

SITUATIONAL ANALYSIS OF ACCESS TO JUSTICE FOR VICTIMS AND SURVIVORS OF VIOLENCE AGAINST WOMEN AND GIRLS IN EAST AND SOUTHERN AFRICA

ACKNOWLEDGEMENT

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The views expressed in this paper are those of the author(s) and do not necessarily represent the views of UN Women, the United Nations or any of its affiliated organizations.

1. INTRODUCTION

This paper presents the findings of the online study for the multi-country study on access to justice for women and girls and access to justice for victims and survivors of violence against women and girls (VAWG), explicitly specifying the actual situation in ten countries under the study. The countries studied include Burundi, Ethiopia, Kenya, Malawi, Mozambique, Somalia, South Sudan, Tanzania, Uganda and Zimbabwe. The online research focused on access to justice for women and girls, including the forms of discrimination faced by women and girls. The study identifies and recommends priority areas for programming to promote access to justice for women, including increasing the number of women in the judiciary in both customary and formal systems. The

study targeted vital institutions dealing with and addressing the issues of access to justice regionally or nationally. The study also targeted the staff of judicial offices, such as judges, magistrates, lawyers and prosecutors, and police officers. At the local government level, the study focused on administration officers, including chiefs and local elders. Traditional and religious leaders were also targeted for the study. To enhance cross-referencing and corroboration of the case studies, survivors and victims of gender-based violence were also interviewed in the data collection processes. This was done with consideration for survivor-centred and ethical data collection practices.

Violence against women and girls is a global issue and is the most pervasive 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.¹ 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. Therefore, access to justice for all is a cornerstone of democracy and a principal goal set by nations globally. Access to justice is multi-dimensional. It encompasses the justice system's justiciability, availability, accessibility, quality and accountability, and the provision of remedies for victims.

2. METHODOLOGY AND TOOLS

The study adopted an analytical approach, which combines quantitative and qualitative approaches using quantitative and qualitative tools to collect and analyze data. This holistic approach is widely applied in gender studies, particularly those involving women's and girls' issues, as it derives qualitative contextual analysis from practical experiences. Gender analysis used sex, disability, socioeconomic status, and norms disaggregated data, and data that explained nuances in the causes and effects of gender inequalities was adopted. 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 ten countries' structural, legislative, institutional,

policy and policy factors and experiences. The study's key sources of data and information 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. This study also documented testimonies from GBV survivors as ethical case studies. The study used multipronged strategies and approaches that provided several data collection elements. These included desk review, online and tele-studying methods, in-country visits, virtual meetings, virtual studies, case studies, and review of records.

3. FINDINGS FROM THE STUDY

All figures and tables in the study result from field data by UN Women during the multi-country research in all the ten study countries listed above.

a. Response Rates

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

Figure 1
Gender of respondents (%)

