the xeer councils have no mandate to imprison people. Instead, they order fines or whipping, with the severity of the offender's infractions on existing law determining the intensity of the offender's punishment. The clan courts form the basis of customary laws in the country. The diversity of clan laws implies

129 Gemechu, D. 2011. "The Customary Courts of the Weliso Oromo." In Yntiso, Azeze and Fiseha (Eds.), pp. 251–277.

130 Zeleke, M. 2010. "Ye Shakoch Chilot (the Court of the Sheiks): A Traditional Institution of Conflict Resolution in Oromiya Zone of Amhara Regional State, Ethiopia." *African Journal on Conflict Resolution* 10 (1), pp. 63–84.

131 Ibid, p. 30. See also Kariuki, F. 2015. "Customary Law Jurisprudence from Kenyan Courts: Implications for Traditional Justice Systems." 8 (1), pp. 58–72.

132 Kariuki, F. 2015. "Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities." *Alternative Dispute Resolution* 3 (2), pp. 30–53.

133 Martin, K., B. Rabar, R. Pkalya, M. Adan and I. Masinde, *Indigenous Democracy: Traditional Conflict Resolution Mechanism among the Pokot, Turkana, Samburu and Marakwet*. Nairobi: Intermediate Technology Development Group.

134 Jona, O. M. 2013. "UPDATE: Republic of Mozambique – Legal System and Research." *GlobaLex*. Accessed 30 June 2021. <https://www.nyulawglobal.org/globalex/Mozambique1.html#III213>.

135 Abdile, M. 2012. "Customary Dispute Resolution in Somalia." *African Conflict and Peacebuilding Review* 2 (1), p. 87.

that their justice is diverse, with different governing procedures, structures, rules and punishments.

In 2011, the Malawi Parliament passed the Local Courts Act, which gives life to the customary law courts where traditional leaders make determinations on traditional matters in their areas of territorial jurisdiction. The courts in Malawi are therefore a hybrid combining characteristics of state and customary forums. The courts are therefore easily accessible because they are geographically close to the parties. They use local languages, but the proceedings are recorded in English. The court uses simple local procedures because their sitting duration is short. Community members are involved in the process and give opinions that seek to restore community order. The courts comprise a chairperson who is assisted by two assessors. The chairperson is appointed by the Chief Justice on the recommendation of the Judicial Service Commission and must have adequate knowledge of the customary law in the area and command of the local language. The assessors are selected from a panel recommended by the District Resident Magistrate. The court has jurisdiction regarding the administration of customary law in civil matters and minor statutory offences.¹³⁶

Religious courts featured in Ethiopia, Kenya, Somalia, Tanzania and Uganda. In Burundi, Malawi, Mozambique, South Sudan and Zimbabwe, there are no formal religious courts, although religious leaders play a significant role in access to justice for women through mediation and peace negotiations in communities and for women specifically. Sharia courts, which apply Islamic law, are the only religious courts that have been officially established at the various levels of governance, for example federal and state levels. They also have their own appellate system. They are funded by the state and are thus required to follow the procedural rules and regulations of ordinary courts. However, the disputant parties must voluntarily submit to the jurisdiction of these courts, and if that does not happen, the dispute should be redirected to the regular courts.

In Ethiopia, according to Proclamation No. 188/1999, there are specific circumstances under which Islamic law is applicable by sharia courts at the federal

level, where they have been reconstituted into a three-level judicial structure distinct from the regular federal judicial structure. The three-level judicial structure entails the Federal First Instance Court of Sharia, Federal High Court of Sharia, and Federal Supreme Court of Sharia. The accountability of the federal sharia courts mirrors that of the federal state judicial organs, as they are also accountable to the Federal Judicial Administration Commission. Accordingly, all of the state councils have officially recognized the sharia courts in their respective jurisdictions. According to Article 4 (1) of Proclamation No. 188/1999, federal courts of sharia exercise common jurisdiction over the following matters: any matter relating to marriage, maintenance, divorce, guardianship of minors or family relationships, as long as the marriage in question was concluded or the parties have consented to be adjudicated in accordance with Islamic law. Sharia courts can be used on wakf, gift or hiba, or wills succession, as long as the endower or donor is a Muslim or the deceased was a Muslim at the time of their death. They also cover any matter on payment of costs incurred in any lawsuit concerning the above-mentioned matters.

Islamic sharia courts were first established in north Mogadishu (Somalia) in 1994. These courts are part of Mogadishu's clan power, and the enforcement of judgments depends on male military officials recruited to form the clan. The sharia courts have successfully dealt with crimes against women and girls in Somalia, particularly in Mogadishu. Sheiks and Imams form the decision-making organ of the courts. Sharia courts rely on the Qu'ran as its necessary law-giving document, and there are clauses that contradict Somalia national law and key sections of international laws relating to, among other areas, human rights.¹³⁷

The Constitution of Kenya provides for the freedom of religion in public and private life, the separation of church and state, and the equal treatment of all religions under the law. Kadhi courts or Kadhi's courts are a court system in Kenya that enforce limited rights of inheritance, family and succession for Muslims. The jurisdiction of a Kadhi's court extends to the determination of questions of

136 Ubink, J. 2016. Access vs. Justice: Customary Courts and Political Abuse: Lessons from Malawi's Local Courts Act. *American Journal of Comparative Law* 64 (3), pp. 745–784.

137 GSDRC (Governance and Social Development Resource Centre). 2020. *Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives* – GSDRC. 2020. Birmingham: GSDRC.

Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion.¹³⁸ The Ugandan Constitution provides the framework for the independent validity of non-state or unofficial laws such as customary and religious laws in some fields of social activity. In Uganda, Khadi courts are recognized.

According to the Inter-Religious Council of Uganda,¹³⁹ Khadi courts are minor courts recognized by Article 129 of the Constitution of Uganda as one of the subordinate courts of judicature exercising judicial power to deal with matters of marriage, divorce, inheritance of property and guardianship.

Case Study 9: Landmark ruling for 2007 post-election sexual violence victims¹⁴⁰ as per the Constitutional Petition No. 122¹⁴¹

High Court in Nairobi finds the Government of Kenya responsible for failing to investigate and prosecute 2007–2008 post-election sexual violence as per Constitutional Petition No. 122; four of eight survivor-petitioners were awarded compensation.

On 10 December 2020 in a landmark judgment, the High Court in Nairobi, after 7 years of waiting, ruled in favour of four survivors of post-election sexual violence in Kenya. The Court found the Government of Kenya responsible for a “failure to conduct independent and effective investigations and prosecutions of SGBV [sexual and gender-based violence]-related crimes during the post-election violence in 2007.” The case was initiated on 20 February 2013. Four of the eight survivor-petitioners in the case were each awarded compensation of KSh 4 million (approximately \$35,000) “for the violation of their constitutional rights.” The High Court in Nairobi found a “violation of the Kenyan State to investigate and prosecute violations of the rights to life, the prevention of torture, inhuman, and degrading treatment, and the security of person.” The judgment marks the first time in Kenya that the government has legitimately recognized post-election sexual violence and survivors have been offered compensation for harm suffered. The judgment was announced on 10 December 2020, which is International Human Rights Day. “We are happy that the court has finally recognized the harm that we suffered as victims. It has been a long journey,” said one of the female survivors of sexual violence, whom the court has ordered shall receive compensation from the Government of Kenya.

“However, we do not understand why the court separated us (victims) and did not offer compensation for the other four victims. We have been walking this journey together. We will continue the journey until the other four victims get justice.” Victory for survivors of post-election sexual violence in Kenya resulted from years of tireless work and advocacy by a community of courageous survivors, advocates, medical and legal professionals, and supporters. A core consortium of organizations supported the campaign, including the Coalition on Violence Against Women, Constitution and Reform Education Consortium, Independent Medico-Legal Unit, International Commission of Jurists – Kenya, Kenya Human Rights Commission, Katiba Institute, Kenya National Commission on Human Rights, Physicians for Human Rights and REDRESS.

138 Chesworth, J. 2018. Kadhi’s Courts in Kenya: Reactions and Responses.

139 Inter-Religious Council of Uganda. 2019. Khadi Courts in Busoga Region to be Empowered to Resolve Gender-based Violence Matters. Kampala: Inter-Religious Council of Uganda.

140 Physicians for Human Rights. 2020. “Court Delivers Justice for Several Survivors of Post-election Sexual Violence in Kenya” Reliefweb. 10 December. Accessed 30 June 2021. <https://reliefweb.int/report/kenya/court-delivers-justice-several-survivors-post-election-sexual-violence-kenya>.

141 Constitutional Petition No. 122 of 2013 seeks to hold the Kenyan government accountable for failure to prevent the violence and resulting sexual and gender-based violence; protect the general population, including survivors, from sexual assault; investigate and prosecute perpetrators of SGBV; and provide prompt, adequate, appropriate and effective reparations to survivors.

Case Study 10: Malawi Landmark High Court ruling on compensation of victims of rape¹⁴²

In August 2020, while COVID-19 was wreaking havoc across the world, a group of dedicated women lawyers was wading through Malawi's justice corridors in pursuit of justice for 18 women and girls who were raped outside Lilongwe in the aftermath of Peter Mutharika's re-election in 2019. The Women Lawyers Association of Malawi picked up the case of the 18 women and girls following reports from the Malawi Human Rights Commission highlighting how police raped and sexually assaulted them in retribution following the killing of a police officer by protesting civilians. In particular, the report established that 13 women and 1 girl were raped by the police in the incident, with 3 additional girls below 18 years being sexually assaulted. Unfortunately, the police failed to take appropriate action to address the case.

In his August landmark ruling, the Lilongwe High Court Judge Kenyatta Nyirenda established that the officers of the Malawi Police Service sexually assaulted the victims. He also reiterated that there was no credible system to monitor the conduct of the police, no proper investigation being carried out into the complaints made by the 18 women and girls, and the police authorities had failed to arrest and prosecute the perpetrators.

Judge Nyirenda granted the majority of the Women Lawyers Association of Malawi's orders, including directing the court registrar to establish, within 21 days, a commensurate amount of compensation, legal costs against the police, and a thorough investigation and arrest of the 17 police perpetrators within 30 days.

The ruling has been hailed as a success by different stakeholders, including civil society organizations, non-governmental organizations, and United Nations agencies across the continent.

"It is a great satisfaction for the lawyers as it is not an everyday occurrence to hold police accountable, and the ruling has provoked an urgent establishment of the Independent Police Complaints Commission," said Ms Tadala Chinkwezule, president of the Women Lawyers Association of Malawi.

The Malawi United Nations Resident Coordinator, Mr Benoit Thiry, also mirrored such satisfaction. He noted, "The UN reiterates its commitment to continue supporting the government and the people of Malawi to uphold human rights in particular, to ... end violence against women and girls throughout the country, which is an obstacle to the achievement of equality, development and peace."

Case Study 11: Traditional court system in Zimbabwe

Zimbabwe has customary law courts that are recognized by the Constitution, although they are generally unwritten. Traditional chiefs have jurisdiction and traditional leaders are recognized as the individuals responsible for dispute resolution in accordance with customary law. Their jurisdiction is limited and does not cover criminal law. Zimbabwe's 2013 Constitution recognizes the role of traditional leadership institutions that operate alongside judicial authority. Communities such as the Kalanga, Ndebele, Shona, Tonga and Venda ethnic communities have chiefs, headpeople and village heads who are close to the people and have different hierarchies. Customs and traditions are only considered valid in as far as they are consistent with the Constitution. Chapter 15 of the Constitution recognizes traditional leadership institutions as custodians of law, and this allows transparency and development of their decisions. Chiefs are therefore represented in every province. Their work is further regulated by the National Council and Provincial Chiefs Council, which ensure that cultural practices which are evil or contrary to the Constitution are not used in adjudication of justice. Section 284 (4) provides for the election of a chief president and deputy, whose actions are regulated.

Traditional leaders' adjudication of the law is further explained by various acts of parliament, namely, the Traditional Leaders Act 1998, the Customary Law and Local Courts Act and the national Constitution. In the Constitution of Zimbabwe Amendment (No. 20) (2013), Section 282 details their functions, including dispute

142 BBC Sounds. 2020. "Malawi Police Must Compensate Rape Victims: Focus on Africa." <https://www.bbc.co.uk/sounds/play/po8nl2j2>.

resolution, promoting and upholding cultural values, promotion of family relations, preserving cultural traditions, and facilitating development, administering land, ensuring environmental protection, and preserving the history and heritage of the sacred shrines of communities. Examples of these leaders include the Dare among the Shona people, and Inkundla among the Ndebele people. Their role is focuses on restoring peace more than punishing the wrong-doer. Traditional leaders' approach to justice include negotiation, forgiveness and compensation at all levels, from village to national, from family to the village court (Dare), from the Dare to the chief's court (Dare ramambo). From there, more formal systems, including the Magistrate's Court to the High Court then the Supreme Court, can be employed. They are therefore considered more accessible and economical in dispensing justice. The leaders are supported by advisers, usually from the family of the ruling tribe, as is the case with the Venda tribe. The advisers are like sages and seek reconciliation and not retribution. Customary law upholds the doctrine of natural law in which communities believe that the leaders base their knowledge on the natural issues considering the day-to-day lives of people and therefore their decisions stem from the roots of the matter.

Certain rituals also follow customary courts, for example in Chief Charumbira's court of the Shona community, his entrance is followed by ululations from women and whistles from the men as a sign of respect and praise. Food is usually offered during or after court sessions. Some courts may also be decorated with animal skins (matehwe) from leopards, cattle or zebras, which symbolize the powers of the chief. The more skins or the bigger and more dangerous the animals used, the more respect for the chief. Rules are raised through poems (kudetemba), where the community recite the chief's totem and the chief's family lineage. The recitation of the totems and the lineages gets the chief into a good mood (manyemwe). The Customary Law and Local Courts Act assign judicial powers to traditional courts, limiting their actions to civil cases and not criminal cases. Chiefs perceive their role as representing a democratic society whose communal aspirations and values are collectively expressed as 'grass-roots democracy'.

Chief Charumbira of the Shona community made a landmark ruling in an incident in which a 16-year-old girl was defiled by her boyfriend, who was 20 years old. In this case, the Constitution would not recognize this as a crime because 16 is considered the age of consent in Zimbabwe, which conflicts with the cultural laws of the chief's community. In the ruling delivered by the chief, an order was made that, at 16 years old, the girl was unable to consent. Therefore, the perpetrator had to pay seduction damages to the girls' father, regardless of Zimbabwe's Constitution recognizing 16 years as the age of consent. 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 given by men.

Village heads usually constitute the minor courts called zunde raSabhuku, while the chiefs constitute the community court to which appeals from the minor courts are forwarded. As the people who preside over cases in traditional courts (the chief and the assessors) are usually from the same tribes or clan, their norms and values are the same. Court levies are lower, usually starting at around \$20, which is negotiable as one can pay in kind with goats or chickens and are therefore considered economical for parties involved.

The procedures in traditional courts are flexible and simple. For example, at Chief Charumbira and Chief Sigola's courts of the Shona community, the plaintiff and the defendant each narrate their version of what transpired up to the time the plaintiff reported the case. Communication is easier than with any other formal court. This is because the language used is the same that the people involved use in their daily lives. This implies that the communication process is simple and less prone to ambiguity or misinterpretation, because the local language used in traditional courts is understood by everyone, unlike in regular courts where the jargon is technical, some words are Latin and often only understood by legal practitioners and judges. There is thus no need for an interpreter in traditional courts. Although chiefs are the heads of communities, they have time to interact with their people. This facilitates effective communication, as people are not intimidated by their chief and do not feel that there is a difference in social status. After hearing from parties involved,

witnesses from both sides are called to testify, provided that they have first-hand information and that there is no hearsay. Later, the plaintiff and the defendant are given the chance to respond to what the witnesses would have said. After that, the floor is given to the Dare (the people who would be in court) to give their views concerning the matter. This is the standard procedure that gives both parties in a dispute an equal chance to be heard. Presumption of innocence is therefore implied and therefore traditional courts are considered user-friendly for both the accused and the plaintiff.

5.6 Challenges of access to justice for women and girls in East and Southern Africa

The study finds that women face discriminatory social norms and powerful obstacles to equal rights that are grounded in gender inequality and compounded by barriers related to poverty, disability, ethnicity, geography and migratory status. Women's pursuit of justice is riddled with legal discrimination both on paper and in practice, uneven implementation of safeguards and patchy legal protection. The study notes that women's justice needs must address several cross-cutting themes, namely legal discrimination and discriminatory practices, overlapping disadvantages and plural legal systems.¹⁴³ All the study countries still experience widespread poverty and social exclusion. Thus, women who are poor and marginalized are still ostracized by the socio-economic and legislative ecosystem. From a human rights perspective poverty is a human condition characterized by chronic deprivation of resources. Therefore, access to justice improves women's enjoyment of their rights as well as contributing to a social recognition of their dignity. Exclusion of women living in poverty was witnessed in all 10 countries studied and is an outright violation of their access to fundamental representation and protection. Women's testimonies from Ethiopia, Kenya, Malawi, Mozambique and Tanzania demonstrate difficulties in finding the fees to access judicial services, including lawyers and courts and, worse still, for the corruption of government officials.

In the study countries, respondents pointed out that women living in poverty in society experience complex interrelated legal problems that can compound cumulative overlapping disadvantages. This intersectionality of barriers has disproportionate effects on women across communities.¹⁴⁴ Therefore, when the national system of justice does not guarantee gender equality laws on paper and in practice, justice for women was reported to be undermined and discrimination against women persisted. Where reports that courts use to deliver justice are reliant on government authorities, it becomes a challenge to get the same reports where the perpetrator is a government official or a police officer, as they cannot police themselves. A woman would rather buy food than use the funds to pay for transport to court because of poverty. In Kenya, for instance, a survivor of rape has to pay almost KSh 1,500 to complete the whole process, which is too expensive for most sexual violence victims in the country.¹⁴⁵ Police training is not sufficient and more capacity training is needed. Corruption is a lived perception of community members and therefore they do not trust the judiciary. Defaults in payment of maintenance costs for family cases are common. Respondents pointed to the fact that investigators sometimes have interests in cases and curtail the process of justice. There are cases of witness tampering to get to the truth of the matter, while prosecutors may not be conversant with new laws enacted in the country. Women and girls are not aware of laws that

143 UN Women, IDLO (International Development Law Organization), World Bank and Task Force on Justice. 2019. Justice for Women High-level Group Report: Executive Summary and Key Messages. New York: UN Women; Rome: IDLO; Washington, D.C.: World Bank; Task Force on Justice.

144 UN Women, United Nations Development Programme, United Nations Office on Drugs and Crime and Office of the United Nations High Commissioner for Human Rights. 2018. A Practitioner's Toolkit on Women's Access to Justice. New York: UN Women.

145 ACORD (Agency for Co-operation and Research in Development). 2010. Pursuing Justice for Sexual and Gender Based Violence in Kenya. Nairobi: ACORD. <https://reliefweb.int/sites/reliefweb.int/files/resources/pursuing-justice-for-sexual-and-gender-based-violence-in-kenya.pdf>.

safeguard their rights and of court procedures unless aided by a legal person, which was evident in all the countries studied.

In all countries studied, most justiciable problems were determined outside the formal justice system.¹⁴⁶ Many constitutions reviewed acknowledge customary laws in practice to steer women to access justice by drawing legitimacy from standard practice. Evidently, customary laws have long-standing implications for women's justice. Some customary laws marginalize women and are patrilineal in all 10 countries; some laws are matrilineal where women have a decision-making role in the traditional hierarchy; and others have adapted to changing gender roles.¹⁴⁷

The study reports widespread socio-political, economic, cultural and psychological barriers in all the countries, which obstruct women's access to justice and perpetuate inequality and disempowerment for women in the communities. Respondents across the 10 countries reported that legal institutions are slow in instituting proceedings and lack judicial independence in some instances, and that legislation is not in line with international standards, and cases are challenged by limited enforcement of rulings affecting women, inadequate training of law enforcement officers and community members, and gaps and loopholes in legislative provisions. All countries have a plural legal system embracing customary, religious and statutory laws shapes women's ability and/or inability to access equality, education, justice, inheritance and property rights. Securing women's property rights is now considered a way of realizing gender equality given that women depend on land as a source of their livelihoods, which in turn affects their economic stability and reduces their vulnerability to discrimination and physical and sexual violence. The Constitution of Kenya (2010),¹⁴⁸ for example, recognizes alternative dispute resolution mechanisms, including the

provision of traditional court mechanisms. However, discriminatory cultural practices against women have dominated traditional proceedings and legal considerations, leaving women vulnerable to the interest of patriarchal society. Patriarchy remains a challenge for women in all countries studied. In Kenya, Mozambique and other countries, men are socially allowed to marry more than one woman, contrary to the requirement by law. This practice inherently subordinates women, violates their dignity and increases their risk of contracting HIV and then AIDS.¹⁴⁹ It is considered emotionally damaging and is economically oppressive to women, violating their rights as enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In addition, older women in polygamous relationships are increasingly prone to experiencing violence from their partners,¹⁵⁰ and widows are readily accused of sorcery, as in the cases of Kenya, Malawi, Mozambique and Tanzania.¹⁵¹

Another challenge reported by respondents in all countries is the limited confidence in police services and judicial systems. The lack of confidence by women and girls in these services poses a challenge in implementation of the existing legislative provisions on protection of women against GBV. The study reveals that many women view state courts as corrupt; therefore, they trust in customary and religious institutions as justice centres. Furthermore, informal courts, such as religious or customary justice systems, are favoured because they preserve social cohesion in communities and good relations between neighbours, unlike formal courts, which are perceived to destroy the social fabric.

Respondents pointed to a case in Mozambique in which Ms Josina Machel lost her eye on 15 October 2015. Josina was with her partner of 3 years, named RL, when they disagreed, and he physically assaulted her. After medical treatment, she reported the incident to the police and the case ultimately reached

146 World Bank. 2011. *World Development Report 2012: Gender Equality and Development*. Washington, D.C.: World Bank.

147 Harper, E. 2011. *Customary Justice: From Program Design to Impact Evaluation*. Rome: International Development Law Organization.

148 The Republic of Kenya. 2010. *The Constitution of Kenya*.

149 Mwambene, L. 2017. "What is the future of polygyny (polygamy) in Africa?" *Potchefstroom Electronic Law Journal* 20 (1).

150 Jansen, N., and V. Agadjanian. 2020. "Polygyny and Intimate Partner Violence in Mozambique." *Journal of Family Issues* 41 (3), pp. 338–358.

151 Mwareya, R. 2016. "Widows Without Sons in Mozambique Accused of Sorcery and Robbed of Land." Reuters. Accessed 29 June 2021. www.reuters.com/article/us-mozambique-widows-polygamy/widows-without-sons-in-mozambique-accused-of-sorcery-and-robbed-of-land-idUSKCN0ZLoT6.

the law courts. As she pursued her case, her file went missing at the police station. In February 2017, the Ka-Pfumu Municipal District Court convicted her attacker for the crimes of serious physical and psychological violence, under Articles 246 (b), 171 (e) and 247 (i) of the Mozambican Penal Code. The perpetrator was sentenced to 3 years and 4 months of detention, which was suspended under the condition of paying damages amounting to \$2.8 million. However, Josina was never paid. On 12 June 2020, the 2nd Criminal Appeal Section of the Judicial Court of Maputo's City upheld the arguments of the defence, ruling that Josina could have 'injured herself' by falling because the incident happened when she was intoxicated. Notably, the defence did not provide any evidence to support Josina's intoxication. An ophthalmologist's report was dismissed because it could not prove that the injury (a burst eyeball) was caused by the fist of the perpetrator. This was despite four doctors affirming that the loss of the eye was due to use of force. Therefore, the judgment to award damages was thrown out on the basis that such compensation was only eligible in situations in which the victim's body and beauty is used for income, as in the case of sportswomen. Text messages demonstrating the perpetrator's remorse after the incident were ignored. Josina sought orders for protection against stalking, but these were also declined by the courts. Josina is currently appealing the case as she continues to pursue justice. In addition, Josina is using her story and experience to speak out against GBV and fight for justice for other women who feel that the formal justice system has reinforced a belief that a male intimate partner has a right to do as they wish to their female partner, a narrative that promotes negative forms of masculinity.¹⁵²

Inadequate implementation and enforcement mechanisms for survivors of gender-based violence is another challenge often reported. Implementation and enforcement of legislative provisions are slowed by poor coordination of gender-related interventions, mismatch between cultural realities, limited information from women and inadequate resources for interventions to fight violence.

Respondents also reported the potential for revictimization. Police, prosecutors and, sometimes, judges were reported to be insensitive in certain cases and question the motives of women victims, which leads to revictimization. More often, such experiences cause women and girls to refrain from seeking and/or accessing justice, as reported in Burundi, Ethiopia, Kenya, Tanzania and Uganda. In addition, respondents from Kenya emphasized the fact that cultural fear of negative consequences and backlash from the community (reprisals and revictimization) for survivors of sexual violence makes women refrain from reporting to the police, seeking treatment, guidance and counselling and giving evidence during court proceedings. The patriarchal system and rural-based, male-dominated societies in which cultural and religious laws define what a woman does or says have a great influence in disenfranchising women seeking justice. In South Sudan, research shows that 56 per cent of women who are raped do not report the violence to the police and law enforcement agencies due to fear of reprisals.¹⁵³

Limited inclusion in both formal justice systems and customary justice was also reported by respondents. The literature highlights obstacles to the participation of women in both informal and formal justice systems in all 10 study countries, although the obstacles differ from country to country. In formal justice systems, obstacles relate to a lack of understanding of legal systems, distance, cost and lack of education, while for informal and customary laws, patriarchal norms and exclusion from decision-making in the ranks of justice provision are the main barriers. Analysis reveals that women face wider restrictions in accessing justice and their exclusion reflects the restricted position of women in wider society among the study countries. In Malawi, for example, the subordinate courts use negotiation to reach agreements as the customary law seeks to enforce restorative justice and create social harmony. There is therefore undue pressure from the local community on how to adjudicate on the cases.

Challenges facing state (formal courts) justice systems include lack of resources and capacity to determine cases, corruption, political

152 Suttner, R. 2020. "Unresolved Intimate Partner Assault: Josina Machel Loses an Eye." Daily Maverick. <https://www.dailymaverick.co.za/article/2020-07-16-unresolved-intimate-partner-assault-josina-machel-loses-an-eye/>.

153 David, K. 2013. *Challenges of Accountability: An Assessment of Dispute Resolution Processes in Rural South Sudan*. London: Pact.

interference, lack of legal aid and awareness of legal systems, the high cost of accessing justice, language barriers, poor literacy and distance. For example, a survivor in Kenya reported that she had struggled to get justice for a case in which her land was taken away by her brother-in-law, and that she was sent away from her home after facing various counts of assault. She could not get justice because the village elder and the chief's committee wanted payment

to hear the case, which she could not afford. In addition, she could not afford a court process because of the technicalities involved and the associated costs. During the study, respondents from Malawi reported that subordinate court hearings are held in English instead of in the local languages, making it difficult for locals to understand complicated court procedures.

Case Study 12: Customary justice on divorce¹⁵⁴

In South Sudan, a 29-year-old married woman of the Bari tribe brought a complaint against her husband, who was a 37-year-old retired soldier with the Sudan Armed Forces from the Lukuya tribe. She claimed that approximately 9 years prior, he raped and impregnated her. She demanded that he take her as his wife. Since then, they have had other children (girls), but recently he stole money from her, mistreated her and threatened to kill her, and he does not pay or help with caring for the girls. She wants a divorce. The man denied raping her, saying it was consensual and a normal courtship. The chiefs examined the use of customary law to judge rape cases, while also citing the relevance of statutory law. The chiefs found the husband guilty on all counts and approved the divorce request. The husband was ordered to pay SSP 60 or go to jail for 6 months; to return the SSP 280 stolen from his wife; and to pay three cows, six goats and SSP 500 (one quarter of the dowry) to the wife's parents. The wife was also ordered to pay SSP 60 instead of going to prison for 6 months (the reason was not clear), SSP 135 for the court fees and SSP 50 for the divorce certificate, and to declare the girls' names before the court. There did not appear to be any punishment specific to the rape issue, despite the chiefs seemingly deciding in favour of the woman. The woman expressed satisfaction with the result.

The study points to lack of fairness, accountability and transparency in the traditional justice system in all the countries studied. From the analysis, it can be concluded that customary justice mechanisms do not provide consistently fair trials. For example, the rights of the accused to appeal decisions may be infringed, while in some cases harsh punishment may be imposed, especially for women. Other challenges noted include customary justice courts' inability to enforce decisions and resolutions, leading to cases resurfacing.

Across the study countries, when handling marital disputes, customary courts place emphasis on preserving marriages even if doing so is detrimental to a woman's safety and well-being, as illustrated in South Sudan.¹⁵⁵ Although customary courts tolerate physical abuse, women are allowed to appeal to the courts in instances where the violence exceeds what is socially tolerated as a 'normal' level. Although the law in South Sudan outlaws sexual violence, most sexual violence cases do not make it to the courts. Women and girls are often forced to marry their rapists, an option preferred by some, as it prevents men

from going to jail and avoids the stigma attached to women who have been raped. Formally, customary courts should not hear serious criminal GBV cases, such as rape, and should refer these to the statutory court system. In South Sudan, customary courts normally try rape cases, which constrains access to justice for women and girls.

In most cases reported during the study from Ethiopia, Kenya, Malawi, Somalia, Tanzania and Zimbabwe, men who are illiterate and uneducated are the elders who adjudicate matters of customary laws, especially land matters. They may not understand the prescribed law, making rulings that disadvantage women. The government has also done little in terms of educating and advocating justice among vulnerable women. In cases where written information is available, women from marginalized groups usually do not access the materials and, if they do, they are unable to interpret them due to the legal terminology and the complexities of legal processes.¹⁵⁶

154 Interview with victim in South Sudan conducted on 6 November 2020.

155 Human Security Baseline Assessment for Sudan and South Sudan (HSBA). Women's Security and the Law in South Sudan. Geneva: HSBA. https://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_3562.pdf.

156 UN Women, UNDP, UNODC and OHCHR. 2018. A Practitioner's Toolkit on Women's Access to Justice. New York: UN Women.

Stereotyping is another challenge documented in all 10 countries studied. This has resulted from deep-rooted customary and religious practices that curtail women from seeking justice and speaking out against the violence they experience. In Kenya, for example, the 2016 Demographic and Health Survey states that a third (34 per cent) of GBV victims prefer seeking support from their neighbours rather than pursuing available legal justice measures. The help-seeking hierarchy descends to their families (31 per cent) and the husband's or partner's family (14 per cent). Unfortunately, only 8 per cent of violence victims in Kenya seek help from the police. Worse still, it is uncommon for women who have experienced physical and sexual violence to obtain help from service providers such as medical personnel, lawyers and social work agencies or organizations, with only 2 to 3 per cent of survivors taking this route.

The patriarchal system and rural-based, male-dominated societies in which cultural and religious laws define what women do or say has a great influence on disenfranchising women seeking justice, as shown in the countries studied, especially Ethiopia, Malawi, Mozambique, Somalia and South Sudan. In Mozambique, women and girls face challenges in expressing their opinions and participating in and benefiting from socioeconomic and political life. Exclusion of women from traditional arbitration committees was also reported across the 10 study countries. In Kenya, religious laws and customary laws coexist with statutory laws, creating legal pluralism and complex justice structures for women. Locally, customary laws are dynamic and have evolved over time in response to demographic, social and economic changes at community level, which influences a myriad of human rights. Notably, traditional gender biases, stereotypes, norms and values deny women the ability to access justice and forward legal claims. Traditional practices also limit women's access to justice at community level. Discriminatory cultural practices against women have dominated traditional proceedings and legal considerations, leaving women vulnerable to the interests of patriarchal society. In Kenya, as the Constitution recognizes alternative forms of justice, many Kenyans have shown preferences for traditional or alternative

dispute resolution mechanisms over formal courts because of their accessibility, low cost and speed, yet only men preside over these courts.¹⁵⁷

Another challenge reported is the exclusion of women from traditional arbitration committees. In the Ethiopian customary justice system, for example, women and girls are never part of the local elders arbitrating disputes between couples in their community. As posited by one of the female group discussants,¹⁵⁸ "I was once scheduled for a dispute resolution meeting to mediate between a couple in my village. Owing to the downing tasks in the house, I arrived late, and to the team of elders' surprise and disappointment, they were waiting for the eighth male. In fact, they angrily remarked that 'We wasted our time waiting for a woman.'" In this setup, decisions reached in such mediation and arbitration meetings favour men, leaving women with no option but to abide by the decisions, irrespective of the degree of their victimization.

There is a stigma related to female genital mutilation (FGM) and other forms of violence. In Somalia, customary and traditional system decision-making bodies are headed purely by men. This structure makes it difficult for women to participate and have fair trials in the justice sector because the systems are biased. Women are not allowed to participate in decisions made by the group. In some rape cases, victims have been forced to marry the offender. Several Somali women and girls suffer the irreversible effects of FGM. Studies show that most FGM survivors live in sub-Saharan African, including Somalia. FGM comprises partial or complete removal of the external female genitalia. It can also mean any intentional injury to the sexual organs of a female. In Somalia, FGM is usually performed at adolescence as a means of initiation into womanhood. However, at present, FGM is no longer a rite of passage in Somalia. According to Somalia's Health and Demographic Survey 2020, "99 per cent of women have undergone FGM between the ages of 15 and 49 years. In addition, 64 per cent of women who had undergone FGM experienced pharaonic FGM, 12 per cent experienced the intermediate type and 22 per cent experienced the Sunni type. Similarly,

157 The Republic of Kenya. 2019. "National Policy on Gender and Development: Towards Creating a Just, Fair and Transformed Society Free from Gender Based Discrimination in all Spheres of Life Practices." Sessional Paper No. 02 of 2019. Nairobi: The Republic of Kenya.

158 Key informant interview from Ethiopia conducted on 7 November 2020.

71 per cent of women aged 15–49 reported being cut between the ages of 5 and 9 years.”¹⁵⁹ Generally, the repercussions of FGM are severe for women and girls. Those who conduct FGM follow the desires of the parents. The rural and nomadic communities in Somalia have recorded some of the worst forms of FGM. Survivors of FGM are surrounded by fear and shame, discouraging them from reporting it to the criminal justice agencies, which hinders women and girls from accessing justice.

Police victimization is another challenge facing women in all 10 study countries. Police desks do not take cases of VAWG seriously in many cases. When victims report to them, they may ridicule the victims and send them away, especially if the police officers are male.

Case Study 13: Police victimization in Ethiopia

Makda (not her real name) noted that her decision to report her husband to the police for violence was highly regrettable. To her disbelief, the three male police officers she met at the station did not take her statement but hurriedly referred her to her husband’s community elders. In fact, she reported that one of the policemen sarcastically retorted that

“Abbaa manaaf haadha manaa sireetu araarsa,” plainly implying that “the bed mediates between a husband and a wife.” This clearly indicates a significant policy implementation gap.

Police systems must be a refuge for women victims of violence rather than places of revictimization. In Kenya, a respondent reported that cultural fear of negative consequences and backlash from the community (reprisals and revictimization) of survivors of sexual violence makes women refrain from reporting to the police, seeking treatment, guidance and counselling and giving evidence during court proceedings.

In Mozambique, women and girls do not report a majority of cases for fear of stigma and because of a lack of confidence in the criminal justice system. The fear of violence keeps women and girls from seeking testing, care and treatment, and, in some settings, may even discourage women from attending prenatal services to avoid testing and disclosure of their HIV status.¹⁶⁰ HIV prevalence is high at 11.5 per cent of the general population, with women having a higher prevalence than men, at 13.2 per cent compared with 9.8 per cent. All of these factors compound lack of access to justice, as evidence is not collected in time to be used throughout the justice chain. Women fear reporting such cases because of social and traditional norms, stigma and community backlash. While the law provides for equality, in practice it is the husband who often owns the household’s assets, which contributes to women’s economic dependence on their husbands. Efforts by women to access justice and to own matrimonial property are curtailed by cultural practices that exert authority on property to male members of the family.

Case manipulation and delays were also reported, with respondents from the countries under study confirming that women and girls encounter resistance when they try to report cases of abuse. This also frustrates or prevents efforts by lawyers to assist them. Ms. Chimwaza, a respondent from Malawi, reported: “The time it takes is, however, dependent on the parties. Delays are rampant and therefore it takes even up to a year before justice is rendered in cases. Occasionally, it can take a short time, especially for cases adjudicated in the lower courts. Cases in the Supreme Court and the High Court take longer, as they don’t have enough judges to handle the many cases. Appeal cases usually take the longest.” A focus group discussant from Ethiopia reported Case Study 14.

159 Directorate of National Statistics, Federal Government of Somalia. 2020. The Somali Health and Demographic Survey 2020. Mogadishu: Federal Government of Somalia.

160 Supra note 78.

Case Study 14: The entrenched tendons of customary laws enable case manipulations in Ethiopia

Ms Armaye Assefa, who is a lecturer, has been offering free legal aid on a pro-bono basis since 2015, focusing mainly on women's rights, including domestic violence, abduction, rape, and marital and property issues. In her work, she was involved in an abduction and rape case in Aleta Chuko Woreda Court in 2017 that shows incidences of case manipulation by authorities. Armaye and members of staff from the Legal Aid Centre and the local Woreda Office for Women and Children Affairs intervened when they heard that a girl had been abducted from school. They went to great lengths, including borrowing a car from the university, to search for her and rescue her from the abductors in a distant rural area. However, after the rescue and reporting of the case to the police, the police insisted on keeping the girl overnight in one of the cells. By the following morning, they had forced her to sign a statement showing that she was 19 years old and was in love with the offender.

The lawyers were determined and managed to take the case to court and to arrange for a medical examination, which confirmed that the girl was under 16 years old. In court, she testified to the abduction and attempted rape, and described having been pressured to sign a false statement. However, the offender denied the charges, and ultimately, despite the efforts of the Legal Aid Centre, the court adjourned the case and community elders and police drew up an arbitration agreement, forcing the girl to drop the case. Meanwhile, the rescuers were criticised by members of the victim's family, who claimed that it was "against the culture."

Another case reported from the United Nations Population Fund, East and Southern Africa as part of the 2020 Spotlight Initiative highlights a case of Debra (not her real name), whose daughter was sexually exploited. As a widow, Debra had high hopes that her daughter Mary would complete her university studies and support the family in later years. This was a great milestone for Debra, who struggled to provide for her children. Debra runs a restaurant in the local market in Chowe village and travels a long distance to get her produce. When she travels to the market, Mary is left to manage the restaurant, which is located near a liquor store. Upon hearing rumours, Debra learnt that her daughter was having a relationship with a man twice her age. "I didn't believe it since I knew the man from way back. I treated him as a brother," she said. Not letting the matter go, Debra reported the incident to the community police. The case proceeded to court, and before a magistrate court in 2019 November, the accused was acquitted on the grounds of lack of evidence. Debra appealed the case and, with support from a CSO, the man was re-arrested. This followed Mary being taken to hospital and found to be 3 months pregnant. Debra recalled, "All my hopes and dreams were shattered because of one man who violated my child." Police and child protection

workers intervened, and the man was jailed for 5 years. "I am so happy that the perpetrator has finally been sentenced to jail," said Debra. "He destroyed my dream and the future of my daughter. But I will work hard so that she continues with her education."¹⁶¹

Language challenges faced by women and girls in accessing justice. In Malawi, for example, subordinate court hearings are held in English instead of the local languages, making it difficult for women and girls who are mostly denied education to understand court procedures that are complicated. In isolated cases, local languages are used, which is replicated in all the other nine countries studied, and translation is conducted for those who do not understand English. Subordinate courts, which in the Malawian context refer to the magistrates' courts, are part of the formal justice system, and they apply formal law, as opposed to customary law. There is therefore undue pressure from the local community on how to adjudicate on the cases. Malawi has no law or provision that allows nursing mothers breaks to nurse their babies or flexible hours. It takes too long to process records for appeal and longer to get feedback from the High Court. As a result, survivors often give up on cases or forced to withdraw cases because of family pressure and threats.

161 UNFPA (United Nations Population Fund) Malawi. 2020. "Seeking Justice for a Young Survivor of Gender-based Violence in Malawi." UNFPA East and Southern Africa Regional Office. 28 July. Accessed 1 July 2021. <https://esaro.unfpa.org/en/news/seeking-justice-young-survivor-gender-based-violence-malawi>.

5.7 Women and girls with disabilities, including intellectual disabilities

Violence against women and girls with intellectual impairments, is a violation of human rights that is less documented, although it cuts across borders, race, class, ethnicity and religion in the study countries. As GBV is systematic and structural, it is a mechanism of patriarchal control over women that is built on stereotypes of male superiority and expectations on the economic, social and political dominance of men and dependency of women.

The process of investigation, prosecution, hearing and judgment of cases of violence against women with disabilities is not based on the needs of people with disabilities either. For example, the Ministry of Justice in Ethiopia has investigation and prosecution guidelines for cases of GBV, but it does not mention women and girls with disabilities. The justice system tries to make women with disabilities fit the system, which is designed for people without disabilities. Communities in the study countries are unaware of the vulnerability of women and girls with disabilities; therefore, they are not protected. Girls with a hearing, physical or intellectual impairments are thought not to comprehend their perpetrators. They are unable to access post-violence services and lack information packaged in accessible formats that they can understand. Elderly women with difficulties walking or with a visual impairment were often violated when left at home alone, as they were unable to identify their attackers. Such cases are difficult to prosecute, as there is no accused. There is also insufficient knowledge among service providers on responding to survivors with disabilities, such as those in the judiciary, police, health institutions and mainstream women's organizations. Such offices have no ramps, language interpreters or braille assistance, as reported by respondents from Zimbabwe.

Worldwide, women show a greater prevalence of intellectual disability than men, although statistics vary by region. The World Health Organization and World Bank (2011) estimates that the global burden of disease of moderate and severe disability prevalence is 11 per cent higher for women than men. The World Health Survey estimates show that the prevalence of intellectual disability is nearly 60 per cent higher for women than for men. Women and girls with intellectual impairments are at higher

risk of experiencing GBV than men with intellectual impairments and women without any disabilities. In Africa, there is a significant gap in services to prevent violence against women and girls with disabilities in practice and in research. Women and girls with intellectual disabilities face various challenges in the community that put them at risk of abuse. It is evident that lack of parental care and family and community support makes this target group of people more at risk of sexual abuse. Furthermore, access to justice is not a reality for them, as they cannot comprehend and comprehensively defend themselves in courts. Most families also do not report sexual abuse because of the stigma associated with people with intellectual impairments.

A study by COVAW in Kenya in 2013 revealed that at least 60.3 per cent of women and girls with intellectual impairments interviewed had been sexually abused or had been neglected by their family members and in addition lacked adequate community support. This was attributed to lack of family care and support whenever an incident occurred, leading to more frequent occurrences. Over 80 per cent (84.9 per cent) of the people interviewed had encountered at least one woman or girl with intellectual disabilities in the community. This encounter strengthened their perception, attitudes, practices and awareness towards them. Most of the community (80 per cent) had negative attitudes and perceptions of women and girls with intellectual impairments, thus making it difficult for those women and girls to seek legal redress. This affects medical care, as the community does not recognize the rights of these women and girls and perceives them as not being at risk of any imminent danger of harm, contracting diseases or unintended pregnancies. These perceptions, attitudes and practices, and lack of awareness of women and girls with intellectual disabilities have often led to many incidents going unreported, varying from homes to institutions, including schools and law enforcement agencies. In some communities, women and girls have been victims of harmful cleansing rituals and practices. Sexual and other forms of gender-based violence have devastating effects on society and on individual women and girls with intellectual impairments. The individual women who are victims of such violence often experience lifelong emotional distress, mental health problems and poor reproductive health, as well as being at higher risk of acquiring HIV and becoming intensive

long-term users of health services. In addition, the cost to women and their children, families and communities is a significant obstacle to reducing poverty, achieving gender equality and ensuring a peaceful transition for post-conflict societies. This affects a state or region's ability to develop and construct a stable, productive society, or reconstruct a country in the wake of conflict.

The factors that contribute to GBV against women and girls with intellectual impairments include stigma associated with intellectual disability. These women and girls may be viewed as cursed and a bad omen. Irresponsibility on the part of some of parents has led to non-pursuance of perpetrators and, when pursued, they are often convinced by the perpetrators not to pursue justice for their family members who have been sexually abused. Institutional failures that manifest in poor attitudes, investigations, ineffective prosecutions, arbitrary delays and inadequate medico-legal support limit the effectiveness of most initiatives to secure justice for victims of GBV, especially those who have intellectual impairments. Lack of state accountability is also visible in the insufficient documentation of GBV cases against people with intellectual disabilities. There is limited knowledge among office bearers of the reproductive health rights of women and girls with intellectual impairments and a lack of progressive laws on sexual violence committed against women and girls with intellectual impairments. Legal causes in the countries studied include the lower legal status of women and girls with intellectual impairments, either in written law or in practice; lack of laws regarding divorce, child custody, maintenance and inheritance;

inadequate legal definitions of rape and domestic abuse; low levels of legal literacy among women; and insensitive treatment of women and girls with intellectual impairments by the police and judiciary.

In Kenya, for example, despite the enactment of the Sexual Offences Act and the Persons with Disabilities Act,¹⁶² the road to justice for women and girls with intellectual disabilities who have been sexually abused or violated is long and is riddled with frustrations for those who pursue justice. There are challenges for the caregivers, witnesses and even the prosecutors, resulting in cases being dropped. Surprisingly, such frustrations and challenges are not just experienced by the caregivers of the survivors of GBV, but also by the government institutions, police and prosecutors that are mandated to enforce the laws and implement policies to ensure that the survivors can access justice. These challenges reveal that there are still many gaps and loopholes that need to be addressed if women and girl survivors of violence with intellectual impairments are to find justice.