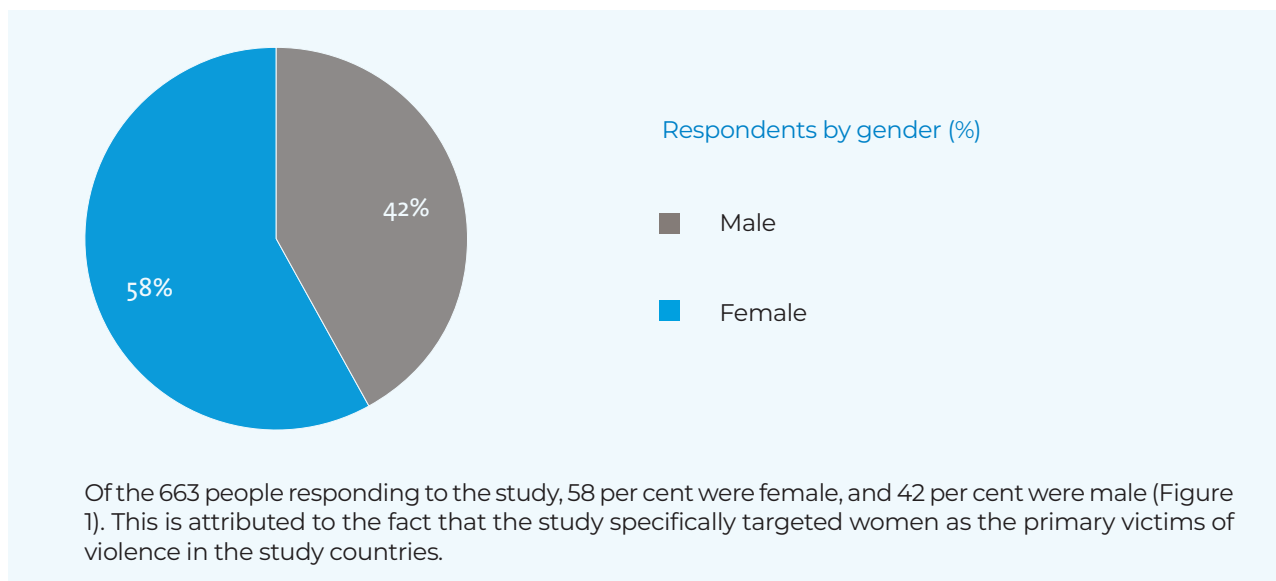


Figure 2
Age of respondents

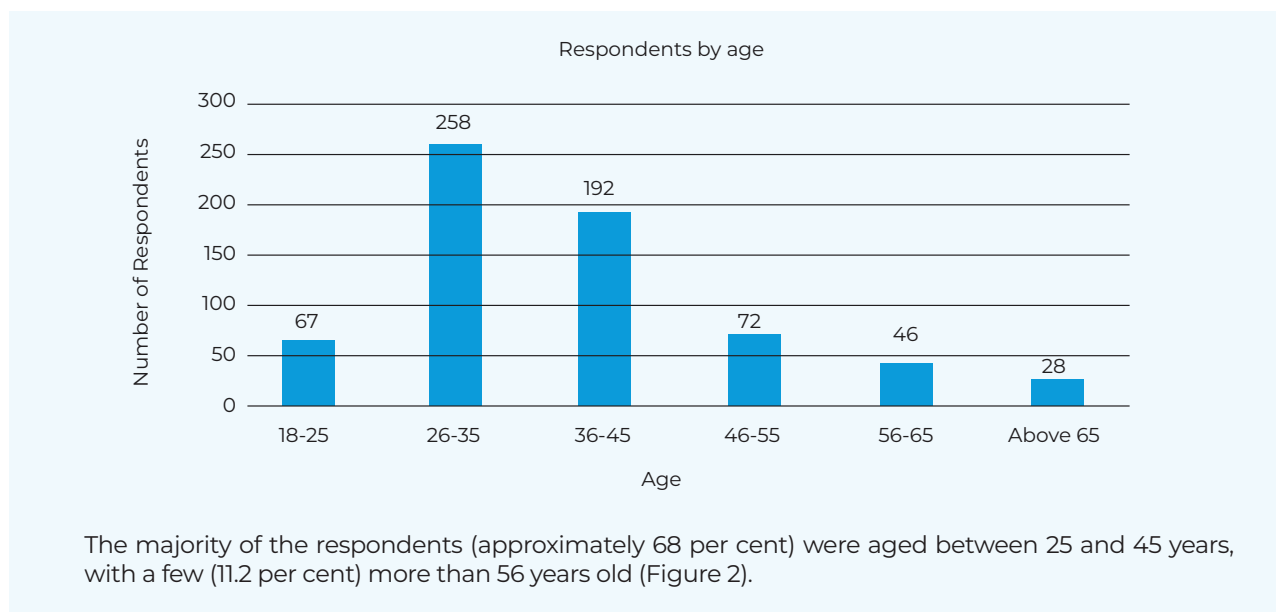


Table 1

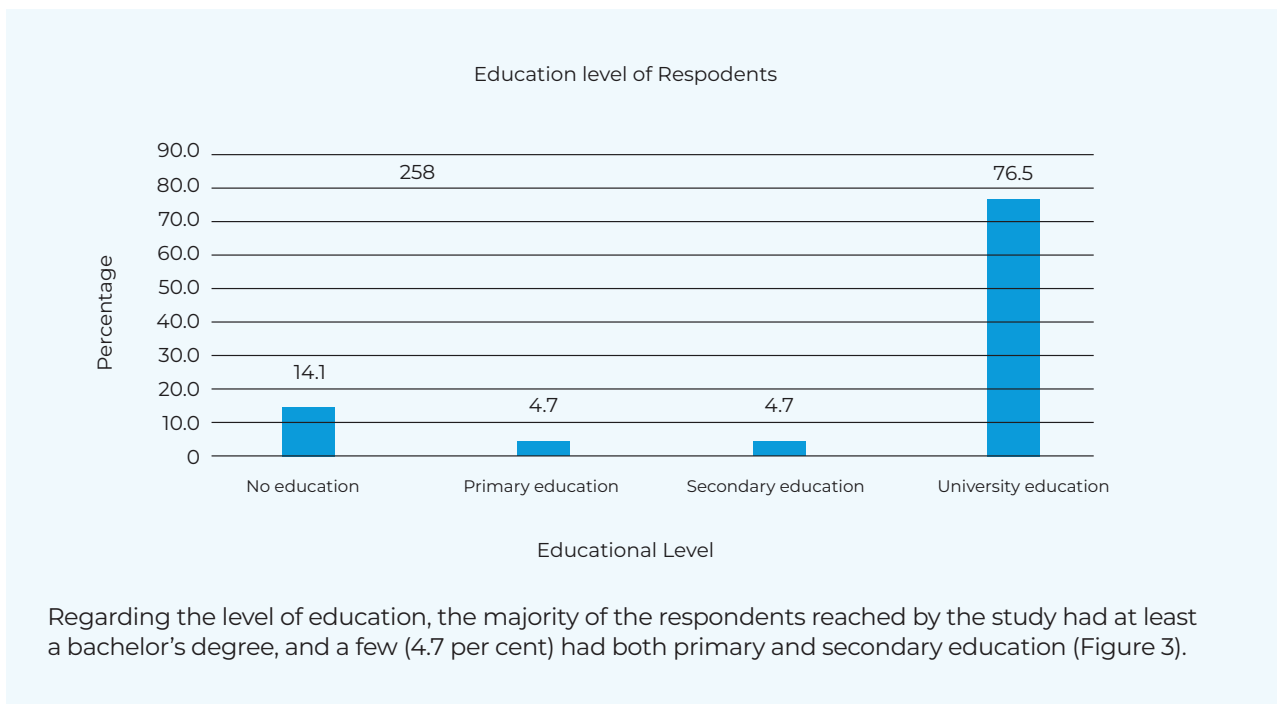
Category of respondents

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

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

Figure 3

Age of respondents



b. Organizations at the forefront of advocating for access to justice for women

Table 2

Category of respondents

Agency	Number of respondents	Percentage
United Nations	131	19.8
Regional institutions	41	6.2
Governmental	95	14.4
International NGOs	109	16.5
National NGOs	123	18.5
Traditional leaders/institutions	63	9.5
Community-based organizations/faith-based organizations	52	7.8
The media	49	7.4

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 significant agents of advocacy for access to justice for women in all of the study countries. Respondents, however, perceived the United Nations, national and international NGOs, and government institutions as the primary agencies advocating for access to justice for women, with other opportunities for advocacy and programming identified as traditional leaders and cultural institutions, community-based organizations, faith-based institutions and the media (Table 2).