In Malawi, perpetrators of sexual violence against persons with psychosocial or intellectual disabilities are prosecutable under Section 139 of the country's Penal Code. According to this section, people who knowingly take sexual advantage of such people are liable for 14 years' imprisonment. This legal provision is a key step in protecting women and girls with intellectual impairments in Malawi. Nonetheless, the law refers to people with intellectual disabilities as "idiots or imbeciles," falling short of international standards, which various stakeholders are lobbying to revise.

Case Study 15: The journey to justice for a girl with hearing and speech impairments in Malawi

Kwasausya (not her real name) is a young mother of one with hearing and speech impairments who can only remember her teenage life with tears. She enjoyed her life in Lumbadzi village until she was 15 years old. A person whom she was told was a protector of her rights turned on her and raped her repeatedly. Her village chief not only infected her with HIV, but also made her pregnant. Were it not for the intervention of the civil society organization Disabled Women in Africa, she would have continued to suffer in silence, as not even her village people could help her, despite knowing about the heinous act. No one, including her parents, dared to report the chief to the police, and even when the case was filed with the Ministry of Gender, no one sought justice. After Disabled Women in Africa's persistent follow-up, the chief was arrested and remanded at Maula Prison with a regular court summons. He passed away on the eve of his verdict.

162 The Republic of Kenya. 2003. Persons with Disabilities Act.

Case Study 16: Justice for a woman with intellectual impairments in Kenya

In the Mukuru informal settlement in Kenya, the brother of a girl and a boy with intellectual impairments narrated the following: “My mother, having been framed and mocked over bewitchment, eventually abandoned her two intellectually challenged children, a boy and a girl, and left to the rural western part of Kenya in 2014 never to return. Without money to take care of my siblings, I resorted to informal duties in the industrial area where I would look for work and money to fend for my siblings. When at work, I would leave them confined in our two-roomed tin house.” However, he did not know that his intellectually challenged sister was being raped frequently by a bicycle milk supplier in the estate. He eventually noticed this when one of the neighbours became suspicious over the man’s visit to the house when he had gone to work: “When I realized this after receiving a call from the neighbour, I left work to be home only to realize that my sister had been raped. I reported the matter to the police station and took my sister to the nearest health centre, which confirmed that she had been defiled.”

He recalled:

“My first encounter with the access to justice jeopardy was in the police station where I presented my sister. The police in that station dismissed me on the basis that they could not proceed to take a statement from someone mad and who is unable to express herself. When I persisted that justice had to be served, the police officers demanded money to fuel their vehicle to visit our house. I obliged and gave them \$10. Upon their arrival at our house, they realized that my brother was equally intellectually challenged. The police insisted that the two may have had sex on their own. This eventually frustrated my efforts to seek justice for my sister, despite knowing the person who had raped her. Later, when I contacted one of the paralegals from a local organization for help, she followed up the case, and it was registered at Makadara Law Courts in Nairobi. With back and forth at the courts, the police insisted that they could no longer trace the accused, as he had fled from the estate. Feeling frustrated and unable to cater for filing court fees and related expenses of traveling to court, I finally gave up on seeking justice for my sister due to frustrations in the legal process and demands for bribes by the various officers to pursue the leads.”

The study also notes that women with disabilities continue to face unfair treatment and discriminatory attitudes from personnel in the court system. This includes translators, court attendants and lawyers, notwithstanding the absence of disability-inclusive access structures such as ramps, sign language interpreters and braille, and appropriate facilities inside and outside courts.

In Malawi, the public transport system does not have reserved seats for people with disabilities, and those who use wheelchairs are made to pay double fares.

People with disabilities are treated with prejudice and scorn to varying degrees, and are regarded as incapable, inadequate, pitiable, aggressive, unhealthy, dependent on charity and costly for society to support. Access to justice is therefore challenging for them, as they cannot access courts or support in the justice system. Albinism is given more prominence and attention by the government, yet it is not the only form of disability and other forms are ignored.

5.8 Lesbian, gay, bisexual, transgender and intersex persons

Recently, there has been increasing attention on the marginalization of lesbian, gay, bisexual and transgender (LGBTI) persons. Research and news reports have indicated that, given the heteronormative and conservative cultures of most African states, LGBTI people are subjected to a host of challenges limiting their access to justice. These range from stigma, discrimination and violence to violation of the universal rights and exposure to legal obstacles. LGBTI people are not recognized in all of the countries studied, and

therefore the only way of addressing such cases is using the Constitution. The laws in these countries do not recognize LGBTI individuals. Uganda, for instance, is mentioned as having an environment that has promotes violation of LGBTI rights and an unresponsive judicial system. A number of cases have been noted in the recent past. Case Study 17 outlines the situation and the challenges LGBTI people face in accessing justice in Uganda.

Case Study 17: LGBTI case, Human Rights Awareness and Promotion Forum versus the Attorney General and the Commissioner General of Prisons, High Court Miscellaneous Cause No. 81 of 2020

Case: Human Rights Awareness and Promotion Forum v. Attorney General and the Commissioner General of Prisons, High Court Miscellaneous Cause No. 81 of 2020.

Analysis: The landmark case highlights the plight of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community in a country where access to justice for sexual minorities is limited. The Chief Magistrates Court of Mpigi at Nsangi charged the accused for a negligent act likely to spread disease contrary to Section 171 of the Penal Court Act. They were then remanded to Kitalya Prison on 31 March 2020. The accused noted that they were detained in a prison facility for 40 days, subjected to torture and not allowed legal representation.

The High Court's decision was based on the observations of denial of right to liberty and denial of the right to a fair trial. The accused were 19 LGBTI youths who were part of a group of 23 people arrested from a homeless shelter in Kyengera.

On the right to liberty, the court observed that, although the right could be limited, there were many options available to prison authorities to allow lawyers to access their clients without putting people at risk of contracting COVID-19. Therefore, denying the accused people access to their lawyers for 40 days was "unreasonable and unjustifiable".

The court affirmed that denial of 19 accused during the COVID-19 lockdown access to their lawyers was a violation of the constitutional right to a fair hearing and liberty. The court further observed that the right to a fair trial could not be waived even during the COVID 19 pandemic, as the right is inalienable in any circumstance.

CHAPTER 6:

LEGISLATIVE AND POLICY FRAMEWORKS FOR ACCESS TO JUSTICE IN EAST AND SOUTHERN AFRICA

6.1 Review of legislative and policy frameworks for access to justice

Numerous international and regional frameworks and initiatives over past decades have aimed to formulate and recognize women's rights, including access to justice and legal aid, with the objective of promoting gender equality and curbing gender-based violence (GBV). The situation of women in Africa remains largely inadequate in all the study countries. Women in Africa face socially constructed patterns and systemic exclusion, which deters them from achieving their full potential in all walks of life, as recognized in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The unequal power relations between men and women throughout the world calls for immediate justice reforms to address the needs of women in accessing justice and making decisions in matters of the law.

The Committee on the Elimination of Discrimination Against Women General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-conflict Situations¹⁶³ and The Committee's General Recommendation No. 33 on Women's Access to Justice¹⁶⁴ undertakes comprehensive protection of women accessing justice by framing the importance of availability, justiciability, accessibility, provision of remedies and accountability of justice systems. The recommendations point to the need for women to be protected against discriminatory laws, practices and procedures, including gender bias and stereotyping in the justice system, and highlight the importance

of capacity-building. The recommendations further provide avenues that anchor access to justice systems for women to be conducive, responsive and inclusive to even the women who live in poverty and are marginalized in society. All 10 countries under study have made efforts towards adopting the CEDAW General Recommendations through various interventions, policies, laws and institutions.

Access to justice for women is guided by international and regional frameworks including treaties, conventions, resolutions and platforms. Various Member States, agencies and stakeholders have

¹⁶³ United Nations, Committee on the Elimination of Discrimination against Women. 2013. General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-conflict Situations. CEDAW/C/GC/30.

¹⁶⁴ United Nations, Committee on the Elimination of Discrimination against Women. 2015. General Recommendation No. 33 on Women's Access to Justice. CEDAW/C/GC/33.

designed and promoted agreements, conventions and protocols to promote access to justice for women. The United Nations CEDAW is among the most important instruments, as it is legally binding, and many interventions are anchored to it. CEDAW establishes international standards for guaranteeing equality between women and men in the family as well as between the family and the state. The essence of this convention, as for the Universal Declaration on Human Rights, is respect for human dignity and respect for the human capacity to make responsible choices. Several African countries have also committed to the 1995 Beijing Platform for Action. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Article 6) was designed to hold African states to account on women's rights, including violence against women and girls (VAWG). All study countries are

state parties to many international law instruments and are duty bound to refrain from acts of violence against women and to prevent and protect women from violence. Similarly, they have a duty to punish perpetrators and compensate victims of violence. They may be held responsible under international law for failure to provide reasonable and adequate measures to prevent or address women's rights violations. The 1993 Declaration on the Elimination of Violence against Women, for instance, includes explicit directions to countries to "not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination." Since 1993, civil society have made concerted efforts to urge Member States in the study to eliminate state and local biases in the implementation of CEDAW due to so-called religious and cultural interpretations or reservations.¹⁶⁵

6.2 Signatories to CEDAW in East and Southern Africa

Table 6: Signatories to CEDAW

Country	Signed CEDAW	Ratification of CEDAW
Burundi	17 July 1980	8 January 1992 ¹⁶⁶
Ethiopia	8 July 1980	10 September 1981 ¹⁶⁷
Kenya	Not available	9 March 1984 ¹⁶⁸
Malawi	Not available	12 March 1987 ¹⁶⁹
Mozambique	Not available	21 April 1997 ¹⁷⁰
Somalia	Not signed	Not ratified
South Sudan	Not available	30 April 2015 ¹⁷¹
Tanzania	17 July 1980	20 August 1985 ¹⁷²
Uganda	30 July 1980	22 July 1985 ¹⁷³
Zimbabwe	Not available	13 May 1991 ¹⁷⁴

¹⁶⁵ Aura, R. "Situational Analysis and the Legal Framework on Sexual and Gender-based Violence in Kenya: Challenges and Opportunities." Nairobi: Kenya Law.

¹⁶⁶ United Nations General Assembly. Convention on the Elimination of All Forms of Discrimination against Women. A/RES/34/180.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

The study appreciates that legal frameworks play a critical role in transforming norms and protecting the rights of women and girls. However, it cautions that the legal and policy frameworks are not sufficient drivers in themselves to realize access to justice for survivors of VAWG and must be paired with effective enforcement and comprehensive prevention and protection efforts. Relevant laws and regulations reported in the study cover sexual violence and domestic violence; anti-corruption; and family status, regulating marriage, divorce, custody and inheritance, among other areas.

The study identifies three levels of instruments that have been deployed to enhance access to justice for GBV survivors, including international agreements and commitments; national policies and laws directed at ending VAWG; and tangential laws and policies that target other fundamental rights and protection for women and girls. Over 32 countries across the continent, including all the study countries, have taken some action to increase opportunities for improving women’s access to justice. Seven of the countries studied have signed the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Table 7).

Table 7: Country status on the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa

Country	Signed the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa	Ratified the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa
Burundi	Yes (3 December 2003)	No
Ethiopia	Yes (1 June 2004)	Yes (18 July 2018)
Kenya	Yes (17 December 2003)	Yes (6 October 2010)
Malawi	-	Yes (20 May 2005)
Mozambique	Yes (15 December 2003)	Yes (9 December 2005)
Somalia	Yes (23 February 2006)	No
South Sudan	Yes (24 January 2013)	No
Tanzania	Yes (5 November 2003)	Yes. (3 March 2007)
Uganda	Yes (18 December 2003)	Yes. (22 July 2010)
Zimbabwe	Yes (18 November 2003)	Yes. (15 April 2008)

Source: African Union, 2019.¹⁷⁵

Across the 10 countries studied, there are laws and policies addressing violence against women and other protections for women and girls with varying extents and effectiveness of implementation (Table 9). It was evident that having the laws has made a significant difference to people’s awareness of violence against women. They have affected and shaped public attitudes, perceptions and responses to access to justice by facilitating and requiring

government follow-up through an enabling citizen and court action for enforcement. Even when local enforcement is incomplete, laws may still have an impact by shaping the terms of debate and providing levers for civil society advocates. For example, Article 535 of the Burundi Penal Code provides that any person who subjects their spouse, child or any other person living with them to cruel, inhumane or degrading treatment is punishable by 3–5 years’

175 African Union. 2019. Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.

imprisonment and a fine of FBu 50,000.¹⁷⁶ However, approximately 48.5 per cent of women and girls experience physical and/or sexual partner violence in their lifetime in Burundi.¹⁷⁷ Heightened risks of GBV still remain in 2020 and are used as a strategy to punish women with political affiliations. Conflict and poverty in several areas in Burundi have led to men who were heads of households getting killed or imprisoned, leaving women and girls in the families vulnerable and exposed to both physical and sexual

violence.¹⁷⁸ All countries studied reported another challenge to enforcement in cases with physical injury, where courts demand a medical certificate as proof, but medical experts refuse to attend court to give evidence of the reports. Some health facilities also refuse to give the medical reports necessary because they do not want to be called as witnesses in cases. This discourages women from using the formal systems to seek justice.

Table 8: International and regional frameworks on access to justice

African (Banjul) Charter on Human and Peoples' Rights	Adopted in 1981 by the African State members of the Organisation of African Unity. Article 3 of the charter recognizes that "every individual shall be equal before the law and shall be entitled to equal protection of the law."
2030 Agenda for Sustainable Development	Adopted in 2015 by the United Nations General Assembly and contains a set of 17 interconnected goals, 169 targets and 232 indicators for promoting human rights, access to justice, gender equality, effective participation and the rule of law. SDG 5 and SDG 16 promote a range of commitments addressing violence against women, women's property rights, reforming discriminatory laws, and ensuring women's effective and meaningful participation in decision-making.
CEDAW	United Nations General Assembly Resolution 34/180 (CEDAW) ¹⁷⁹ is the global charter of women's rights and the proposal for women's access to justice programming. The Optional Protocol has been ratified by 189 countries to realize equality between women and men by ensuring women's equal access and equal opportunities in all spheres of cultural, political, economic, social and civil life. Member States who have signed the charter are bound by this law to keep its statutes and ensure equal access to justice for women. The Committee on the Elimination of Discrimination against Women, United Nations General Assembly Resolution 54/4, which is an Optional Protocol to CEDAW, also provides conditions for access to justice.

176 The Republic of Burundi. Penal Code of the Republic of Burundi, Article 535.

177 UN Women Burundi. 2020. "Global Database on Violence Against Women: Burundi". Accessed 1 July 2021. <https://evaw-global-database.unwomen.org/en/countries/africa/burundi>.

178 Trial International. 2018. "Sexual Violence: The Hidden Face of the Burundian Crisis." Trial International. 20 November. Accessed 1 July 2021. <https://trialinternational.org/latest-post/sexual-violence-the-hidden-face-of-the-burundian-crisis/>.

179 United Nations, Committee on the Elimination of Discrimination against Women. 2015. General Recommendation No. 33 on Women's Access to Justice. CEDAW/C/GC/33, para. 10.

<p>United Nations Security Council Resolutions 1325 and 1820</p>	<p>All United Nations Security Council resolutions on women, peace and security corroborate an important nexus with security, access to justice and state accountability. The Women, Peace and Security Agenda that focuses on four fundamental principles of recovery, peace building, participation and protection is central to programming and planning women’s access to justice.</p>
<p>The Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol)</p>	<p>The Maputo Protocol in several respects outstrips all previous instruments on women’s rights, regionally and internationally, and touches on the political, civil, social, cultural and economic rights of women. It consolidates the rights of women, which were previously scattered in various instruments and were often stated in a gender-neutral manner. The protocol includes novel provisions such as the rights of women to an equitable share in property at the time of divorce; legal aid for women to access justice; the right to peace; economic and social welfare rights (including in the informal sector); widows’ rights; and special protection of women with disabilities.¹⁸⁰</p>
<p>United Nations General Assembly Resolution 67/187, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems¹⁸¹</p>	<p>These standards and norms of the United Nations General Assembly are adopted by the General Assembly or other intergovernmental bodies based on the consensus of all United Nations Member States to provide guidance on access to legal aid in criminal justice systems.</p>
<p>United Nations General Assembly Resolution 65/229¹⁸²</p>	<p>This protocol recognizes the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).</p>
<p>United Nations General Assembly Resolution 65/228¹⁸³</p>	<p>This standard and norm looks at the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice.</p>
<p>United Nations Economic and Social Council Resolution 2002/12¹⁸⁴</p>	<p>This protocol looks at the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.</p>

180 African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol)

181 United Nations General Assembly. 2012. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. A/RES/67/187.

182 UNODC (United Nations Office on Drugs and Crime). The Bangkok Rules. Vienna: UNODC. https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

183 United Nations General Assembly. 2011. Strengthening Crime Prevention and Criminal Justice Responses to Violence Against Women. A/RES/65/228.

184 United Nations Economic and Social Council. 2002. ECOSOC Resolution 2002/12: Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters. <https://www.un.org/en/ecosoc/docs/2002/resolution%202002-12.pdf>.

6.3 Legislative review of access to justice for women by country

6.3.1 What does the law say about access to justice for women?

Table 9: Country laws on access to justice for women

Country	Analysis
Burundi	<p>Article 38 of the Constitution of Burundi (2005) provides that all citizens have the right in a judicial or administrative procedure to have their case heard fairly and to receive judgment without any reasonable delay. Article 22 states that all women and men are equal before the law, which assures them equal protection.</p> <p>Article 535¹⁸⁵ of the Penal Code provides protection of women and girls, with anyone who subjects their spouse, child or any other person living with them to cruel, inhumane or degrading treatment is punishable by imprisonment for 3–5 years and a fine of FBu 50,000.</p>
Ethiopia	<p>The Constitution considers access to justice as a right as guaranteed in Article 37 (1) as follows: “Everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power.”</p> <p>The Revised Criminal Code (2005) criminalizes and sets sanctions against violence against women, including rape and harmful traditional practices such as abduction, child marriage and female genital mutilation. The Government of Ethiopia has since taken measures to enforce the provisions of the Criminal Code against GBV.</p>
Kenya	<p>The Kenyan Constitution provides for the protection of all individuals from any form of discrimination (Sections 29 and 53). It guarantees the rights to security to safeguard all citizens. Women have the right to protection from GBV. It connects with other legal provision such as the Sexual Offences Act 2006, Counter-Trafficking in Persons Act 2010 and the Prohibition of Female Genital Mutilation Act 2011. The law protects women from sexual and other forms of gender-based violence. The Kenyan Constitution acknowledges the following sexual offences: rape, attempted rape, gang rape, defilement, attempted defilement and sexual harassment.</p>
Malawi	<p>The Malawian Constitution in Article 41 (3) states that “Every person shall have the right to an effective remedy by a court of law or tribunal for acts violating the rights and freedoms granted to him by this Constitution or any other law.”</p> <p>It is less gender-sensitive, as it only refers to ‘him’ rather than ‘him/her’.</p>
Mozambique	<p>Article 100 (4) of the Mozambique Constitution of 2004 provides all women and men with a legal right to access not only the courts but also the Office of the Ombudsperson. It also provides for legal representation and legal assistance, regardless of one’s ability to pay.</p> <p>The Mozambican Constitution establishes total gender equality in all areas of society and prohibits all legislative, political, cultural, economic and social discrimination as defined in Articles 6, 67 and 69 of the Constitution. However, the term ‘discrimination’ is not defined.¹⁸⁶</p>

185 Penal Code of the Republic of Burundi.

186 FIDH (International Federation for Human Rights). 2007. International Fact-finding Mission: Women’s Rights in Mozambique. Paris: FIDH. <https://www.refworld.org/pdfid/46fi46890.pdf>.

	<p>For example, while the law outlaws child marriage (Article 30 of the Family Code), the practice remains very common in rural communities, resulting in girls' under enrolment in school and a high rate of teen pregnancy. Mozambique has signed and ratified all normative international and regional texts regarding women's rights, notably CEDAW in 1997 and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa in 2005. Despite the fact that Article 16 (2) of the Family Code formally stipulates that marriage is "monogamous", polygamy remains common throughout the country. While the law provides for equality, in practice, it is the husband who often owns the household's assets. Efforts by women to access justice to own matrimonial property are curtailed by cultural practices that exert authority on property to male members of the family despite the existence of a law on ownership for women to own property.</p>
Somalia	<p>Rape is criminalized by Penal Code Article 398: "Whoever with violence or threats has carnal intercourse with a person of the other sex shall be punished with imprisonment for five to 15 years." The draft federal Sexual Offences Bill will reinforce the criminalization of rape.</p> <p>In August 2018 the Somaliland President signed into law the Sexual Offences Bill, which provides punishment of up to 20 years' imprisonment for perpetrators and compensation for victims.</p> <p>Puntland enacted a state law against sexual offences in 2016 that provides for life imprisonment or the death penalty for offences, recognizing rape as a weapon.</p> <p>Article 15 of the provisional Federal Constitution describes female circumcision as cruel and degrading, equates it with torture and prohibits the circumcision of girls.</p> <p>Article 24 states that "All workers, particularly women, have a special right of protection from sexual abuse, segregation and discrimination in the workplace. Every labour law and practice shall comply with gender equality in the workplace."</p>
South Sudan	<p>The South Sudan Transitional Constitution (2011) covers in Section 110 of the Local Government Act (2009) and Article 16 of the 2011 Constitution a guarantee to equal access to justice basing entirely on principles of equality.¹⁸⁷</p>
Tanzania	<p>The Tanzanian Law of Contract in its CAP 345 guarantees all women and men the same capacity to sue and to be sued. Additionally, the women and men in Zanzibar now have equal access to Kadhi's Courts after a successful review of the Kadhi's Court Act in 1985.¹⁸⁸</p> <p>Article 33 of the Ugandan Constitution is entirely on the rights of women. However, there is no explicit mention of whether women's rights to access justice are fully admissible or curtailed. A critical interpretation of Article 33 (4) would mean that women would have the same rights as men to sue and to be sued in Uganda.</p>

187 The Republic of South Sudan. 2011. The Transitional Constitution of the Republic of South Sudan.

188 Social Institutions & Gender Index. 2019. Social Institutions and Gender Index for the United Republic of Tanzania. Paris: Organisation for Economic Cooperation and Development. <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/TZ.pdf>.