c. Types of justice systems for women in the study countries

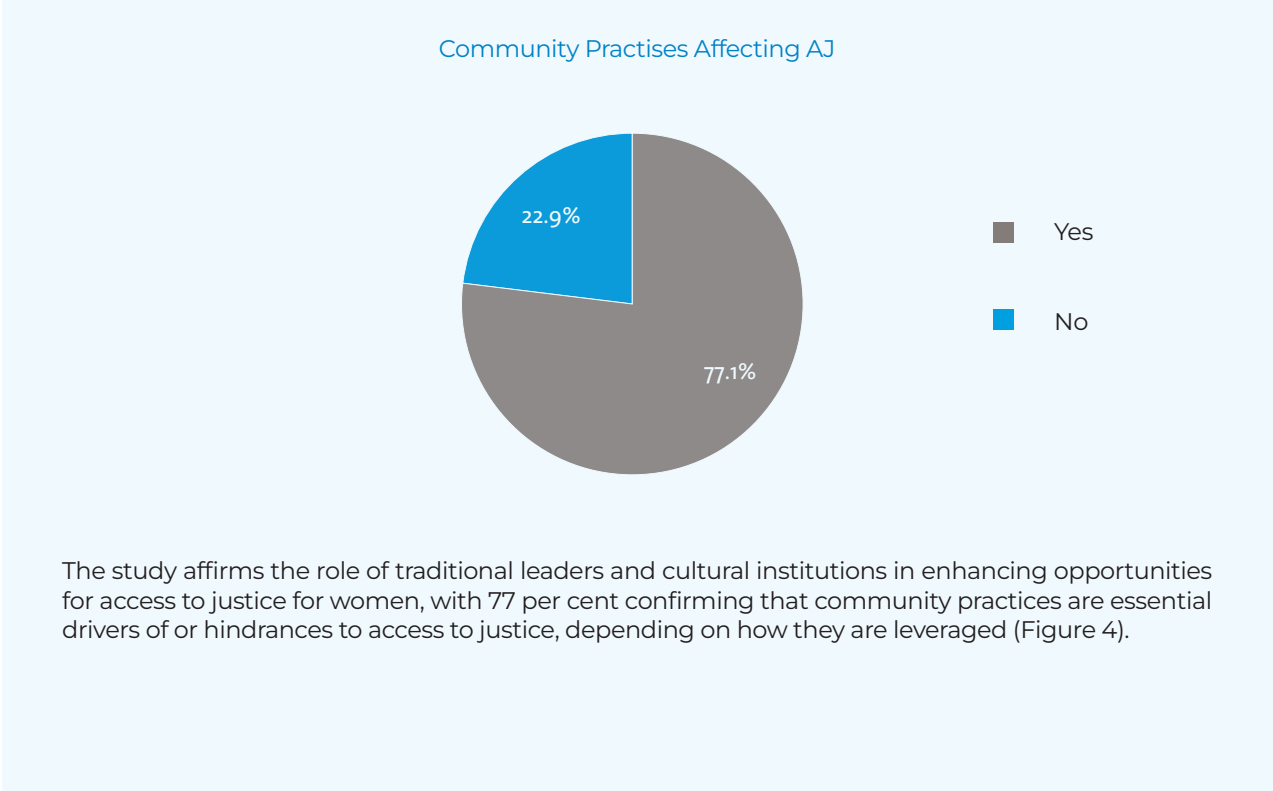
- **Existence of parallel justice systems:** The study countries all feature customary, community, or informal/traditional justice mechanisms and formal justice systems. The presence of conventional and customary systems is described using various tags. They include indigenous, informal, non-formal, non-state and non-official justice systems. The labels were established long ago and are 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, the informal justice system *bashingantahe* 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 issues.
- **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 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 know who is

handling their cases and 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), where customary justice is used to settle land and inheritance disputes and family cases.