Uganda	<p>In Uganda, in the traditional justice and informal justice mechanisms, women and girls are subjected to the same patriarchal norms that reinforce inequalities. These are the Lands Act and Domestic Violence Act. Furthermore, the present marriage laws do not clearly spell out the property rights of married men and women. Notably, the section of the Divorce Act that describes the grounds for divorce has been declared unconstitutional on the grounds that it makes it easier for men to obtain a divorce than women. Parliament has not yet amended the Divorce Act in accordance with this ruling; the impact of this is that women remain disadvantaged in terms of the requirements for obtaining a divorce.¹⁸⁹ Additionally, in most cases, conservative justice reforms have commendably side-lined the justice needs of women and girls. For instance, in land issues, only two sections of the Land Act directly address gender, land and property rights. Section 38A of the Land (Amendment) Act 2004 provides for a spouse’s security of occupancy on family land, and Section 39 requires spousal consent prior to entering into any land transaction concerning land on which the spouse resides on and uses for sustenance. Section 28 of the act specifically states that any decision that provides women, children or people with a “disability access to ownership, occupation, or use of any land or that violates constitutional principles” shall be invalid. In another weakness, the existing marriage laws do not clearly spell out the property rights of married men and women.</p>
Zimbabwe	<p>Section 56 of the Constitution of Zimbabwe (2013) states that “all people are equal before the law and have equal access to the protection and benefit thereof.” This constitutional provision is complemented by other gender-neutral sections on access to courts. In Zimbabwe, Section 31 of the Constitution assumes that the state will take all practical measures in ensuring legal representation, but the lived realities of women and girls indicate an absence of adequate legal aid for women who cannot afford the services. Women complain that the rules of evidence often go against them. The demand for proof from women who complain of being beaten by a husband does not favour those married traditionally who have no legal marriage documents .</p>

189 Hannay, L. 2014. Women’s Land Rights in Uganda. Seattle: Landesa. <https://www.landesa.org/wp-content/uploads/LandWise-Guide-Womens-land-rights-in-Uganda.pdf>.

6.3.2 Are women-friendly justice principles given authority in law, policy regulations and training, including regarding statements taken from women, the provision of evidence by women, court set-up when women testify, privacy and confidentiality?

Table 10: Women-friendly justice principles

Country	Analysis
Burundi	<p>According to Article 20 that enshrines the Law on the Protection of Victims and the Prevention as well as Punishment of Sexual and Gender-based Violence, the state provides legal aid for victims of GBV.</p> <p>In Article 47, all acts of intimidation aimed at preventing a judicial procedure on GBV are punishable by 10 years' imprisonment and a fine.</p> <p>Article 28 of the Constitution protects the intimacy of victims and witnesses in procedures regarding GBV, particularly their personal details and physical safety.</p> <p>According to Article 20, the state is required to create welcome centres and emergency shelters for victims. The centres will provide victims with medical, judicial, legal and psychosocial as well as social rehabilitation services.</p> <p>The Government of Burundi in implementing Article 15 of CEDAW revised the Criminal Code (Law No. 1/05 of 22 April 2009), which had a discriminatory clause while also increasing penalties for violence against women, and prepared public policies on promulgating the laws on succession and matrimonial regimes.</p> <p>The government has further added to the Criminal Code by inserting a clause that severely punishes trafficking of women and girls.</p> <p>The Government of Burundi updated the National Gender Policy and its Action Plan in line with the Strategy Framework for Poverty Reduction, the more developed countries and Vision 2025, and preparation of national strategies for gender-mainstreaming in the police, defence and education sectors.</p>
Ethiopia	<p>The Ministry of Women and Children Affairs' annual reports between 2015/2016 and 2017/2018 state that there are 11 one-stop service centres in 3 regional states and 2 federal states in the country. There are also 12 rehabilitation centres that focus on protecting victims of GBV and girls against retrogressive cultural practices.</p> <p>These figures create an impression that the government has taken initiatives to reach out to the target population, as set out in its strategic plan under the Growth and Transformation Plan II before the target date.</p> <p>However, the data collected from other sources, such as the Ministry of Women and Children Affairs' annual report, indicate that there are only 5 one-stop centres as opposed to the 11 reported in Addis Ababa, while information accessed from FAG points out that Addis Ababa had only 1 one-stop centre and another began to operate in 2018 through the collaboration between the NCBs, which aims to increase the number of centres by 3 in major health facilities in the capital.</p> <p>A 2017 report by the International Law and Policy Institute found that of the 1,140 cases of violence against women from five regional states' counsel, 43 per cent were either cases in which the accused was acquitted due to lack of evidence or was not tried for various reasons, such as referral to traditional justice systems, absentia, conciliation or lack of jurisdiction. Similarly, in 2018, the Federal Attorney General's Office reported that, of the 355 cases of violence against women and children it investigated, 120 were not prosecuted for lack of evidence, the accused's absence or conciliation. Another reason for the low level of reporting usually mentioned by stakeholders is the delays in court proceedings.</p>

<p>Kenya</p>	<p>Several laws provide for the privacy and confidentiality of litigants. First, the Witness Protection Agency is mandated to provide protection to victims and witnesses. The agency, established in 2009, experiences several challenges. First, the qualification for the protection is too high; it requires proof of a severe threat. It is not easy to prove that a threat is severe because of the slow processes of the justice system, which can give rise to abuse and manipulation.</p> <p>Article 50 (8) of the Constitution provides for hearings to be held in camera in certain instances to protect witnesses and vulnerable people, among others. Similarly, Article 50 (7) provides for the use of intermediaries and women-friendly provisions, for example the Evidence Act in Section 124 (corroboration in sexual offences is not mandatory in cases where the only evidence is that of the alleged victim of the offence). In practice, family disputes and cases involving children are held in camera and the names of parties are given by their initials.</p> <p>The Kenyan Government has failed to fully fund civil society organizations that focus on helping victims of sexual violence in society despite the Constitution’s recognition of the protection of vulnerable witnesses, which has led to interest groups and individuals coming to speak on behalf of such victims in cases of minors, victims with disabilities and severely traumatized individuals.</p>
<p>Malawi</p>	<p>Courts in Malawi have used international conventions to rule on cases of women in which the national laws are limited with regard to protection of women.</p> <p>Policies on gender exist through the Gender Equality Act, which was enacted in 2013 to “promote gender equality, equal integration, influence, empowerment, dignity and opportunities, for men and women in all functions of society, to prohibit and provide redress for sex discrimination, harmful practices and sexual harassment, to provide for public awareness on promotion of gender equality, and to provide for connected matters.”</p> <p>Women still fear approaching the courts, as most are located in faraway areas and require funds for transport, as there are no private spaces to take statements or to testify. Malawians may be unable to access the justice system simply because they do not understand it or lack knowledge about it. Procedures and judgments are issued in English, which most women do not understand.</p>
<p>South Sudan</p>	<p>The law gives women- and girl-friendly justice principles priority in a number of provisions. Some laws, however, do not consider the principles of equality for women. The Constitution encourages the enactment of legislation to combat harmful customs and traditions that undermine the dignity and status of women.</p>
<p>Somalia</p>	<p>Article 107 (1) provides that “Judicial proceedings shall be open to the public, but the courts may decide, in the interests of ethics, national security, the protection of witnesses, in cases involving juveniles, or concerning rape, that the proceedings be held in private.”</p>

Mozambique	The Constitution establishes total gender equality in all areas of society and prohibits all legislative, political, cultural, economic and social discrimination, as defined in Articles 6, 67 and 69 of the Constitution. The term ‘discrimination’ is not defined. There are no special arrangements for women when it comes to access to justice. Mozambique has a Ministry of Justice and has a Gender Policy and Implementation Strategy that seeks to ensure inclusion of women in all government services. The justice sector is part of the Multi-sectoral Integrated Mechanism for assistance for women survivors of violence.
Tanzania	The country’s Constitution and justice procedures have embraced women-friendly approaches. Notable national policies and laws adopted in the recent past are built on female-friendly justice principles. The law upholds the principle of access to justice and is founded on respect for gender equality principles.
Uganda	The law gives women- and girl-friendly justice principles priority in a number of provisions. Article 33 explicitly describes the status and rights of women and enshrines women’s right to equal treatment with men. Laws, cultures, customs or traditions that are against the dignity, welfare or interest of women or laws undermining their status are prohibited. Additionally, Article 32 (1) compels the state to take affirmative action in favour of marginalized groups based on gender.
Zimbabwe	Zimbabwe has a Gender Commission, whose work includes monitoring issues of gender equality enshrined in the Constitution. Zimbabwe has also a police Victim Friendly Unit, established in 1995, that is supported to maintain the privacy, confidentiality and safety of violence survivors at all times, while prioritizing the cases. Their protocol and functions allow survivors to report cases from any part of the country and to any police station. Officers attached to the unit are responsible for escorting survivors to access medical examinations, carrying out investigations, arresting perpetrators and compiling the case for prosecution.

6.3.3 Does the law provide for training of police and judicial officers to uphold women’s protection?

Table 11: Country laws on training of police and judicial officers

Country	Analysis
Burundi	The Burundi Police are trained on victim and witness protection, especially on the special needs of children and victims of sexual violence.
Ethiopia	The police have been provided with training in handling cases of VAWG since 2015. Consequently, over 764 police officers and 1,115 police academy cadets have benefited from the training to increase their capability to handle GBV against women and children. They are also trained to provide counselling sessions to women survivors of sexual violence and their families.

	<p>The collaboration between the local police and population has positively improved the police’s ability to investigate crimes. This is attributed to coaching at the shelter to help them testify against alleged sexual offenders in court.</p> <p>In 2012, the Ministry of Justice, in collaboration with Handicap International, gave a 2-day training course on disability, the rights of women and children with disabilities and GBV for 35 prosecutors. In 2014, the Ministry of Justice also gave a 2-day training on disability and people with disabilities, the rights of people with disabilities, the role of the ministry and how to provide a service to 52 heads and vice-heads of justice offices and different ministry departments.</p> <p>In 2016, the Federal Attorney General’s Office, in collaboration with civil society stakeholders, delivered three training sessions on victim-centred investigative techniques and the new trafficking proclamation to 153 public prosecutors and judges. It also partnered with the International Organization for Migration to conduct a ‘training of trainers’ training session for 30 justice sector officials and 27 prosecutors, judges and police officers from Gambela Regional State on how to conduct victim interviews and court proceedings for trafficking cases. The Federal Supreme Court also conducted training on trafficking and smuggling for 45 federal judges.</p>
Kenya	<p>The National Police Service is mandated by Article 244 (d) of the Constitution to train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity. On the same account, the police service has a Gender and Children Protection Directorate, which is housed at its headquarters in Nairobi. The Inspector General has been compelled on several occasions based on this provision to synergize their efforts to protect women from GBV. The police and the courts should work professionally to implement the Law on Gender and Women Development, including accessibility and delivery of justice.</p> <p>Article 171 of the Kenyan Constitution establishes the Judicial Service Commission. The commission is mandated, through the Judicial Training Institute, to provide continuous education and training of judges and judicial officers.</p>
Malawi	<p>Although there is no measure in the law, civil society organizations have taken the responsibility for training sections of the police, department of public prosecution and judiciary. The lack of legal provisions has meant that efforts have not been consistent.</p>
Somalia	<p>The Somali Police Force created the Woman and Child Protection Unit in 2015. The specialized unit offers coordinated multisectoral strategies to investigate and prevent sexual violence and GBV, conflict-related sexual violence and violence against children. Additionally, the unit offers legal aid services and access to medication including psychosocial support. The Woman and Child Protection Unit also provides access to a safe house on a case-by-case scenario. Finally, the unit creates awareness of sexual violence among the Somali Police Force by training police not to avoid cases involving acts of sexual violence and to accord violence against women the sensitivity it deserves.¹⁹⁰</p>

190 UNDP (United Nations Development Programme). Somalia Gender Justice and Law: Assessment of Laws Affecting Gender Equality and Protection against Gender-based Violence. New York: UNDP. <https://www.arabstates.undp.org/content/dam/rbas/doc/Gender%20Justice/English/Regional%20Report%20English/RegionalReport.Eng.pdf>.

	Further gender-related training and capacity enhancement is carried out by civil society, international non-governmental organizations ¹⁹¹ and the African Union Mission in Somalia. ¹⁹²
South Sudan	Article 42 of the Southern Sudan Police Service Act (2009) provides various parameters for determining and executing police in-service training. However, there is no mention of gender-related training for serving police personnel. ¹⁹³
Tanzania	Following the adoption of the National Strategy for Gender Development of September 2005, the curriculum of training institutions for police officers was updated to encompass issues of violence against women and women's rights as human rights. All officers, peacekeepers and other police personnel now receive training on GBV. ¹⁹⁴
Uganda	There is no specific mention of police training on gender issues in both police training colleges and in-service training. However, such services are offered by non-state agencies and organizations such as the United Nations, International Conference on the Great Lakes Region, as well as the civil society organizations.
Mozambique	There are no legal provisions. Gender equality is not a compulsory area of study in the law school curriculum. However, civil society organizations and some United Nations organizations have provided training to sections of the police and justice staff to assist women and girl survivors of violence.
Zimbabwe	The Zimbabwe Republic Police is a unit of the police force whose goal is to increase the number of female police officers and support the members to participate in training and development programmes, either internally or externally. Its work is to also support improvement in the protection of women in the country. The judiciary officials are trained soon after appointment and before they are deployed to their duty stations. Often such training is funded by donor agencies.

191 UNDP. 2014. "Promoting Human Rights and Gender Equality in the Police Force." ReliefWeb. 16 May. Accessed 1 July 2021. <https://reliefweb.int/report/somalia/promoting-human-rights-and-gender-equality-police-force>.

192 African Union Mission in Somalia. 2018. "AMISOM Concludes Gender Awareness Training for Somali Police in Four Regional States." ReliefWeb. <https://reliefweb.int/report/somalia/amisom-concludes-gender-awareness-training-somali-police-four-regional-states>.

193 The Republic of South Sudan. 2009. South Sudan Police Service Act. <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/98165/116701/F492083151/SSD98165.pdf>.

194 UN Women. 2009. Training For Police on Sexual and Gender-based Violence. New York: UN Women. <https://evaw-global-database.unwomen.org/en/countries/africa/ united-republic-of-tanzania/2005/training-for-police-officers-on-sexual-and-gender-based-violence>.

6.3.4 Is knowledge on the part of the police and courts ensured through the constant availability of relevant laws in all justice delivery structures?

Table 12: Country knowledge of police and courts through constant availability of relevant laws

Country	Analysis
Burundi	The Burundi Police force is trained on victim and witness protection, especially on the special needs of children and victims of sexual violence. Articles 9 and 10 of the Protection of Victims and the Prevention and Punishment of Sexual and Gender-based Violence ¹⁹⁵ and Article 259 of the Constitution require the government to establish training programmes on gender and GBV for professionals, including education professionals.
Ethiopia	The Constitution does not explicitly provide for regular training for police officers in Ethiopia. However, there are records of various development partners and non-governmental organizations filling the gap on needs-based training on international human rights, including on the rights of women and girls. In July 2018, the International Committee of the Red Cross collaborated with the Federal Police Commission to organize a 2-day training course for 55 senior federal police officers on leveraging how the commission can apply international human rights standards and humanitarian principles to policing. Since 2015, the women's shelter in Adama has provided training to police on handling cases of VAWG. This training programme helped 764 police officers and 1,115 police academy cadets to improve their ability to handle cases of GBV and offer counselling to women survivors of violence, their families and the local community. The Ethiopia Women Lawyers' Association trains prospective police graduates on women's rights that are enshrined in the country's Constitution, including the amended family law, Penal Code and gender law.
Kenya	Kenya has no viable strategy to build the capacity of police officers to respond effectively to VAWG.
Malawi	Malawi has adopted robust laws both nationally and internationally that respect the rule of law in protecting the needs of women against sexual harassment and discrimination, among others. However, the poor pay for judiciary members resulted in a strike in 2017 by personnel who felt demotivated.
South Sudan	South Sudan currently operates on a transitional constitution and until the country develops its full constitution, there may be no provision of laws to address the numerous existing and emerging challenges in enhancing access to justice for women and girls.
Mozambique	The training of the police and courts covers general knowledge on protection of the citizens and is not specific to women. However, some content of the modules addresses the protection of women's rights.

195 The Republic of Burundi. 2016. The Constitution of the Republic of Burundi. <http://www.assemblee.bi/IMG/pdf/loi%20du%2022%20sept%202016.pdf>.

Tanzania	Tanzania has in place programmes on GBV whose objective is to increase the knowledge and effectiveness of judicial and law enforcement officers on GBV issues. The training also emphasizes increasing the efficiency of reporting and handling of various GBV cases and women's and girls' justice needs. Following the adoption of the National Strategy for Gender Development of September 2005, the curriculum of training institutions for police officers was updated to encompass issues of violence against women and women's rights as human beings. All officers, peacekeepers and other police personnel now receive training on sexual and gender-based violence. ¹⁹⁶
Uganda	There is no specific mention of regular Police Act reviews to address the diverse and continuously evolving issues of GBV against women and girls.
Zimbabwe	The Judicial College of Zimbabwe equips magistrates with the practical skills to preside over cases, and the Zimbabwe Republic Police supports training of police officers on handling abuse cases.

6.3.5 Discrepancies and gaps between statutory and customary provisions on access to justice for women

Table 13: Discrepancies and gaps between statutory and customary provisions on access to justice for women

Country	Analysis
Burundi	Statutory laws of the Constitution of Burundi provide for equality. However, the protection of all rights under Article 88 of Code of Persons and the Family (Codes des Personnes et de la Familia, 1993) provides the legal age for marriage for boys to be 21 years, whereas for girls it is 18 years. However, girls can be married before they are 18 years old with a waiver from provincial government and parental consent. ¹⁹⁷ Furthermore, the customary laws of Burundi do not allow women to inherit land and property from their fathers and/or husbands.
Ethiopia	Voluntary consent: Article 34 (5) of the Federal Constitution takes a permissive stance in relation to both religious and customary laws and courts in the areas of family and personal disputes, as resolutions can only be resolved with the consent of both disputants. Lack of clear judicial hierarchy: it remains unclear whether the final decision of the highest religious or customary court can reviewed by the ordinary courts, or for that matter by the highest ordinary court.

196 UN Women. 2009. Training For Police on Sexual and Gender-based Violence. New York: UN Women. <https://evaw-global-database.unwomen.org/en/countries/africa/united-republic-of-tanzania/2005/training-for-police-officers-on-sexual-and-gender-based-violence>.

197 The Republic of Burundi. Burundi Code of Persons and the Family, Article 88.

Kenya

Systems: customary, statutory, Islamic and Hindu law all acknowledge cohabiting relationships through the judicial application of the common law on presumption of marriage.

Customary laws regulate customary marriages of the various ethnic communities in Kenya. Communities in Kenya have distinct customary laws that guide marriage practices in the community. Civil marriages are regulated by the Marriage Act, which is open to all adults irrespective of religion or race. Marriages under the statutory system are intended to be strictly monogamous (see Article 35 (1)).

The African Christian Marriage and Divorce Act is celebrated under the Christian faith doctrine through a licensed church minister appointed by the Registrar (African Christian Marriage and Divorce Act, Cap. 151). The marriage is intended to be strictly monogamous. Islamic marriages are celebrated under the Mohammedan Marriage, Divorce and Succession Act (Cap. 156). They are potentially polygamous, and the man is legally allowed to marry up to four wives. Hindu marriages are also governed by the Hindu Marriage and Divorce Act (Cap. 157) and are considered monogamous marriages.

Maintenance: the Marriage Act 2014 provides for maintenance of a woman and her children upon separation from a legal husband. However, this provision only protects women in monogamous marriages under the marriage statute. Customary marriages, therefore, do not enjoy this provision. This provision discriminates against women in customary marriages. Under the customary laws, a woman is not entitled to any maintenance when couples separate or divorce, as she is expected to return to her family home. The customary laws also require that the father takes care of children even upon separation, denying the mother the privileges of maintenance.

Matrimonial property: the Marriage Act (2014) provides for registration of all types of marriages, including customary marriages, and certificate issued (Section 55). There are still cases in which no such registrations are made. Accordingly, the latter scenario may be hard to prove during property claims. For a woman in customary marriages to inherit property from the husband, they have to prove that they are married. Without the marriage certificate, it is almost impossible to prove this; hence, women can be denied inheritance of matrimonial property, including land.

Succession: Kenya has three succession laws: statutory law, customary law and Islamic law. The primary problem arises when there is conflict of the laws and conflicting applications of the customary laws in succession. Unfortunately, the succession laws and marriage laws are inseparable.