d. Community practices that hinder access to justice for women

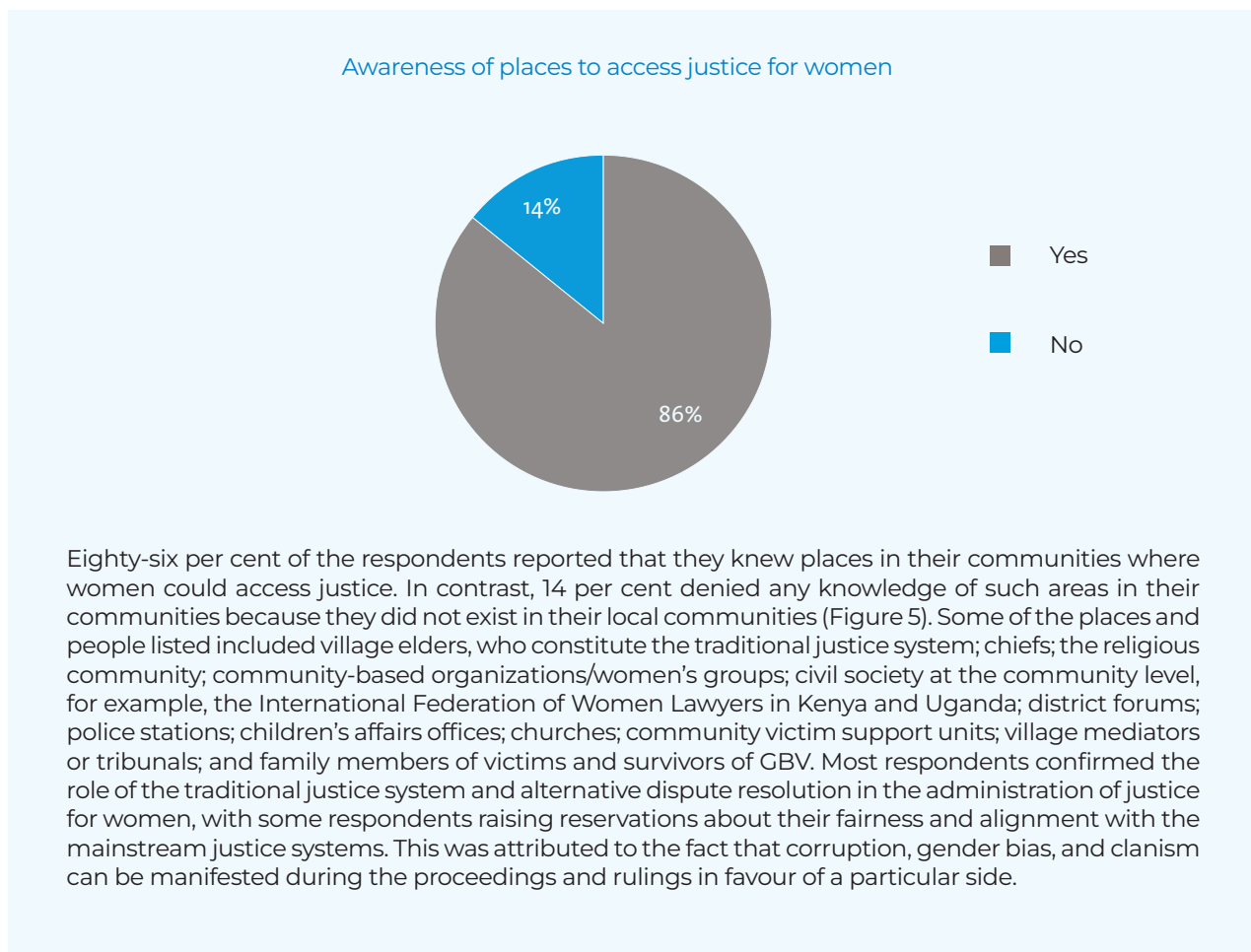
Figure 4
Community practices affecting access to justice