<p>Malawi</p>	<p>Article 24 of the Constitution recognizes that women have equal rights to men to enter into contracts to acquire and maintain rights in property independently. However, under customary norms, women can access land only through male relatives.</p> <p>The Wills and Inheritance Act provides for a woman’s inheritance share under customary law; however, it distinguishes between women who are married patrilocally and matrilocally. A patrilocal widow is entitled to three fifths of the estate of the deceased husband to share with other dependants, while a matrilocal widow is entitled to half of the share with other defendants.</p> <p>The Wills and Inheritance Act 1998 made dispossession of widows and children a criminal offence, but in practice property grabbing continues.</p> <p>The laws outlaw child marriages, but the practice is still common in rural communities. This goes against Section 19 of the Marriage Act, which prescribed 21 as the minimum age for marriage.</p>
<p>South Sudan</p>	<p><i>Forced marriage:</i> while arranged marriage or booking is popularly practised by communities such as Munday and Lotuko, Article 15 of the Transitional Constitution of South Sudan provides that people of marriageable age can only marry with their full consent. The Transitional Constitution is not explicit on what constitutes a “marriageable age.” This gap exacerbates child marriage from the premises of customary laws.</p> <p><i>Rapists marry victims:</i> customary law provisions for rape that require the perpetrator to marry the victim are in violation of Article 15 on the Right to Found a Family. This practice constitutes a marriage against the will of the victim and goes against the Transitional Constitution.</p> <p><i>Tolerance of Domestic Violence:</i> customary laws that tolerate wife-beating if it is not “repetitive” or “unnecessary” are inconsistent with the Constitution Articles 16 (1) and 16 (4) (b) that prohibit acts that undermine a woman’s dignity and status, in equality with men.</p> <p>The customary laws do not consider adultery as a ground for a wife seeking divorce. In fact, a husband may divorce a wife for adultery, but the wife cannot divorce her husband. This remains a loophole for exploiting women, as the Constitution does not cover it. Additionally, the Constitution should replicate and strengthen the customary laws that provide fines or imprisonment for men who father children outside wedlock.</p> <p><i>Widow inheritance:</i> the practice of widow inheritance, which is popular among Acholi people under the community’s customary laws, contravenes the provisions of Article 15 of the Transitional Constitution, unless the woman fully and willingly consents to the “levirate marriage.”</p> <p><i>Property inheritance:</i> customary laws in South Sudan do not accord women (wives and daughters) any inheritance rights, except for in a few ethnic groups (e.g. Lotuko and Lopit) that recognize widow inheritance rights under certain circumstances. These customary laws contravene the provisions of Article 16 of the Transitional Constitution.</p>

<p>Somalia</p>	<p>While both sharia and customary law address the resolution of family disputes, women are not included in the decision-making process.</p> <p>While clans often rely on traditional justice practices, traditional judgments are sometimes heavily biased to the extent of holding a whole sub-clan or clan responsible for alleged violations committed by individuals. Such scenarios have a negative impact on women's access to justice.</p> <p><i>Child marriage:</i> women between the ages of 16 and 18 can be married with their guardian's consent.</p> <p><i>Inheritance:</i> while women have the right to inherit property, sharia law dictates that women (daughters) receive half the share that sons receive.</p>
<p>Uganda</p>	<p>Women-specific courts are essential in improving the ease of access to justice for women and girls. In Uganda, the justice system does not have a special court for women. Furthermore, the present Ugandan Constitution does not provide for the creation of these special courts.</p>
<p>Mozambique</p>	<p>While Article 30 of the Family Law bans marriage for people under 18 years old, early marriages continue to be practised.</p> <p>Article 16 (2) of the Family Law defines marriage as monogamous, but in practice polygamy is also common.</p> <p>The Land Law of 1997 guarantees men and women equal rights to the use of land, but in customary practices husbands regulate how women access land through customary laws.</p> <p>The Constitution prohibits discrimination on the grounds of sex, but women are confined to mostly undertaking household chores and access to primary education, in line with a social expectation that they will fulfil roles as wives and mothers.</p>
<p>Tanzania</p>	<p>Tanzania recognizes customary laws and relies on these as valid sources of law. The application of customary and statutory laws in GBV reveals gaps. The customary laws are undeniably biased against the female gender; some support harmful practices and perpetuate crimes against women and children. At present, the country has an elaborate law on GBV, but reliance on cultural laws and the formal system increases the chances of violation of women's and girl's rights.</p>
<p>Zimbabwe</p>	<p>The practice of eviction of widows is still common in Zimbabwe as part of cultural laws, despite the fact that the Administration of Estates Amendment Act of 1997 removed the inheritance laws that were unfavourable to widows.</p> <p>The law provides that citizens can access credit, but the practice in financial institutions requires women to get consent from a man. This is because assets, such as land, are controlled by men, which denies women decision-making powers on agricultural protection and benefits.</p> <p>The Matrimonial Causes Act of 1985 allows women to maintain their property after divorce, but, because of stigma and discrimination by in-laws, most women prefer to leave their matrimonial property behind after divorce. Additionally, most women struggle to demonstrate and account for their contribution towards a marriage, and this is overlooked during division of matrimonial property.</p>

	<p>In granting a permit to use communal land under the Communal Land Act, the district council usually refers to customary law, which excludes women from acquiring land. Land is registered and adjudicated in the name of 'head of household', but in court proceedings, women can demonstrate that they are entitled to it, as they are not considered the 'head' in cultural settings.</p> <p>The Marriage Act sets the minimum age for marriage at 16 for girls and 18 for boys, but early marriages at ages younger than the law prescribes remain common. This includes practices such as pledging a child to be married and/or children being married before the age of consent, which is often unregistered.</p> <p>The law allows parents and siblings the right to own property of a deceased man if he had no offspring. This leaves women at risk of property-grabbing and blackmail from relatives who stigmatize widows, meaning that women and children have no security on inherited land.</p>
--	---

6.3.6 Does the country have women-specific courts?

Table 14: Women-specific country courts

Country	Analysis
Burundi	Yes. There are specialized judges on GBV who are appointed. Additionally, Article 28 of the Constitution provides for the creation of specialized chambers on gender in the formal courts.
Ethiopia	Special courts dealing with rape and other sexual crimes against women and children have been established through the Child Justice Project of the Federal Supreme Court. Currently, there are more than 120 of these courts operating in different parts of the country. To enhance the capacity of these specialized structures, training for the judiciary and the police has been provided by a range of actors including the Ministry of Women, Children and Youth, Federal Attorney General, and the Ethiopian Human Rights Commission. In addition, special investigation and prosecution units established to handle cases of violent crimes against women and children continue to operate at both the federal and regional levels.
Kenya	No.
Malawi	No. Courts are gender-neutral.
South Sudan	No. Courts are gender-neutral.
Somalia	No. ¹⁹⁸
Mozambique	No.
Tanzania	No. While there are no women-specific courts in Tanzania, the National Plan of Action to Prevent and Eradicate Violence against Women and Children 2001–2015 mandated the creation of gender desks in police stations and courts.
Uganda	No. In Uganda, the justice system does not have a special court for women and the Ugandan Constitution does not provide for the creation of such special courts.
Zimbabwe	No – courts are gender-neutral.

198 World Bank additional data. Available at <http://pubdocs.worldbank.org/en/666161589301125247/WBL-Additional-Data.xlsx>.

6.3.7 Do the country laws mandate the establishment of court and police gender desks?

Table 15: Country laws on establishment of gender desks

Country	Analysis
Burundi	Yes, Article 11 provides for the establishment of a specialized unit of focal points for GBV in the country's police force, although it is not yet established.
Ethiopia	Yes, there are a few specialized benches established in Ethiopian courts to prosecute and rule on violence against women cases. Such benches help judges in acquiring specialized knowledge in violence against women and ensuring that the correct remedies are provided for the victim.
Kenya	Yes, most police stations have established gender desks. However, the gender desks were dormant until early 2020 when the Inspector General ordered the reintroduction of gender desks because of rising incidences of GBV. ¹⁹⁹
Malawi	No. There are no specialized units on gender in the police.
South Sudan	Yes, South Sudan has special protection units in its police, which address GBV through designated gender desks and secured places. The UNFPA and UNDP have worked to enhance the efficiency of these units. ²⁰⁰ In June 2020, the National Police Service launched a Special Protection Unit and Community Policing Unit National Coordination Centre to boost the unit's service delivery effectiveness. ²⁰¹
Somalia	No. The only gender desks were created by the African Union Mission in Somalia to enhance the capacity of the Somali Police Force to proactively respond to GBV.
Tanzania	Yes, the National Plan of Action to Prevent and Eradicate Violence against Women and Children 2001–2015 mandated creation of gender desks in police stations and courts. Presently, these desks are operational in all police stations at district levels of all 148 government (and 162 police) districts of Tanzania.
Uganda	No. The Constitution of Uganda does not provide for the creation of gender desks in courts or police stations.
Mozambique	No, but some female officers have benefited from training under the regional bodies such as the Southern African regional bodies.
Zimbabwe	Yes. Zimbabwe Republic Police and the Victim Friendly Unit are special units that support survivors of violence at police stations to seek justice. Officers attached to the unit are responsible for escorting survivors to medical examinations, carrying out investigation, arresting perpetrators, compiling the case for prosecution and even supporting cases in court.

199 Maichuhie, K. 2020. "Police, NGECC Team Up to Revive Gender Desks." Nation. Accessed 29 June 2021. <https://nation.africa/kenya/gender/police-ngec-team-up-to-revive-gender-desks--493750>.

200 UNFPA (United Nations Population Fund). 2011. "Working with Police in South Sudan to Assist Survivors of Gender-based Violence." Accessed 29 June 2021. <https://www.unfpa.org/news/working-police-south-sudan-assist-survivors-gender-based-violence>.

201 UNDP (United Nations Development Programme) South Sudan. 2020. "Launch of Special Protection Unit and Community Policing Unit National Coordination Centre to Enable Effective Service Delivery." Accessed 29 June 2021. https://www.ss.undp.org/content/south_sudan/en/home/presscenter/pressreleases/2020/Launch_of_SPU_CPU_Coordination_Centre.html.

6.3.8 Is there a non-discrimination clause in the constitution and does it explicitly mention gender?

Table 16: Country gender non-discrimination laws

Country	Analysis
Burundi	Yes. Article 21 of the Constitution of Burundi under the Charter of Fundamental Rights of the Citizens of Burundi states that “Human dignity is respected and protected. Any infringement upon human dignity is reprimanded by the law.” Furthermore, Article 22 states that “All citizens are equal before the law, which assures them equal protection. No one may be targeted on discrimination based on origin, race, ethnicity, sex, colour, language and social situation.”
Ethiopia	Yes. Article 7 of the Constitution makes reference to gender: “Provisions of this Constitution set out in the masculine gender shall also apply to the feminine gender.” Article 35 provides for the rights of women: “(1) Women shall, in the enjoyment of rights and protections provided for by this Constitution, have equal right with men. (2) Women have equal rights with men in marriage as prescribed by this Constitution. (3) The historical legacy of inequality and discrimination suffered by women in Ethiopia taken into account, women, to remedy this legacy, are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to women so as to enable them to compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions.”
Kenya	Yes. Section 27 (3) on Equality and freedom from discrimination states that “Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.”
Malawi	Yes. Section 24 of the Constitution of Malawi (1994) provides that (i) women have the right to full and equal protection by the law, and have the right not to be discriminated against on the basis of their gender or marital status ... (ii) Any law that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women, particularly practices such as (a) sexual abuse, harassment and violence; (b) discrimination in work, business and public affairs; and (c) deprivation of property, including property obtained by inheritance.
South Sudan	Yes. Article 14 of the Transitional Constitution of South Sudan shuns discrimination on the basis of race, ethnic origin, colour, sex, language, religious creed, political opinion, birth, locality or social status, ²⁰² although the term gender is not explicitly mentioned.

202 The Republic of South Sudan. 2011. The Transitional Constitution of the Republic of South Sudan. <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/90704/116697/F762589088/SSD90704%202011C.pdf>.

Somalia	<p>Yes. Article 11 (2), (3) and (4) provides as follows:</p> <p>“(1) Discrimination is deemed to occur if the effect of an action impairs or restricts a person’s rights, even if the actor did not intend this effect.</p> <p>(2) The state must not discriminate against any person on the basis of age, race, colour, tribe, ethnicity, culture, dialect, gender, birth, disability, religion, political opinion, occupation, or wealth.</p> <p>(3) All state programs, such as laws, or political and administrative actions that are designed to achieve full equality for individuals or groups who are disadvantaged, or who have suffered from discrimination in the past, shall be deemed to be not discriminatory.”</p>
Uganda	<p>The Constitution guarantees equality before the law. Under the Right to Equality, the Constitutional Order in Article 21 (2) states that “the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.”²⁰³ There is no law with a non-discrimination clause explicitly mentioning gender.</p>
Mozambique	<p>Yes. The Constitution of the Republic of Mozambique in Articles 35 and 39 upholds the right to equality and outlaws all forms of discrimination, while Articles 36 and 37 protect gender equity and the rights and equality of people with disabilities, respectively.</p>
Tanzania	<p>Yes. Article 13 (1), (2), (4) and (5) clearly shuns discrimination of all sorts, including on the basis of sex. The areas pointed out include protection and equality before the law, among authorities and in state offices. Article 13 (5) provides a clear definition of what discrimination entails.</p>
Zimbabwe	<p>Sections 69 (1) to (3) of the Constitution is framed in the following terms:</p> <p>“(1) Every person accused of an offence has the right to a fair and public trial within a reasonable time before an independent and impartial court.</p> <p>(2) In the determination of civil rights and obligations, every person has a right to a fair, speedy and public hearing within a reasonable time before an independent and impartial court, tribunal or other forum established by law.</p> <p>(3) Every person has the right of access to the courts, or to some other tribunal or forum established by law for the resolution of any dispute.”</p> <p>It also mentions that no one will be discriminated based on their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, etc.</p>

203 The Republic of Uganda. The Ugandan Constitution, Chapter 31.

6.3.9 Does the constitution guarantee equality before the law?

Table 17: Constitutional guarantee of gender equality

Country	Analysis
Burundi	Yes. Article 22 of the Constitution of Burundi (2005) states that “All citizens are equal before the law, which assures them equal protection. No one may be targeted on discrimination based on origin, race, ethnicity, sex, colour, language and social situation.”
Ethiopia	Yes, in Article 25 on the right to equality: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.”
Kenya	Yes. Section 27 of the Constitution of Kenya provides for equal rights of both men and women and particularly recognizes ‘he’ and outlaws discrimination against any citizen based on gender, ethnicity, sex, race, marital status or health status, among other factors.
Malawi	Yes. According to the Malawi's Constitution of 1994 with Amendments through 2017, Chapter 4: “(1) Every person shall have a right to recognition as a person before the law. (2) Every person shall have the right of access to any court of law or any other tribunal with jurisdiction for final settlement of legal issues. (3) Every person shall have the right to an effective remedy by a court of law or tribunal for acts violating the rights and freedoms granted to him or her by this Constitution or any other law.”
South Sudan	Article 14 of the Transitional Constitution of South Sudan guarantees entitlement to equal protection of the law without discrimination based on race, ethnic origin, colour, sex, language, religious creed, political opinion, birth, locality or social status. ²⁰⁴
Somalia	Yes. Article 11 (1) guarantees equality of all Somali citizens as follows: “All citizens, regardless of sex, religion, social or economic status, political opinion, clan, disability, occupation, birth or dialect shall have equal rights and duties before the law.”
Mozambique	Yes. The Constitution of the Republic of Mozambique in Articles 35 and 39 upholds the right to equality and outlaws all forms of discrimination. Article 36 protects gender equity, while the rights and equality of people with disabilities is enshrined in Article 37.
Uganda	Yes. Article 21 aims to address equality before the law: “all persons are equal before and under the law in all spheres of political, economic, social and cultural life.”
Tanzania	Yes. Article 13 (1) of the Constitution upholds equality before the law for all citizens. It further reaffirms their protection before the law without discrimination.
Zimbabwe	Yes.

204 The Republic of South Sudan. 2015. The Transitional Constitution of the Republic of South Sudan. Available at <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/90704/116697/F762589088/SSD90704%202011C.pdf>.

6.3.10 Is customary law recognized as a valid source of law under the constitution?

Table 18: Recognition of customary laws as valid sources of law

Country	Analysis
Burundi	No. The position of customary law is uncertain in Burundi because the Constitution does not specify the issue. However, the practices at the local level, particularly on matters of succession and inheritance, are governed by the customs of the people of Burundi, which vary from one community to another. For instance, the absence of a specific law on inheritance may prompt judges to apply the principle of equality enshrined in the Constitution, or to rely on customary law in making their judgment.
Ethiopia	Yes. Articles 34 (5) and 78 (5) of the Constitution allow the establishment of religious and customary courts, while making clear that this legal pluralism applies only to personal status and family law, with criminal cases being the domain of the statutory courts. Customary courts, in contrast, are not established by law, despite their constitutional recognition. Their authority stems from tradition and local customs, which have evolved from traditional elder councils. These councils do not have formal legal authority but carry moral force and still operate widely as primary decision makers and alternative dispute resolution mechanisms in rural areas throughout Ethiopia.
Kenya	Yes. However, in Section 2 on the Supremacy of the Constitution, it states that “(4) Any law, including customary law that is inconsistent with this Constitution, is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.”
Malawi	Yes. In 2011, Malawi Parliament passed the Local Courts Act, which gives life to the existence of customary law courts where traditional leaders make determinations on traditional matters in their areas of territorial jurisdiction.
South Sudan	Yes. The Transitional Constitution of Sudan 2015 in Article 165 (6) (i) acknowledges and incorporates customary laws and the traditional authority into the local government system. This recognition is reiterated in Articles 166 (1) and 170 (7), (8) and (9) of the Transitional Constitution. Similarly, Section 9 of the Local Government Act 2009 recognizes the people’s customs and traditions as sources of legislation in South Sudan. ²⁰⁵
Somalia	Yes. Article 40 (4) of the provisional constitution recognizes the sharia and customary legal systems as follows: “The recognition of the fundamental rights set out in this Chapter does not deny the existence of any other rights that are recognized or conferred by Shari’ah, or by customary law or legislation to the extent that they are consistent with the Shari’ah and the Constitution.”
Mozambique	Yes. Article 4 of the Mozambican Constitution recognizes the pluralism of its legal system.
Uganda	Yes. In Article 246 (1), the Constitution provides: “Subject to the provisions of this Constitution, the institution of traditional leader or cultural leader may exist in any area of Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies.”

205 The Republic of South Sudan. 2009. The Local Government Act. <https://www.icj.org/wp-content/uploads/2014/06/South-SudanLocal-Government-Act-2009.pdf>.

Tanzania	Yes. According to the Judicature and Application of Laws Act, Article 11, the customary laws of the country have the same status in all courts as any other law, subject to the Constitution and any other statutory law that may provide to the contrary. Customary law is accepted as part of the Tanzanian legal system and thus receives constitutional recognition and protection. ²⁰⁶
Zimbabwe	Yes. The constitution of Zimbabwe entrenches customary law in various provisions. In its definition section, law is defined as including any unwritten law in force in Zimbabwe, including customary law such that traditional leaders are authorized to adjudicate on disputes in communities. Section 89 of the Constitution of Zimbabwe in imposing the law to be administered sets up African customary as part of the law to be administered. Section 176 of the Constitution allows the constitutional, supreme and high courts to take customary law into account in the interests of justice and the provisions of the Constitution. The Customary Marriages Act, Administration of Estates Act and Customary Law, and Local Courts Act also recognize customary law or provide for its enforcement in certain areas such as inheritance.

6.3.11 Does the law recognize customary courts?

Table 19: Recognition of customary courts

Country	Analysis
Burundi	No. The Constitution in Burundi does not mention customary law, although in practice at the local level community customs are used, particularly on matters of succession and inheritance.
Ethiopia	Yes. From the cumulative reading of Articles 9 (1) and 91 (1) of the Ethiopian Constitution, there is evidence that the legal pluralist ethos was extensively considered during the process of Constitutional formation. Besides binding international treaties ratified by Ethiopia, these provisions impose an obligation on the government to “support ... the growth and enrichment of cultures and traditions that are compatible with fundamental rights, human dignity, democratic norms and ideals” The Constitution also recognizes the possibility of adjudicating personal and family matters through customary and religious laws.
Kenya	No. Kenya has no special customary courts. However, the courts in Kenya have varying levels of jurisdiction in customary law. Under the Constitution, the High Court has original unlimited jurisdiction in all civil and criminal matters. Though not specifically stated, this jurisdiction includes customary law jurisdiction. This means that it may hear any civil matter based on customary law. The Court of Appeal hears appeals from the High Court on all matters, including customary law matters. As the High Court and Court of Appeal are not expected to be experts in customary law, they usually rely on the evidence of witnesses and also on independent assessors to enlighten them on the content of customary law. They also pay high regard to the restatements relating to customary law of marriage, divorce and succession.

²⁰⁶ The United Republic of Tanzania. Judicature and Application of Laws Act. https://www.tanzania.go.tz/egov_uploads/documents/JUDICATURE%20AND%20APPLICATION%20OF%20LAWS%20ACT.pdf.

	<p>Magistrates' courts, comprising resident and district magistrates' courts, are subordinate to the High Court and Court of Appeal. Magistrates' courts have jurisdiction to hear customary law cases, but this jurisdiction is restricted to customary law claims related only to certain matters. Under Section 2 of the Magistrates' Courts Act, a 'claim under customary law' is defined as a claim concerning any of the following matters under African customary law:</p> <ul style="list-style-type: none"> • Land held under customary tenure. • Marriage, divorce, maintenance or dowry. • Seduction or pregnancy of an unmarried woman or girl. • Enticement of or adultery with a married woman. • Matters affecting status, and in particular the status of women, widows and children, including guardianship, custody, adoption and legitimacy. • Intestate succession and administration of intestate estates, so far as not governed by any written law.
Malawi	<p>Yes. Courts in Malawi apply customary law. As in the case of common law, Section 200 of the Constitution provides for the continued application of the customary law in force at the time the Constitution was adopted. Furthermore, Section 10 (2) of the Constitution enjoins courts to have due regard to the principles and provisions of the Constitution when applying and developing the same. In 2011, the Malawi Parliament passed the Local Courts Act, which gives life to existence of customary law courts in which traditional leaders make determinations on traditional matters in their areas of territorial jurisdiction.</p>
Mozambique	<p>Yes. The country has community courts that often adjudicate on instances of GBV, including rape.</p> <p>Article 4 of the Constitution recognizes all the "different legal systems and customary norms that coexist in Mozambican society as long as they do not contradict the fundamental principles and values of the Constitution." The Community Court Act was enacted (Law No. 4/92 of 6 May) along with the legal framework for its recognition as a legal forum for minor civil and criminal conflict resolution.</p>
South Sudan	<p>Yes. Chapter 6, Section 97 of the Local Government Act 2009 establishes the customary law courts in South Sudan.²⁰⁷ The customary courts are established as:</p> <p>'C' courts 'B' courts or regional courts 'A' courts or executive chief's courts Town bench courts.</p>
Somalia	<p>Yes. Article 40 (4) of the provisional constitution outlines that "The recognition of the fundamental rights set out in this Chapter does not deny the existence of any other rights that are recognized or conferred by Shari'ah, or by customary law or legislation to the extent that they are consistent with the Shari'ah and the Constitution."</p>

207 The Republic of South Sudan. 2009. The Local Government Act. <https://www.icj.org/wp-content/uploads/2014/06/South-SudanLocal-Government-Act-2009.pdf>.

Uganda	Yes. In 2006, Uganda legislated the local council court as a complementary system to the formal courts. They are designated in every village, parish and sub-county to handle, among other matters, customary law disputes on customary marriages, including but not limited to the marital status of women and the identification of customary heirs. The act also mandates the local council court to adjudicate on family property upon divorce. ²⁰⁸
Tanzania	Yes. Article 11 (3) of the Judicature and Application of Laws Act provides for court proceedings based on the customary laws, unless the matter in question pertains to the Law of Marriage Act. ²⁰⁹
Zimbabwe	Yes. Section 176 of the Constitution allows the constitutional, supreme and high courts to take customary law into account in the interests of justice and the provisions of the Constitution. The Customary Marriages Act, Administration of Estates Act, Customary Law and Local Courts Act also recognize customary law or provide for its enforcement in certain areas such as inheritance.

6.3.12 Does a woman’s testimony carry the same evidentiary weight in court as a man’s?

Table 20: Evidentiary weight of a woman’s testimony

Country	All countries confirm that a woman’s testimony carries the same evidentiary weight in court as a man’s.
Burundi	Article 22 of the Constitution provides married or unmarried women with the same capacity as married or unmarried men to be sued and to sue. Accordingly, Article 38 ensures that a married/unmarried woman’s testimony carries the same evidentiary weight in court as a married or unmarried man’s in all types of court cases.
Ethiopia	Articles 25 and 37 of the Constitution provide married or unmarried women with the same capacity as married or unmarried men to be sued and to sue. Furthermore, Article 25 of the Constitution provides that a married or unmarried woman’s testimony carries the same evidentiary weight in court as a married or unmarried man’s in all types of court cases, such as civil, criminal, family court and tribunal. ²¹⁰
Kenya	A World Bank collection of development indicators in 2017 formally collected from official sources noted that Kenyan women’s evidence carries similar importance in court cases ²¹¹ to men’s.
Malawi	The law does not discriminate but, for women to give testimony, the majority require the support of a legal officer because they do not understand the language, as most of the discussions are in English.

208 The Republic of Uganda. 2006. The Local Council Courts Act. <http://extwprlegs1.fao.org/docs/pdf/uga138974.pdf>.

209 The United Republic of Tanzania. Judicature and Application of Laws Act. https://www.tanzania.go.tz/egov_uploads/documents/JUDICATURE%20AND%20APPLICATION%20OF%20LAWS%20ACT.pdf.