e. Awareness of places where women in the community seek justice

Figure 5

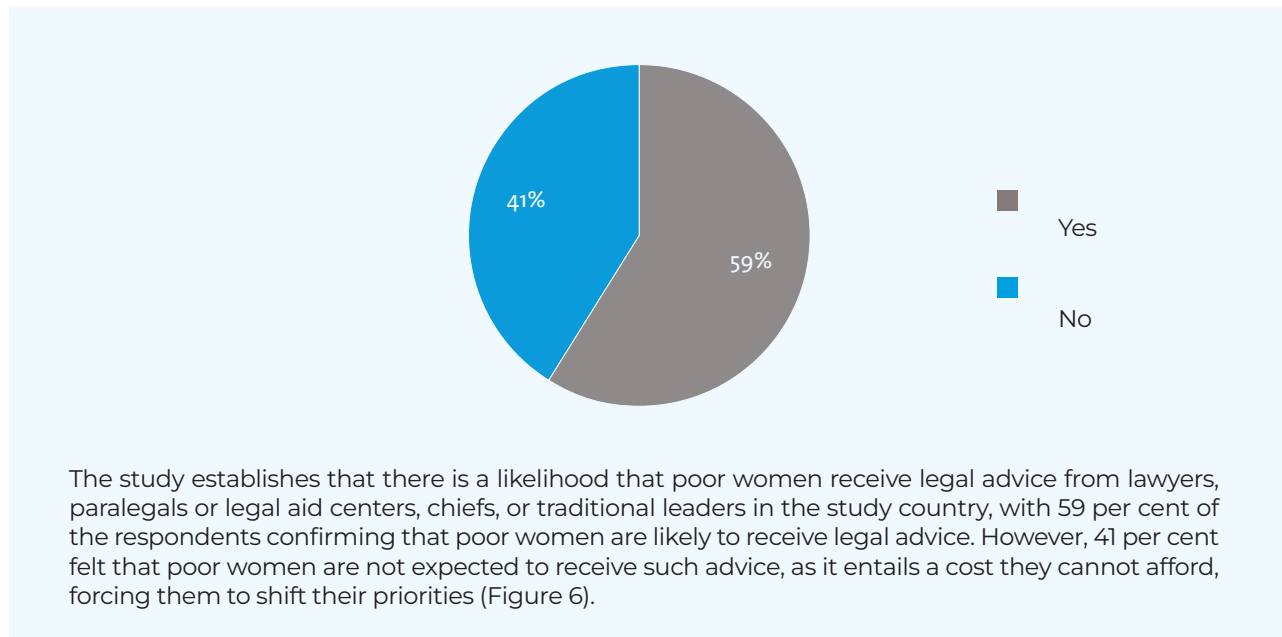
Awareness of places to access justice for women