210 The Federal Democratic Republic of Ethiopia. 1995. Constitution of the Federal Democratic Republic of Ethiopia.

211 Trading Economics. 2020. “Kenya – Woman’s Testimony Carries the Same Evidentiary Weight in Court as a Man’s (1 = Yes; 0 = No).” Accessed 29 June 2021. <https://tradingeconomics.com/kenya/womans-testimony-carries-the-same-evidentiary-weight-in-court-as-a-mans-1-yes-0-no-wb-data.html>.

South Sudan	The World Bank reports that a woman’s testimony carries the same evidentiary weight in court as a man’s. ²¹²
Somalia	Articles 176–184 of the Somali Civil Procedure Code ²¹³ of 1974 and Article 180 of the Criminal Procedure Code ²¹⁴ stipulates the equality of women’s testimony to men’s.
Tanzania	World Bank data show that, between 2009 and 2017, a woman’s testimony carried the same evidentiary weight in court as a man’s. ²¹⁵
Uganda	The World Bank reports that a woman’s testimony carries the same evidentiary weight in court as a man’s. ²¹⁶
Mozambique	World Bank data show that, between 2009 and 2017, a woman’s testimony carried the same evidentiary weight in court as a man’s. ²¹⁷ However, the customary norms result in most testimonies of women not carrying any weight. For, example, in the case of Josina Machel upheld the arguments of the defence ruling that Josina could have injured herself while falling because the incident happened when she was intoxicated. Notably, the defence did not provide any evidence to support that argument.
Zimbabwe	The evidence provided by a woman is taken in the same way as that of a man.

6.3.13 Is there compensation for victims of crime? For what kinds of offences? What does this compensation consist of?

Table 21: Compensation of victims of violence

Country	Analysis
Burundi	No. The Penal Code of Burundi has provisions on punishment for perpetrators, but no legislative provisions specifically for women and girl victims of abuse and discrimination.
Ethiopia	No. Criminal law does not provide compensation for people unlawfully detained.

212 World Bank. 2018. “TCdata360: Does a Woman’s Testimony Carry the Same Evidentiary Weight in Court as a Man’s?” Accessed 29 June 2021. https://tcdata360.worldbank.org/indicators/h872055f9?country=SSD&indicator=115&viz=bar_chart&years=2018&indicators=944.

213 Somaliland Civil Procedure Law. 2013. “Somaliland Civil Procedure Law”. Accessed 29 June 2021. https://www.somalilandlaw.net/civil_procedure_law.html.

214 Federal Government of Somalia. 2017. Draft Report of the Somali Criminal Law Recodification Initiative. Mogadishu: Federal Government of Somalia; Rome: International Development Law Organization. <https://www.law.upenn.edu/live/files/6310-vol-1-and-2-somali-recodification>.

215 Knoema. 2021. “Gender Statistics.” <https://knoema.com/WBGS2019/gender-statistics?country=1002010-mozambique>.

216 Supra Note 218.

217 Knoema. 2021. “Gender Statistics.” <https://knoema.com/WBGS2019/gender-statistics?country=1002010-mozambique>.

Kenya	<p>Yes. The Kenyan government has recognized the significance of compensation of victims, as Kenya’s Truth, Justice and Reconciliation Commission recommended restitution as the most effective solution in its final report, particularly by identifying sexual violence offences committed during post-election violence. The report noted some groups and individuals who should be compensated for the violation of their rights during the post-election violence.²¹⁸ Accordingly, the government set aside KSh 10 billion for a restorative justice fund to be disbursed to the relevant victims for the next 3 years. Nonetheless, little or no progress has been reported about the funds.</p> <p>There have been doubts among women participants about whether victims of sexual violence would receive the funds. Specifically, they noted that evidentiary requirements for the victims were difficult for eligible survivors to meet, as they are largely disadvantaged women and displaced people. For instance, the lack of relevant documentation already disadvantaged many women, as many of the victims had been displaced from their original areas of residence.</p>
Malawi	<p>Yes. The Malawian government does not provide monetary compensation to crime victims. Although the law allows courts to order the perpetrator to pay restitution to the victim, this is rarely done in practice.</p>
South Sudan	<p>Yes. Article 123 (5) (c) of the Transitional Constitution of South Sudan provides that the courts should apply the principle of awarding adequate compensation to the victims of wrongs, subject to the law, inter alia, in adjudicating cases of both civil and criminal natures.²¹⁹</p>
Somalia	<p>Yes. The Constitution is not clear on the compensation for victims of violence against women. However, the only available compensation modality is dispensed by the customary justice system. It includes 100 camels for loss of life, blood compensation (for violence committed against or by a diya group member) that is not received by women and on rape. When a woman is raped, the clan elders of the two families deliberate and agree on the amount of money for the perpetrator’s family to pay (usually anything from \$5 to \$100) to the victim. Unfortunately, sometimes rape is compensated by having the rapist marry the victim.²²⁰</p>
Uganda	<p>Yes. Article 6 (5) (f) of the Domestic Violence Act (2011) states that victims of violence can be compensated. However, the act is not explicit on what that compensation entails, including how much it covers.²²¹</p> <p>The customary system also provides for reconciliatory compensation called luk, which is usually paid by husbands to their wives for using violence against them. However, this mechanism has yielded very minimal results, as husbands would not only refuse to pay compensation but also continue to abuse their wives.²²²</p>

218 Truth, Justice, and Reconciliation Commission, "Final Report - TJRC Report Volume 2A" (2013). I. Core TJRC Related Documents. 6. <https://digitalcommons.law.seattleu.edu/tjrc-core/6> (accessed July 14, 2021), 3-5

219 The Republic of South Sudan. 2015. The Transitional Constitution of the Republic of South Sudan. <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/90704/116697/F762589088/SSD90704%202011C.pdf>.

220 Human Rights Watch. 2014. "Here, Rape is Normal": A Five-point Plan to Curtail Sexual Violence in Somalia." New York: Human Rights Watch. https://www.hrw.org/report/2014/02/13/here-rape-normal/five-point-plan-curtail-sexual-violence-somalia#_ftn65.

221 The Republic of Uganda. 2010. The Domestic Violence Act. https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_172625.pdf.

222 My Voice. 2016. "Court awarded compensation." Accessed 29 June 2021. <https://voicenorhants.org/myvoice/after-sentencing/court-awarded-compensation/>.

Tanzania	Yes. Survivors and victims are entitled to compensation; however, this is set by judges determining the cases and the victims have to wait many years to receive this, leading most to avoid pursuing the cases.
Mozambique	Yes. The Constitution under Article 58 provides for the right of individuals to compensation for damages caused by a violation of their rights. However, there is no national framework to operationalize and protect this law. The 2012 Law on the Protection of Victims, Witnesses and Whistle-blowers is yet to be implemented. However, liability of legal persons exists in Mozambican law (Article 26), which recognizes the principle of criminal liability of legal persons, but this applies to cases of corruption and economic crimes. The Criminal Code regulates criminal liability in Articles 27–30. The Law on Credit Institutions 15/1999 (Article 95) contains similar provisions.
Uganda	Compensation for victims of gender-based crimes is not well established under the Constitution. In most cases, the traditional systems have been used to determine the cases, settlements and compensation, if necessary.
Zimbabwe	The Criminal Procedure and Evidence Act (Chapter 9, Sections 362–365) provides for restitution and compensation where: A victim is compensated for loss and damage to property A victim is compensated for personal injury A victim is compensated for innocent purchase of property Restitution for unlawfully obtained property.

CHAPTER 7:

COVID-19 AND ACCESS TO JUSTICE FOR WOMEN IN EAST AND SOUTHERN AFRICA

7.1 Global context

Globally, the COVID-19 pandemic has disrupted systems and curtailed access to justice institutions, as well as creating an intense shock worldwide, with different implications for men and women. The disruption of access to justice is more evident now following the COVID-19 outbreak. It is estimated that 7 million unintended pregnancies could occur during the pandemic, as 47 million women do not have access to contraceptives because of restricted movement and because of the crisis. It is expected that an additional 31 million cases of gender-based violence and 13 million child marriages could occur globally.²²³ It is evident that the COVID-19 pandemic is having a worse impact on women, as they are more often victims of gender-based violence (GBV) and are locked down with their abusers as well as being in informal work or jobs that lack social protection. These facts call for direct and urgent attention to upholding the rights of women and girls in the COVID-19 era.

The effects of the COVID-19 pandemic have been felt in the judiciary. Countries around the world have effected changes in their judicial systems in response to the new context. Courts around the African continent are either closed or operating under new hours, with limited types of cases being heard. The unfolding unprecedented global situation is widening the justice gap in general and affecting women's and girls' access to justice, in particular. 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 regarded

as 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 requires the impartiality, credibility and independence of the judiciary. Reference from the Committee on the Elimination of Discrimination against Women General Recommendation No. 30²²⁴ on Women in Conflict Prevention, Conflict and Post-conflict Situations and General Recommendation No. 33²²⁵ on Women's Access to Justice underscore that justice delivery must respond and conform to the desires of women to enrich their access to justice,

223 United Nations Population Fund (UNFPA), with contributions from Avenir Health, Johns Hopkins University (USA) and Victoria University (Australia). 2020. Impact of the COVID-19 Pandemic on Family Planning and Ending Gender-based Violence. New York: UNFPA.

224 United Nations, Committee on the Elimination of Discrimination against Women. 2013. General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-conflict Situations. CEDAW/C/GC/30.

225 United Nations, Committee on the Elimination of Discrimination against Women. 2015. General Recommendation No. 33 on Women's Access to Justice. CEDAW/C/GC/33.

by mainly being accessible, available, justiciable and accountable.²²⁶ For example, 40 and 75 per cent more women report legal issues than men related to domestic violence and child support, respectively.²²⁷ In addition, women with disabilities are significantly disadvantaged in accessing justice and this has escalated during the pandemic. This has been aggravated by the use of technology in most courts, which have not integrated assistive devices to ensure the inclusion of people with disabilities, jeopardizing efforts to serve women and girls with disabilities. Across the world, measures to contain the spread of COVID-19 have created disruption for many marginalized groups. This has exacerbated the vulnerability of women and girls with disabilities to GBV due to pre-existing gender inequalities, toxic social norms and barriers to accessing response services, including access to justice.

The new operating context of justice institutions has left growing injustice for women and girls in all the countries studied. Furthermore, intimate partner violence (IPV) survivors have reduced access to support services such as first responders and helpline crisis hotlines, which serve as links to legal assistance, safe housing and financial assistance. This has greatly affected justice system delivery, as 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 adjustment of case management, enforcement and decisions, which basically leaves women vulnerable and cut off from access to justice in all 10 study countries. Subsequently, lockdown conditions in the countries

exacerbate the risks of abuse, violence, exploitation and harassment, as evident from previous predicaments and from preliminary cases reported in Burundi, Ethiopia, Kenya and Mozambique during the COVID-19 crisis.²²⁸ The study notes that the pre-existing gender justice gaps and challenges before COVID-19 have increased with the pandemic. This relates to justice responses to IPV, emerging injustices for women labourers, comprising those on the front line of the crisis, and addressing discriminatory laws. 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.²²⁹ Among the study countries, only Tanzania allows unrestricted movement and activities to continue, and therefore has less of an effect on access to justice for women. The pandemic has created a staggering gap in inequality and injustice for the growing cases of GBV coupled with diminished effectiveness in the delivery of justice. This requires the creation of innovative ways to support women to access justice and realize their rights.

The UN Women and United Nations Development Programme COVID-19 Global Gender Response Tracker revealed that, out of the 42 countries surveyed, one fifth (20 per cent) have no gender-sensitive measures in response to COVID-19. In addition, only 25 countries (12 per cent of the world) have introduced measures that cover the provision of helplines, judicial or shelters to counter the surge in cases of violence against women and girls during the pandemic, the provision of childcare services or paid family and sick leave, and cash transfers directly

226 United Nations Office on Drugs and Crime (UNODC). 2007. *Commentary on the Bangalore Principles of Judicial Conduct*. Vienna: UNODC.

227 Dawuni, J. 2020. "The Gendered Face of COVID-19: Women and Access to Justice." Accessed 29 June 2021. <https://www.unodc.org/dohadecommunication/en/news/2020/04/gendered-face-of-covid19-women-and-access-to-justice.html>.

228 Du, Q. 2020. "Chinese Families see Surge in Domestic Violence amid COVID-19 Lockdown." *Global Times*. <https://www.globaltimes.cn/content/1182484.shtml>.

229 The Global Health Network. 2020. "COVID-19". Accessed 2 July 2021. <https://wephren.tghn.org/covid-19-prisons-and-places-detention/>; WHO (World Health Organization). 2019. *Promoting the Health of Refugees and Migrants: Draft Global Action Plan, 2019–2023*. Geneva: World Health Organization. See also Bittenwieser, S. 2020. "A Powder Keg Waiting to Explode": COVID-19 and Incarcerated Women." *Women's Media Center*. 1 April. Accessed 2 July 2021. <https://womensmediacenter.com/news-features/a-powder-keg-waiting-to-explode-covid-19-and-incarcerated-women>: "In prisons, jails, and detention facilities there is little to no access to basic hygiene and supplies such as disinfectant soap, hot water, paper towels, clean laundry, and daily showers, making it impossible to maintain the level of cleanliness required to ward off this highly contagious virus and creating a fertile breeding ground for a pandemic."

targeted at women.²³⁰ Globally, courts are continuing to adjust and adopt different approaches towards court procedures and processes, including adopting limited in-person appearances in ‘exceptional’ or ‘urgent’ cases. However, what constitutes exceptional or urgent in gender-related justice cases is viewed differently by judicial officers. This finding has been echoed in all 10 study countries in East and Southern Africa.

The study finds that in East and Southern Africa, beyond 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 the ever-changing ecosystem. The pandemic has required them to use technology and alternative means to operate remotely and to make use of tools that often are not intended to support the needs of those operating in the justice sector.²³¹ A majority of the court cases reviewed and delivered during this period confirm that court responses have been disrupted by decisions taken in response to the COVID-19 pandemic. For example, Justice Sylvain

Oré, President of the African Court on Human and Peoples’ 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 would work on rotation while observing social distancing, while non-essential staff would work remotely.²³² 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 processes, turning to remote and virtual participation from various locations, including in 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 dispute resolutions.²³³ At the same time, Uganda’s Chief Justice and his Kenyan counterpart issued a directive to suspend court hearings and appearances and deliver virtual and online rulings.

7.2 Regional analysis for COVID-19: alternative approaches to providing access to justice for women

COVID-19 led to an escalation in the violation of women’s rights, with courts adopting alternative approaches to providing justice for women. Technology and virtual platforms, such as Zoom and Skype, remain the most preferred tools for delivering justice for women. This was witnessed in 90 per cent of the countries studied, with the exception of Tanzania. Despite this, gaps in women’s access to digital devices have resulted in discussion of whether or not virtual courts reinforce the marginalization of women in accessing justice. Realistically, 65 per cent

of people with identification compared with 40 per cent in low-income areas have a mobile phone. These statistics are a vital representation of the ability of women to access their savings during economic turmoil to access justice. Gallup World Poll statistics from a survey of 150 countries revealed that in 2017 almost 500 million women were not connected to a mobile network, with wider gender gaps being realized in South Asia (20 per cent), sub-Saharan Africa (13 per cent) and the Middle East and North Africa (10 per cent). This means that a larger number of women

230 According to data released by UN Women and the United Nations Development Programme from the COVID-19 Global Gender Response Tracker. <https://msmagazine.com/2020/09/28/covid-19-only-1-in-8-countries-protect-women-against-social-and-economic-impacts-data-shows>. The tracker, which includes over 2,500 measures across 206 countries and territories, specifically analyses government measures with a gender lens in three areas: those that tackle violence against women and girls, support unpaid care and strengthen women’s economic security.

231 Sourdin, T. and J. Zeleznikow. 2020. “Courts, Mediation and COVID-19.” *Australian Business Law Review* 48 (2), pp. 138–158.

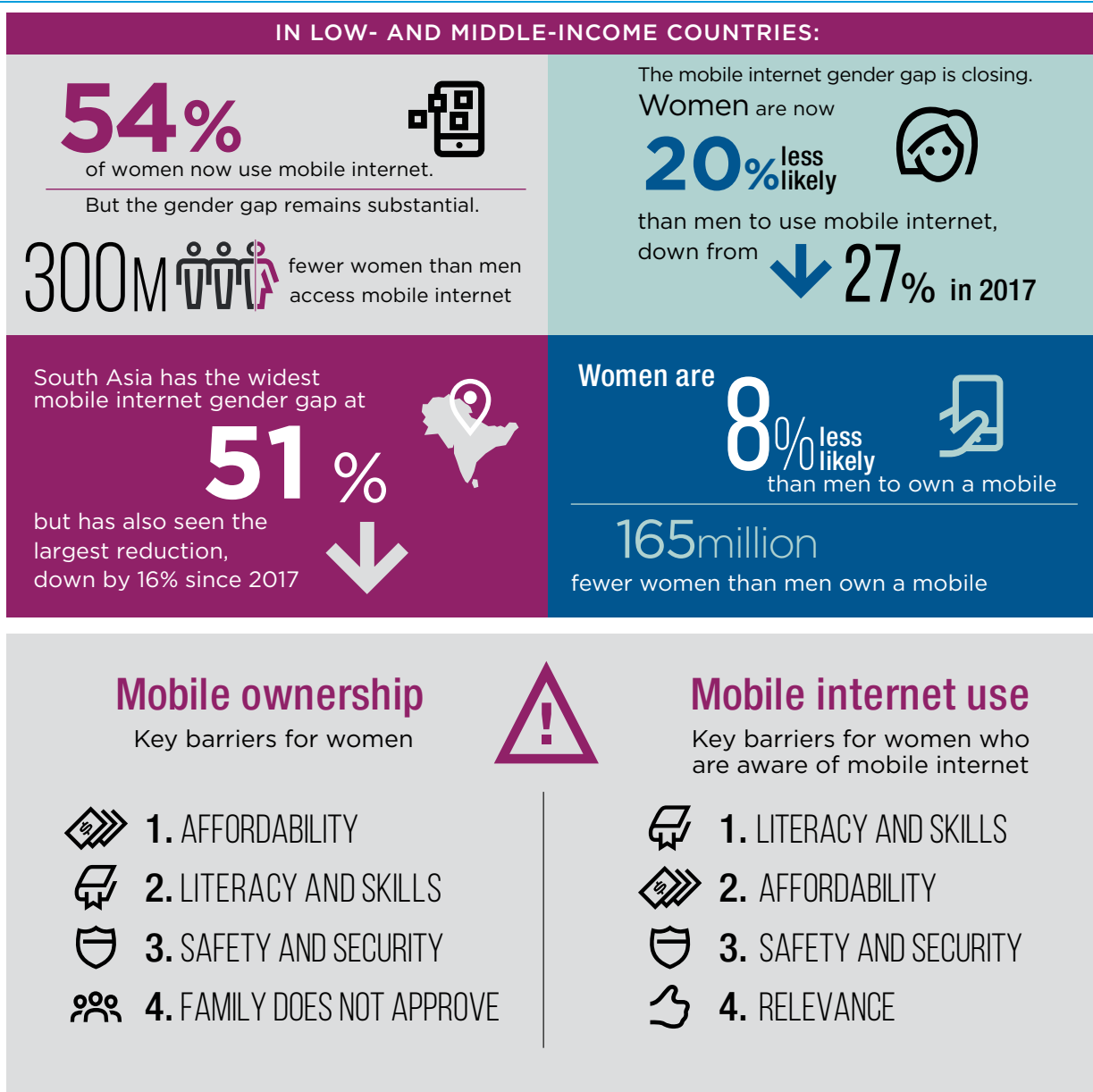
232 Statement by Justice Sylvain Oré, President of the African Court on Human and Peoples’ Rights, issued a proclamation on 23 March 2020 suspending the 56th Ordinary Session of the court.

233 Musiime, E. 2020. “The Disruption of Women’s Rights in the face of the COVID-19 Pandemic in Uganda.” *The Institute For African Women In Law*. Accessed 2 July 2021. <https://www.africanwomeninlaw.com/post/the-disruption-of-women-s-rights-in-the-face-of-the-covid-19-pandemic-in-uganda>.

may not be able to access court sessions virtually or get information regarding justice messaging. The study reports that justice recovery mechanisms for women in all the study countries, apart from Tanzania where evidence of delay was not identified, have been affected by lost time and delayed rulings linked to their inability to connect through virtual systems. More delays were also experienced in the traditional and religious courts (informal systems), which were entirely closed and were not handling

any cases during the peak in the COVID-19 outbreak in all the countries studied. Across low- and middle-income countries, women are 8 per cent less likely than men to own a mobile phone, a slight decrease from the 10 per cent gender gap in preceding years. The statistics in Figure 28 show disproportionate phone ownership by women globally and reflect the situation in all of the study countries and how it relates to the evidential gap of accessing justice for women and girls.

Figure 28: Low- and middle-income countries' gender gaps in mobile phone ownership for women

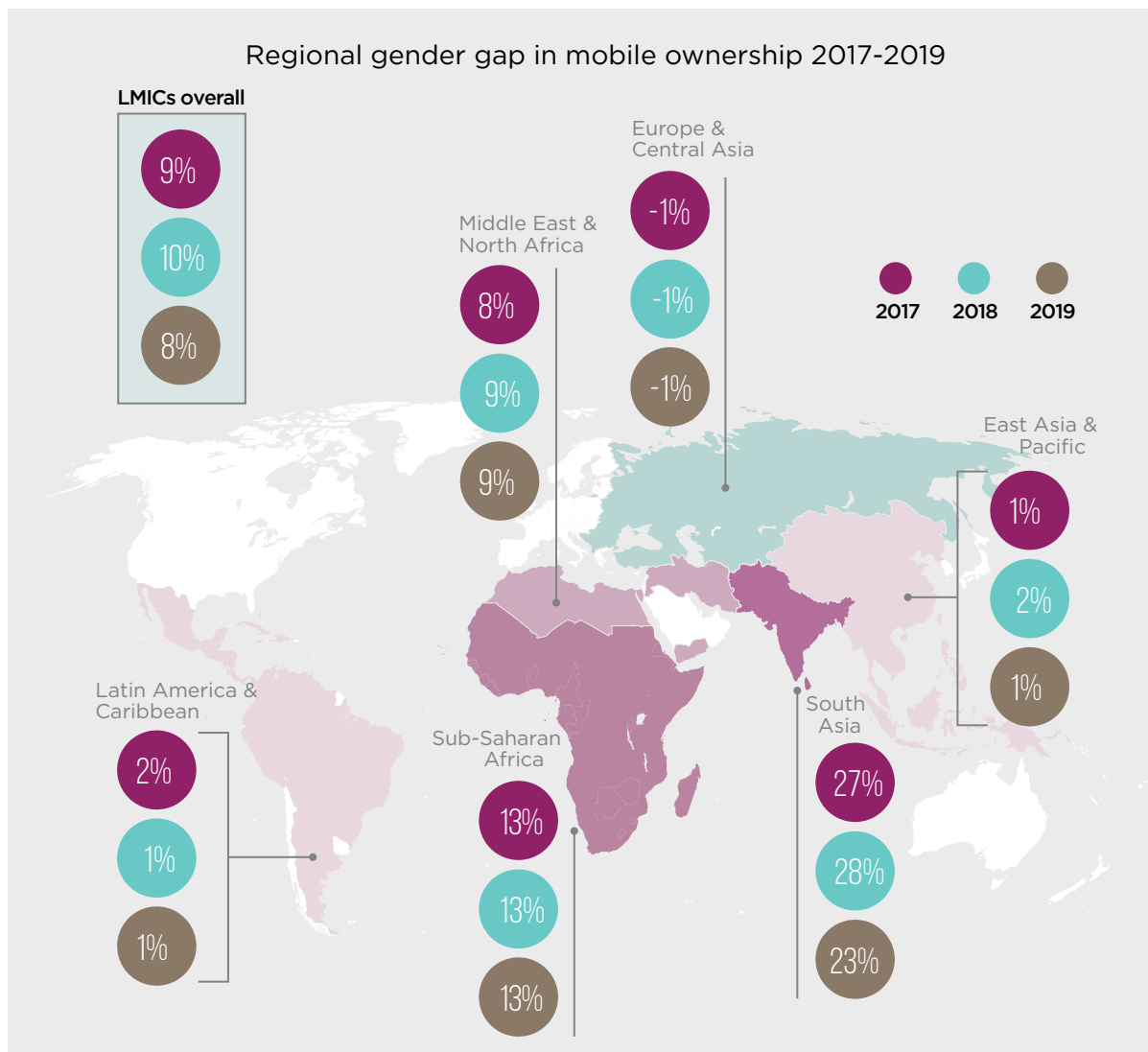


Source: Mobile Gender Gap Report, 2020.