f. The likelihood that poor women receive legal aid in accessing

Figure 6

Likelihood that poor women receive legal aid in accessing justice

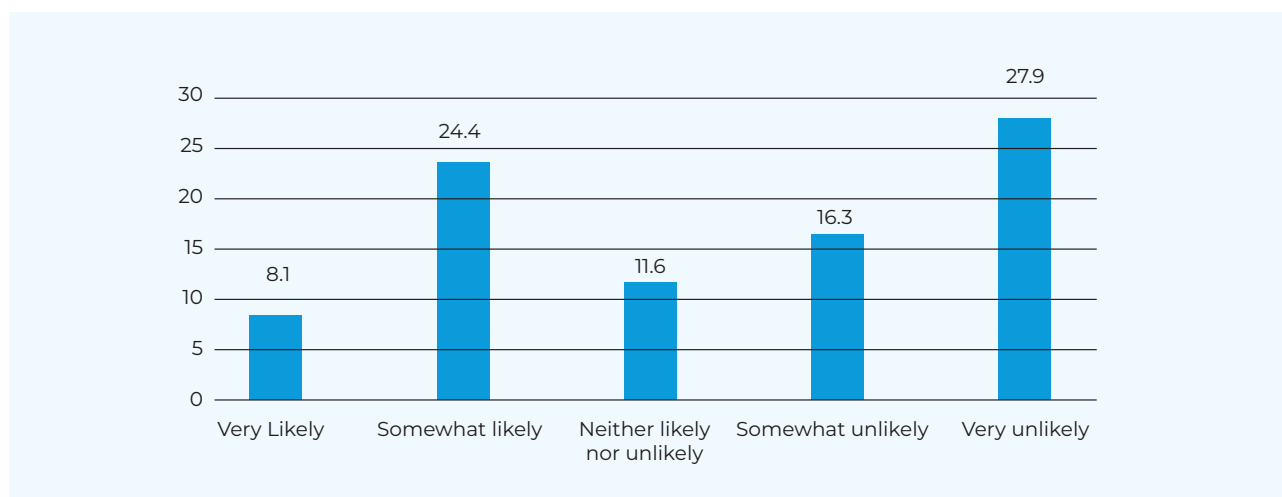


The study also looks at the likelihood that detained female suspects who request access to legal counsel receive adequate legal counsel from a public defender during initial police custody, pre-trial detention, or trial,

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 7).

Figure 7

Likelihood of receiving legal aid during initial police custody



g. 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 aid (Figure 8). This is one of

the biggest obstacles to women's access to justice in the countries studied, as women cannot afford legal assistance for their cases because they have limited resources.

Figure 8

Availability of legal assistance for women

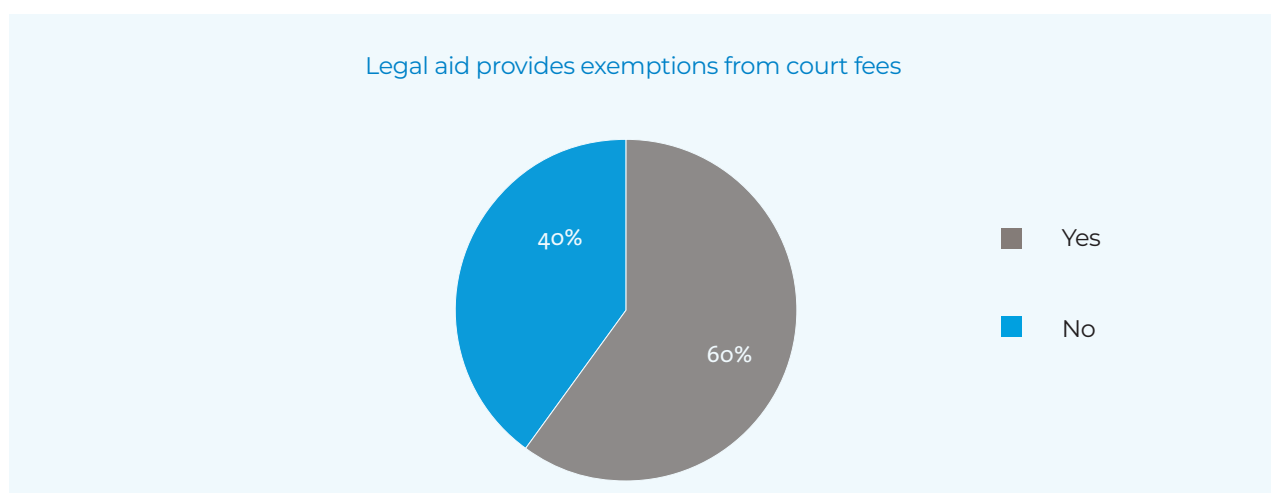


Even where legal aid for access to justice is provided, 60 per cent of respondents stated that it does not include court fee waivers (Figure 9). Court fees are one of the primary obstacles that prevent women from accessing justice; they increase the cost of

access to justice for women, denying poor women the opportunity to realize justice. Therefore, exemption from court fees will progress towards achieving access to justice for women in Africa and the study countries.