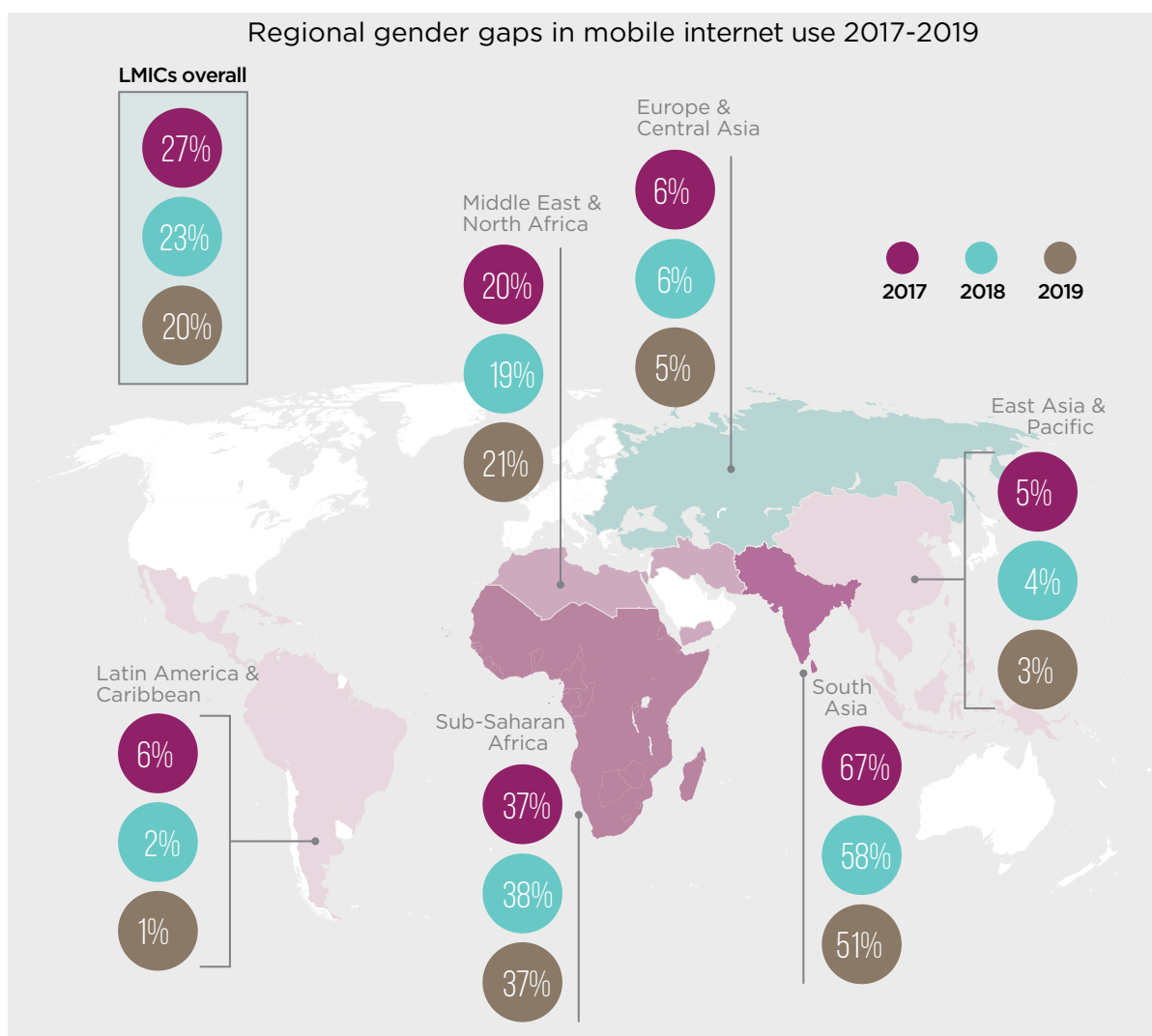
As depicted in Figure 29, mobile ownership trends are not consistent and uniform in different regions, including East and Southern Africa where the study was conducted. South Asia has seen a consistent improvement in narrowing the divide in the mobile internet gender gap, with over 78 million more women going online in the last 3 years. Regions such as sub-Saharan Africa have made less progress in recent years. It is therefore the case that

technology and mobile assistance, court attendance and information sharing are limited in sub-Saharan Africa compared with other regions. When it comes to mobile ownership and the gender gap in sub-Saharan Africa, Mozambique records the lowest level of women’s mobile ownership, with only 46 per cent of women owning a mobile phone compared with 56 per cent of men.²³⁴

Figure 29: Regional gender gaps in mobile ownership and mobile internet use, 2017–2019



234 GSMA Intelligence. 2019. Regional Gender Gaps in Mobile Ownership and Mobile Internet Use, 2017–2019. London: GSMA Intelligence.



Note: LMICs, low- and middle-income countries.

Source: GSMA Intelligence, 2019.²³⁵

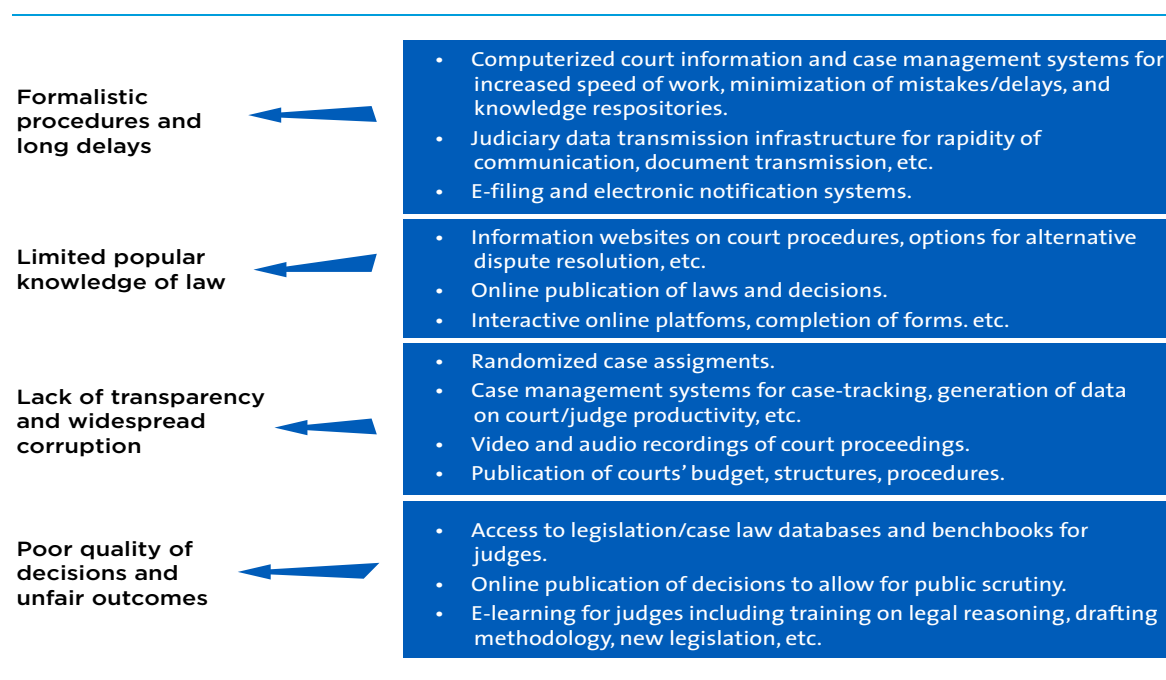
Innovatively, courts have adopted the use of technology to deliver and hear cases remotely, enhancing accountability and efficiency. However, concerns arising from existing challenges, including inaccessibility, inadequate technology infrastructure and lack of user skills prevents many women from having their cases determined expeditiously (Figure 29). During this time, despite the increasing trends in GBV in all 10 study countries, it is also notable that courts experienced linguistic inaccessibility, chronic under-resourcing and inefficient management of justiciable cases for women. Practically, procedures and information proved difficult for women to access and understand during this period, rendering courts unfriendly spaces for women. The study finds that

the introduction of technology for justice processes during the COVID-19 pandemic has the potential to address several barriers to women’s access to justice among the study countries. For example, digital technology has lessened the need for direct contact between disputing parties, especially in GBV cases. In addition, the court administration in some countries has simplified electronic forms through e-filing, e-payment systems and e-notification, which allow women to access and file court documents from an internet cafe, home computer or lawyer’s office.²³⁶ A remaining question to be answered is how effective teleconferencing is in hearing pleadings and presenting evidence on GBV cases.

²³⁵ Ibid.

²³⁶ IDLO (International Development Law Organization). 2018. Enabling Sustainable Development: Lessons from E-Justice Programming in Kyrgyzstan. Rome: IDLO.

Figure 30: Barriers to accessing technology-driven justice solutions



Source: International Development Law Organization, 2018.

7.3 Country situational analysis of access to justice by women during COVID-19

According to the United Nations Sustainable Development Goal Group 2020 report, the COVID-19 pandemic has resulted in loss of livelihoods, economic pressure, disruption of access to health, social and protection services, and disruption of access to justice. This follows the government directives to affect a state of emergency. Heightened stress levels are known to result in violence, with families forced to spend more time together than usual. This has increased cases that need attention in courts; however, women and girls remain vulnerable without the possibility of accessing justice. Delayed justice and rulings have caused grief and uncertainty for women who want their cases concluded. In response, communities have encouraged those affected by violence to seek support and services during the pandemic.²³⁷

Respondents from Burundi confirmed that the COVID-19 pandemic has undermined access to justice for women, as resources were shifted from the criminal justice system to other sectors such as the health emergency and management of various sectors.

In Ethiopia, Meaza Ashenafi, Ethiopia's Supreme Court President, closed the federal courts for 2 weeks on 18 March 2020 to contain the spread of COVID-19 in the country. Since the first case of COVID-19 was reported in Ethiopia, one-stop crisis centres and shelters have not been able to support survivors because of the lack of isolation rooms for newcomers and insufficient human resources and personal protective equipment. To fill this gap, a transitional shelter was opened to serve as a space where survivors could stay during the quarantine period. Once the survivors have tested negative for COVID-19, they can be transferred to existing shelters.

Across the study countries, people were not going to the police immediately after a violent incident because of COVID-19, which delayed the collection of medical evidence and pressing charges against the perpetrator. People thought that such services were not available during the pandemic. As a result, many rape cases went unreported, and many women have had to endure repeated violence, as reported by a respondent in Ethiopia.

237 United Nations Sustainable Development Group. 2020. "Au Mozambique, Tandis que la Pandémie s'Étend, les Centres d'Aide se Préparent à Affronter un Pic d'Actes de Violence de Genre." Accessed 29 June 2021. <https://unsdg.un.org/fr/node/30187>.

The three one-stop-centres that serve Addis Ababa (Ethiopia), Tirunesh (Beijing), Gandhi and Menelik hospitals remained open, but have seen a decrease in the number of reported cases of sexual violence. This is perhaps because women and girls fear going to health centres during a health crisis, or because they live with the people who have caused them harm and they do not have the privacy to report abuse. Non-profit organizations focusing on women’s rights such as Setaweet worked with partners such as

Ethio telecom to move services online so that calls could be rerouted to counsellors in the safety of their homes.²³⁸ In Ethiopia, Chief Justice Meaza Ashenafi, President of the Supreme Court, announced that the courts would hear domestic violence cases as a priority area and that such cases would not be affected by the closure of most courts, a huge pre-emptive move against the surge in violence, which was appreciated.²³⁹

Table 22: Technology adoption for justice delivery in courts during the COVID-19 pandemic

Country	Technology adopted		Courts open or closed	Disability-assistive technology installed
	Yes	No		
Uganda	Yes	-	Access restricted	No
Malawi	Yes	-	Access restricted	No
Zimbabwe	Yes	-	Access restricted	No
Mozambique	Yes	-	Access restricted	No
South Sudan	-	No	Opened	No
Kenya	Yes	-	Access restricted	No
Tanzania	Yes	-	Opened	No
Somalia	-	No	Opened	No
Ethiopia	-	No	Restricted	No
Burundi	-	No	Opened	No

Source: Secondary data review and primary interviews conducted from key informant interviews.²⁴⁰

As shown in Table 22, 60 per cent of the countries in the study adopted technology to facilitate court sessions. Only four countries (Burundi, Ethiopia, Somalia and South Sudan) did not provide any evidence of using technology to access court sessions during the pandemic. No country adopted disability-assistive technology for accessing justice during the pandemic, which constrained opportunities for women and girls with disabilities to access justice.

In Kenya, the Chief Justice, through a circular, recommended that courts should remain closed and that judges could administrate cases through virtual

and online platforms. For example, using a virtual platform, Hon. Hannah Okwengu managed to deliver 57 judgments and rulings of the Court of Appeal through a virtual video link. All decisions were also made available to the parties through email, and the judgments were published on the Kenya Law website within 48 hours. Technology therefore remains a potential technique that can be used to hasten cases related to violence against women in the COVID-19 era.

Malawi, like other countries worldwide, documented an increase in cases of GBV, although reporting was

238 Teferra, S. 2020. “The COVID-19 Crisis through the Gender Lens.” Fortune. April 17. Accessed 29 June 2021. <https://addisfortune.news/the-covid-19-crisis-through-the-gender-lens/>.

239 Ibid.

240 Secondary and primary data collected from October to November 2020.

difficult and many were forced to reside with abusers out of risks for their lives.²⁴¹ As a way of reaching out to support women survivors of violence, hotlines were set up whereby response mechanisms could be coordinated. The most affected justice responses were the criminal trial courts and industrial relations court matters in which women were seeking redress for unlawful dismissal and minimal pay. Industries affected were those in which the majority of workers are women, such as flight attendants, restaurant workers and others in the hospitality sector, hairdressers and beauticians, and others who are reliant on daily wages. Their wages were significantly reduced or cut due to limited business, as in all of the other countries. The alternative means of redress is to rely on social cash transfer schemes to cushion income earners, which was done in Ethiopia, Kenya and Malawi.

A respondent reported that, in Malawi, sexual and reproductive health clinics found themselves understaffed, as health workers fearing contamination left facilities. Women could therefore not access clinics, and the few that were left in operation were further for women to reach than their usual clinics.

The closure of schools, which happened in 9 of the 10 countries (except for Tanzania), left parents worried about increased child marriages, in cases where parents have promised their daughters for marriage to receive a dowry. In Kenya, Malawi and Somalia, government data and media reports documented evidence of increased child marriage. Women reported to have resorted to sex work to earn a living and girls have been forced into transactional sex to meet basic needs.²⁴² School closures left children unsupervised and exposed to sexual predators. Child labour also soared, with reports of children selling water, sweets and other items on the streets, exposing girls to sexual exploitation and sex trafficking.²⁴³

Similarly, households faced loss of income because of the imposed travel restrictions and social distancing measures, which were eased from October to December 2020. Fares in public transport doubled in 9 out of 10 of the countries affected (except for Tanzania), affecting small-scale women entrepreneurs, who survive on daily wages. Hunger and acute malnutrition increased, placing women and girls at greater risk of pregnancy, linked to sexual coercion and commercial sexual exploitation due to increased transactional sex in exchange for the basics for survival, such as food, clean water and sanitary products.

In Malawi, on 27 March 2020, the Office of the Chief Justice issued a statement ordering judges, registrars, magistrates, chairpersons and researchers to review their case lists and adjourn non-urgent matters to reduce overcrowding in court premises. All cases, including chamber matters, are being held in open courtrooms one at a time so that they have more space. Entry is restricted to court officers, legal practitioners, prosecutors, litigants, accused people, witnesses and security personnel. Parties not being heard must wait outside for their cases to be brought forward. Access to the gallery is also restricted, with people having to maintain at least 1–2 metres' distance from each other.²⁴⁴ There is no uniformity of approach, as some courts have suspended non-urgent matters.²⁴⁵ This has slowed processes in women and girls' access to justice, including judgment of cases.

In Mozambique, Directive No. 01/TS/GP/2020 of 23 March 2020 spelled out individual and collective prevention measures against the COVID-19 pandemic in courts. Court proceedings were postponed for 60 days between 1 April 2020 and 30 May 2020, which meant the suspension of hearing all courts cases. People were kept away from the courts, with restrictions allowing only the accused, litigants, witnesses, those accompanying children, people with

241 Chimwaza, E. 2020. "MALAWI: 'Girls Need Protection against COVID-19, and against Endemic Violations of their Rights.'" Interview by CIVICUS. CIVICUS. Accessed 29 June 2021. <https://www.civicus.org/index.php/media-resources/news/interviews/4463-malawi-girls-need-protection-not-just-against-covid-19-but-also-against-endemic-violations-of-their-rights>.

242 Ipas. 2020. "Putting Women at the Center of the COVID-19 Response in Malawi." Ipas. 11 June. Accessed 29 June 2021. <https://www.ipas.org/news/putting-women-at-the-center-of-the-covid-19-response-in-malawi/>.

243 Ng'ombo, C. C. 2020. "COVID-19 Conversations: Sexual Exploitation and Sex Trafficking in Malawi." Interview by Equality Now. Equality Now. 30 May. Accessed 29 June 2021. https://www.equalitynow.org/covid_19_malawi.

244 Mwale, F. A. 2020. "COVID-19 and Malawi Courts: A View from the Bench." African Women in Law. Accessed 29 June 2021. <https://www.africanwomeninlaw.com/post/covid-19-and-malawi-courts-a-view-from-the-bench>.

245 Ibid.

disabilities, victims of domestic violence and abuse, family members and media personnel to attend cases certified as urgent in courtrooms. Trials were also postponed and proceeding cases were handled through video links. Accused people in prison or police cells or youth centres had stopped being presented in court. No eviction notices were allowed to be issued and urgent court documents were serviced by sheriffs. However, challenges were observed in enforcing child welfare orders and cases in which children moved on a weekly basis between parents. The courts therefore ordered that such children stay with one parent during the pandemic. Other complexities were also noted in cases requiring court orders addressing issues of foster care, children in need of care and protection, adoption, placements in child and youth centres, cases of abductions and first-time applications, which continued to be heard. These resulted in applications for interim protection against harassment being issued as well as domestic violence protection orders. Lawyers were, however, required to show proof that they have matters on the day they appear before court and that the case was urgent. Other parties were summoned on days they needed to appear in court. While in court, everyone maintained social distance, washed their hands regularly and completed a form to review their exposure to COVID-19.²⁴⁶

In Somalia, citizens adjusted to changes amid the ongoing insecurity. However, the government came up with procedures to aid women in accessing justice during the pandemic, as reported by Amin Abdi Mohammed, the leader of GBV and child protection at the Mogadishu-based Somali Women Development Centre. The team at the centre addressed the effects of COVID-19 on women and its implications for GBV, working to defend women affected by the conflict and increased domestic violence.

South Sudan was also affected by delays in case processing because of the pandemic. The ministries of gender and humanitarian affairs, Community Empowerment for Progress, and Rural Women for Development South Sudan performed a gender analysis to investigate how the pandemic affected women and girls to identify their needs, understand their rights and how they could seek justice. Consequently, restrictive procedures aimed at limiting exposure to COVID-19 resulted in limited access to justice and increased their exposure to rights violations, especially for marginalized women in South Sudan. Entry points identified to mitigate these risks included the sharing of good practices among justice actors on handling of cases to inform preparation and planning in the context of COVID-19 in line with international standards, cooperation with bar associations and other governing bodies of lawyers and partnership with civil society to enhance access to justice for women. There was also support for community-based dispute resolution organizations to enhance quick delivery of justice, facilitating access to restorative justice services, such as online mediation and alternative dispute resolution, and access to administrative legal services and legal documentation, supporting legal information, rights awareness and justice. This also ensured continued remote access to legal education, provision of equipment and training to enable court systems to function virtually, where appropriate, provision of personal protective equipment for justice sector actors, establishing criteria for prioritizing cases in contexts where courts needed to scale down functioning, enabling justice systems to develop business continuity plans, including prioritization of cases and remote case management systems, and supporting the development of a holistic and inclusive strategy for ensuring the functioning of the justice system and equal access to fair, timely and effective justice services.

246 De Almeida, V. 2020. "Coronavirus: Mozambique – Impact on litigation matters." International Comparative Legal Guides International Business Reports. 7 May. Accessed 29 June 2021. <https://iclg.com/briefing/12188-coronavirus-mozambique-impact-on-litigation-matters>.

The Tanzanian justice system remained operational following the President's decision to allow normal operations in its core sectors. In this way, the standard operating procedures on management of women- and girl-related cases remained effective and operational. Although the shock of the COVID-19 pandemic affected the country and created some panic, there is limited data on how women and girls seeking justice were affected by the pandemic in Tanzania.

On 19 March 2020, the Chief Justice of the Republic of Uganda wrote a circular on administrative and contingency measures to prevent and mitigate the

spread of COVID-19 by the judiciary, suspending all court hearings for a period of 32 days (Figure 31).²⁴⁷ In Uganda, the pandemic brought new challenges to the judiciary. It led to closure of or reduction in court operations, which negatively affected hearings, causing untimely and unfair treatment of victims of crime.²⁴⁸ Cases have accumulated, leading to an increase in the length of judicial proceedings. However, the government is trying to implement the use of technology to enable virtual determination of cases in courts. The judiciary is also adopting different approaches to limit in-person appearances for urgent or exceptional cases.²⁴⁹

Case Study 18: Mobile call centre for COVID-19-related gender-based violence victims in Uganda

According to the 2016 Uganda Demographic Household Survey, 56 per cent of women experience physical violence from their partners, while 22 per cent are victims of sexual violence. This violence has been exacerbated by the COVID-19 pandemic, during which the country has recorded an increase in gender-based violence (GBV) cases reported, with districts such as Budaka recording 5,016 cases in less than 9 months.

To address the increase in violence, Legal Aid Service Providers Network (LASPENT) legal services, in collaboration with other civil society organisations and the European Union and United Nations Spotlight Initiative, established a toll-free mobile telephone line for GBV victims during the pandemic. The service allows victims to report GBV cases and receive prompt legal information and help to enable them access to justice.

The call centre is run by 12 trained agents with diverse professional backgrounds, including lawyers, paralegals and law students from several Spotlight Initiative districts, such as Amudat, Arua, Kampala, Kasese and Kyegegwa. The agents operate from both the LASPENT headquarters and various locations to increase the efficiency and responsiveness of the centre.

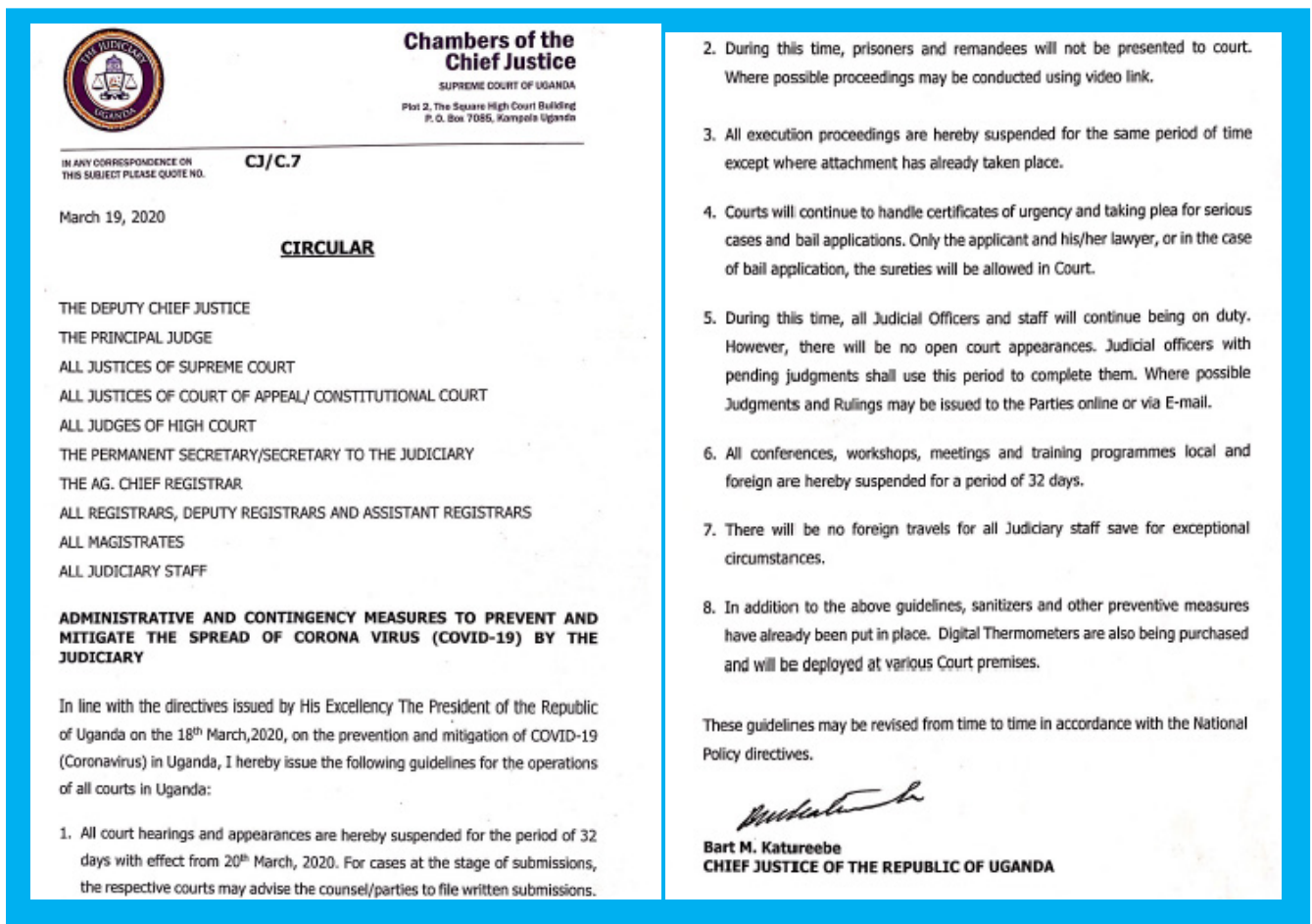
“The initiative is a big boost for Ugandan women whom COVID-19 has locked down with their abusers in the midst of judicial service disruptions. The women can now remotely receive much-needed legal services” (Dr Sylvia Namubiru Mukasa, Chief Executive Officer, LASPENT).

247 Letter addressed by Chief Justice of the Ugandan High Court on coronavirus restrictions and closure of courts on 19 March 2020.

248 Musiime, E. 2020. “The Disruption of Women’s Rights in the Face of the COVID-19 Pandemic in Uganda.” Institute for African Women in Law. Accessed 29 June 2021. <https://www.africanwomeninlaw.com/post/the-disruption-of-women-s-rights-in-the-face-of-the-covid-19-pandemic-in-uganda>.

249 Cousins, S. 2020. “COVID-19 has ‘Devastating’ Effect on Women and Girls.” *The Lancet* 396 (10247), pp. 301–302.

Figure 31: Circular of courts closure by Uganda Chief Justice as a result of the COVID-19 pandemic on 19 March 2020



Zimbabwe also reported a surge in GBV cases during the pandemic. A total of 4,047 calls were received between 30 March 2020 and 15 July 2020, of which 70 per cent were GBV cases.²⁵⁰ Of these, 94 per cent of the calls were women reporting abuse, mostly psychosocial abuse at 55 per cent, physical violence at 22 per cent, economic violence at 15 per cent and sexual violence at 8 per cent.²⁵¹ Overall, 90 per cent of the cases involved IPV. It is also noted that Zimbabwe experienced an increase in the number of returnees and stigmatization at points of entry, especially with

‘border jumping’, trafficking and retaliation through GBV against those reporting illegal migration.

Reports from nine of the study countries where travel was restricted and a curfew initiated, indicate incidents of harassment at roadblocks, reduced access to public transport, and demands for passes from GBV survivors seeking essential response services, including to report crime. This reduced access to the process of seeking justice, particularly to post-rape treatment. Furthermore, those unable

250 Radio France Internationale. 2020. “Study Shows Zimbabwe Lockdown Triggered Sharp Rise in Violence against Women.” Radio France Internationale. 29 September. Accessed 29 June 2021. <https://www.rfi.fr/en/africa/20200929-study-shows-zimbabwe-lockdown-triggered-sharp-rise-in-violence-against-women>.

251 United Nations Country Team in Zimbabwe. 2020. “Providing Services to Survivors of Gender-based Violence during COVID-19.” Accessed 29 June 2021. <https://reliefweb.int/report/zimbabwe/providing-services-survivors-gender-based-violence-during-covid-19>.

to afford masks, negative COVID-19 test certificates or mobile transactions faced harassment or requests for transactional sex from law enforcement agents, placing them at risk of additional violence and exploitation. In some religious sects, members took part in unprotected gatherings those failing to adhere to the new regulations were exposed to GBV. Kenya reported a case in which a prison warden was accused of raping a female patient in a COVID-19 isolation facility that he was meant to be guarding. The attack added to fears over treatment in government facilities that health experts warned may deter Kenyans, especially women and girls, from coming forward to be tested for COVID-19.²⁵²

In Zimbabwe, the Chief Justice ordered measures to prevent further spread of COVID-19. All trials and non-urgent hearings were postponed for 2 months, except for bail applications and initial remands. Judicial Service Commission members, legal practitioners and litigants were to ensure that all courts observed COVID-19 global protocols, including washing of hands frequently with soap and running water, disinfection of surface areas and maintenance of 2 metres distance in registries and courtrooms. Everyone was required to sanitize when going in and out of court. All court weddings were cancelled and hearings of cases in chambers postponed. In emergency cases, hearings were confined to only parties involved in the cases and their legal practitioners.²⁵³ This greatly affected women and girls in accessing justice and reporting cases to the minimally operational courts.

7.4 Good practices in COVID-19 delivery of justice for women

The International Development Law Organization (IDLO) in Kenya has been at the forefront of supporting the judiciary's electronic automation programme since 2017. This has given Kenyan courts and the judiciary some leverage in terms of operationalizing an e-filing platform for all courts and holding virtual rulings during the COVID-19 pandemic. It is also noted that IDLO's support for the judiciary in the automation process has significantly increased. The provisions of platforms to hold virtual court rulings ensures that laws, policies and regulations are in place for effective virtual operations of the courts in Kenya. In addition, IDLO has also supported the Judicial Training Institute to set up an e-learning platform and convert at least three of its curricula to this platform, including developing a virtual mediation guide for court-annexed mediations. With the increase in the number of cases related to GBV during the COVID-19 period, IDLO has partnered with the police to work with police regional training institutions to offer training on gender and inclusion matters for synergy in sectors responding to and preventing GBV. This support is expected to improve the capacity of police officers in gender departments in all police stations through the provision of survivor-centred versions of GBV standard operating procedures.

252 Reuters Staff. 2020. "Kenya Police Arrest Prison Warden Over Rape of Patient in COVID-19 Quarantine." Reuters. 17 July. Accessed 29 June 2021. <https://www.reuters.com/article/health-coronavirus-kenya-security-idINKCN2412BV>.

253 Office of the Chief Justice, Republic of Zimbabwe. 2020. Preventive Measures to Reduce the Spread of COVID-19 (Coronavirus) in the Courts of Zimbabwe. Office of the Chief Justice, Republic of Zimbabwe. http://veritaszim.net/sites/veritas_d/files/COVID-19%20protection%20measures%20in%20all%20Zimbabwe%20Courts.pdf.

CHAPTER 8:

CONCLUSIONS AND RECOMMENDATIONS

8.1 Conclusions

While individual countries have made efforts to end gender-based violence (GBV), glaring statistics and stories reveal the continued significance of the problem, especially with regard to intimate partner violence, non-partner sexual violence, conflict-related GBV and harmful practices. The establishment of institutions and adoption of internal reforms of different agencies aimed at creating systemic responses to reduce GBV are important foundations but have their limitations. There is an urgent need for attention to increase investments for integrated interventions that address GBV at national and local levels in all countries.

The study shows that access to justice for women is embedded in all cultures, customs, tribes and traditions, and is closely connected to principles of equity, accountability, fairness and impartiality. However, women have consistently suffered attitudinal, pervasive structural and systemic challenges in pursuit of accessing justice, whether from customary or statutory structures. The ten countries studied have varying levels of 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 remain prevalent because of financial, technical and societal barriers. Justice is inaccessible for women as a result of attitudes driven by patriarchal social norms that perpetuate disinheritance and GBV. Many constitutions recognize alternative forms of justice, and communities have shown preferences for traditional or alternative forms of dispute resolution over formal courts because of their accessibility, cost-effectiveness and speed, yet these courts are mostly presided over by men. In Malawi, courts are viewed as not survivor-friendly, as many victims with sensitive cases are presented in open courts with no privacy. Cases also take a long time to process records for appeal and longer to get feedback from the High Court. This results in the victims and

survivors giving up on cases, while others are forced to withdraw their cases because of pressure and threats from their families. Women and girls do not report many cases for fear of stigma and a lack of confidence in the criminal justice system. In Kenya and other countries in the region, religious laws and customary laws coexist with statutory laws, creating legal pluralism and complex justice structure for women. The Constitution of Kenya (2010) recognizes alternative dispute resolution mechanisms, including the traditional court mechanisms for dispute resolution. In Ethiopia, it was noted that deep-rooted customary and religious practices curtail women from seeking justice and speaking out against the violence that they experience.

Access to justice for women and girls with disabilities is riddled with more challenges, as disability-inclusive access to courts or support in the justice system is not prioritized. The structure of the courts in most of the study countries is not disability-inclusive in terms of infrastructure (e.g. ramps), communication (sign language interpreters or braille) and social systems (e.g. tailoring the justice process for women and girls with diverse disabilities). For women and girls with intellectual impairments, there is a lack of state accountability, as manifested through insufficient adaptation of processing of GBV cases for people with intellectual disabilities. There is limited knowledge on the reproductive health rights of women and girls with intellectual impairments

among office bearers in addition to lack of progressive laws on sexual violence committed against women and girls with intellectual impairments. Legal causes may discriminate against women and girls with intellectual impairments, who may have a lower legal status in written law or in practice. This also affects laws regarding divorce, child custody, maintenance and inheritance; legal definitions of rape and domestic abuse; low levels of legal literacy among women; and insensitive treatment of women and girls with disabilities by the police and judiciary. These challenges reveal the many gaps and loopholes that need to be addressed if women and girl survivors with intellectual impairments are to find justice. Generally, there are insufficient community efforts to educate the public on the laws and how to use them for their protection. Legal representation is still minimal and unaffordable for the rural poor and those in informal areas in the countries studied. Notably, there is also a lack of sufficient data and constitutional approaches to dealing with lesbian, gay, bisexual and transgender people, migrants and other marginalized groups of women and girls.

The ten 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. These are generally supported by constitutional clauses that affirm gender equality and non-discrimination. However, the findings of the study suggest that the legal and policy frameworks are not sufficient drivers in themselves to realize the vision of access to justice for women and girl survivors of violence, and must be paired with effective enforcement and comprehensive prevention and protection efforts. Relevant laws and regulations reported in the study relate to issues of sexual and domestic violence; anti-corruption; and family status, regulating marriage, divorce, custody and inheritance, among others.

Many study countries have signed and ratified regional and international legal frameworks that establish laws that prohibit gender inequalities. However, gender inequalities remain common in the countries, with polygamy, child marriage and prohibition of women from owning property. For example, the Ugandan traditional justice system promotes patriarchal beliefs that enhance gender inequalities. These beliefs are then reinforced by legislation such

as the Lands Act and Domestic Violence Act, which has openly failed to define property rights of men and women. Notably, the Divorce Act gives men more powers to make decisions in divorce matters than women, depriving them of the opportunity to decide on divorce.

Promising practices to increase women's access to justice have been identified in some countries, including legal aid clinics, paralegal support systems for women survivors of violence and clear policy guidelines to address gender inequality. Countries with legislation on legal aid, such as Burundi, Ethiopia, Kenya and Somalia, have embedded legal support in their education systems to allow legal practitioners to extend legal help to victims of GBV. In addition, Malawi created the Paralegal Advisory Service to train paralegals to educate, provide advice and support communities in the criminal justice system.

The study highlights how COVID-19 has greatly exacerbated VAWG by not only locking them in their homes with their abusers but also nearly shutting down the available justice delivery mechanisms. The creation of adapted justice delivery systems has forced the countries studied, apart from Tanzania, to rethink appropriate approaches to addressing VAWG. Respondents said that innovative and remote services, such as first responders and crisis hotlines or helplines have served as practical links to legal aid. For example, Ethiopia, Kenya, South Sudan, Uganda and Zimbabwe, among others, have established toll-free telephone numbers for survivors of GBV to report their cases. While innovative solutions such as courts adopting the use of technology to deliver and hear cases remotely have enhanced accountability and efficiency, it is important to address barriers to and gaps in accessing these technologies for women and girls. For instance, women in remote areas have internet connectivity challenges and, even when they do not, they may have no opportunity to make calls and report GBV cases if they reside with their abusive partners.

The legislative and legal analysis revealed that all countries covered in this study recognize both statutory and customary justice delivery mechanisms. In fact, countries such as South Sudan seem stronger in their customary justice systems than their legal framework. While such customary justice systems remain admirable in Africa, they raise challenges in

the efforts to end GBV. The systems remain heavily dominated by men, who are the main perpetrators of VAWG. It is also worrying that the customary justice provisions greatly conflict with constitutional provisions, yet they continue to be applied in resolving

GBV. Such legal gaps are visible in Malawi, Somalia, South Sudan and Uganda. This study thus calls for the harmonization of customary and statutory justice delivery mechanisms to bring an end to impunity for the perpetrators of VAWG in the region.

8.2 Recommendations

The study recommends a framework of agreed commitments in which access to justice is part of the achievement of gender equality and women's empowerment, and brings together the peace and security, human rights and development agendas. This will enable programming and policies to better address the continuum of violations of women's rights, including in contexts where transitional justice processes are underway or have been concluded.

The study recommends the following actions as a matter of priority to ensure that women have full access to justice and to uphold a justice system that is responsive to the needs of women and girls in their diversity:²⁵⁴

Legislative Improvements & Enforcement

- 1) Eliminate GBV and discrimination as a central pillar of sustaining peace and the rule of law, through removing retrogressive laws, enforcing and raising awareness of instituted laws and standards that impartially uphold women's rights as human rights, and criminalizing all forms of VAWG in line with international standards.
- 2) Ensure proper enforcement of the legislative provisions on protection of women throughout the process of seeking access to justice, including through investment in managing records and administrative data on reported cases, coordination among and between justice and other service providers, and monitoring the implementation of legislation.
- 3) Create provisions for compensation for women and girls who are victims of violence, abuse (which should complement and be used as a substitute for sentences) and discrimination, including inheritance rights and child support for divorcees.
- 4) Promote women's property rights and economic status to combat exclusion and poverty through provisional avenues of access to justice. These include women's right to own and inherit land and access assets such as housing and machinery. Access to justice is part of a strategy for poverty eradication, which can improve women's income levels and access to housing, food, water and sanitation, education and health services. Access to justice plays a fundamental role in fulfilling's and protecting women's rights, personal security and entitlements (including protection from sexual harassment, economic exploitation and lack of power in relation to powerful private or public actors).

²⁵⁴ These recommendations also align with the recommendations in Joint United Nations. 2015. Essential Services Package for Women and Girl Survivors of Violence: Module 3 – Justice and Policing. <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2015/essential-services-package-module-3-en.pdf?la=en&vs=3520>.

Strengthening the Justice System

- 5) Use the available justice systems to hold accountable perpetrators who violate women's rights. This involves sustained efforts against impunity to achieve women's access to justice, effective and respectful communication with the woman or girl seeking justice and removing the burden of seeking justice from survivors of violence.

- 6) Invest in mainstreaming gender into the justice sector while also exploring targeted initiatives to address issues of access to justice for women, which includes training more female judges on women's rights and addressing violations of them. This may involve establishing women-only courts or specialized courts for processing violations of women's rights, which can meet the needs of women survivors of GBV.²⁵⁵

- 7) Create justice avenues that protect women from economic exploitation, unfair labour practices, physical harm and unequal pay to address emerging unfair practices.

- 8) Feminize the justice sector to improve women's experience of justice. Women in leadership, including police services and the judiciary, contribute to better experiences for women witnesses and survivors. The visible representation of women in these roles and the perspective that they bring can make the process less distressing for women and girls who appear before them. Increasing the number of women in these positions may facilitate victims' engagement in the process, and women judges may provide litigants with holistic justice solutions, making formal justice systems more appealing.

Survivor-Centred Approaches for Diverse Women & Girls

- 9) Institutionalize and sustain training for judicial personnel, police officers and prison staff on matters related to improving access to justice for women. This will accustom judicial officials to the unacceptability of men's and boy's acts of violence against women and how to handle GBV cases. It will ensure that they respond to the dynamic needs of women in accessing gender-responsive justice and reduce the mishandling of GBV cases.

- 10) Identify and eliminate obstacles and barriers faced by women before, during and after they pursue access to justice. This means prioritizing women's safety, empowerment and recovery; treating every woman with respect; waiving court fees and providing court advocates for women (including women with disabilities); and keeping women informed throughout the justice process.

- 11) Strengthen victim and survivor protection given the cultural fear of negative consequences and backlash from the community (reprisals and revictimization) against survivors of sexual violence. This should cover women's immediate-, medium- and long-term safety needs, involve assessment of risks and safety planning, enforcement, and coordination of protection measures with other service providers.

- 12) Provide information and diverse options to women seeking justice who may be disenfranchised because of the patriarchal system, and cultural and religion laws, which prevent women from reporting to police, seeking treatment, guidance and counselling and giving evidence during court proceedings.

²⁵⁵ See, for example, in countries such as Kenya, where there are children-only courts.

- 13) Create policies and laws that promote the investment and creation of disability-inclusive services for women to access justice. This includes investment in the architecture of court buildings, provision of sign language interpretation, provision of facilities and aid to women with disabilities, addressing attitudinal barriers by educating judicial personnel on the rights of women and girls with disabilities and state obligations, and adapting the justice process to the needs of women and girls with diverse disabilities, including by reducing the procedures that could delay the delivery of justice to them.
-

Community-level recommendations are as follows:

- 14) Improve the gender diversity of the traditional justice systems to ensure that traditional authorities understand gender issues, support their committees to be gender-sensitive and have women represented. Expand the support for traditional justice systems led by women and where women were part of decision-making, which proved more gender-sensitive in issuing their judgments and were more responsive to the needs of women and girls seeking justice following GBV.
-
- 15) Ensure that the customary laws are in line with constitutional provisions on fundamental rights and international human rights standards.
-
- 16) Declare customary laws that discriminate against women and girls illegal (e.g. child marriage).
-
- 17) Continue engagement with traditional and religious leaders and cultural authorities through a comprehensive strategy to improve the gender-sensitivity of the traditional dispute resolution systems at community level, actively respond to the justice needs of women, build positive forms of masculinity and end retrogressive cultural practices and stereotypes against women and girls.
-
- 18) Develop coordinated community responses on matters of VAWG to facilitate women's and girls' access to justice in the community.
-

**UN WOMEN IS THE UN ORGANIZATION
DEDICATED TO GENDER EQUALITY
AND THE EMPOWERMENT OF WOMEN. A
GLOBAL CHAMPION FOR WOMEN AND
GIRLS, UN WOMEN WAS ESTABLISHED
TO ACCELERATE PROGRESS ON
MEETING THEIR NEEDS WORLDWIDE.**

UN Women supports UN Member States as they set global standards for achieving gender equality, and works with governments and civil society to design laws, policies, programmes and services needed to implement these standards. It stands behind women's equal participation in all aspects of life, focusing on five priority areas: increasing women's leadership and participation; ending violence against women; engaging women in all aspects of peace and security processes; enhancing women's economic empowerment; and making gender equality central to national development planning and budgeting. UN Women also coordinates and promotes the UN system's work in advancing gender equality.



UN Women East and Southern Africa
Regional Office
UN Gigiri Complex, Block M
P. O. Box 30218 – 00100, Nairobi, Kenya Tel:
254 20 762 4778

<https://africa.unwomen.org>
esaro.publications@unwomen.org

 @unwomenafrica

 @unwomenafrica

www.flickr.com/photos/unwomenafrica