Figure 9

Legal aid provided excludes court fees

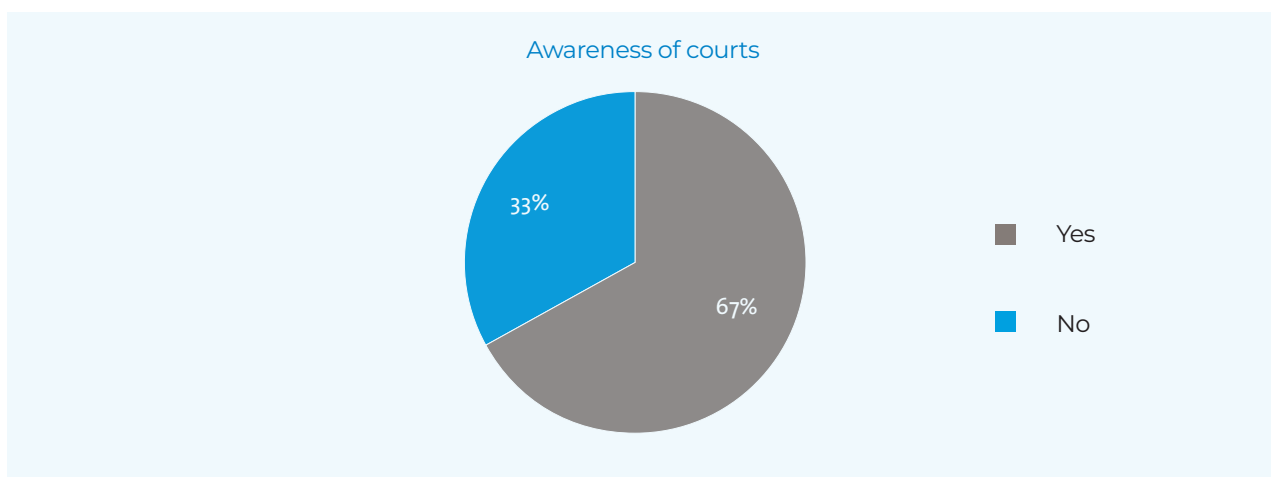


Knowledge of courts adjudicating violence is a critical entry point for accessing justice. Sixty-seven per cent of respondents reported that they were aware of such institutions

(Figure 10). This suggests that 33 per cent of respondents are potentially excluded from seeking justice.

Figure 10

Awareness of courts



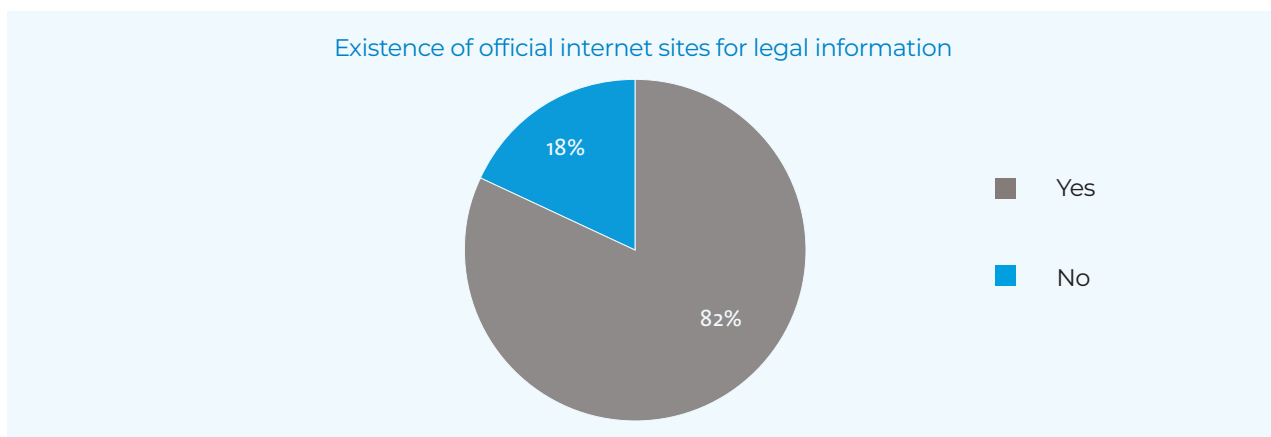
h. Existence of official internet sites for legal information

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), the 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,² a Kenyan site for case law and other legal issues, the Malawi Human Rights Commission portal and library, and Abyssinia Law, an Ethiopian site.³

Figure 11

Existence of official internet sites for legal information



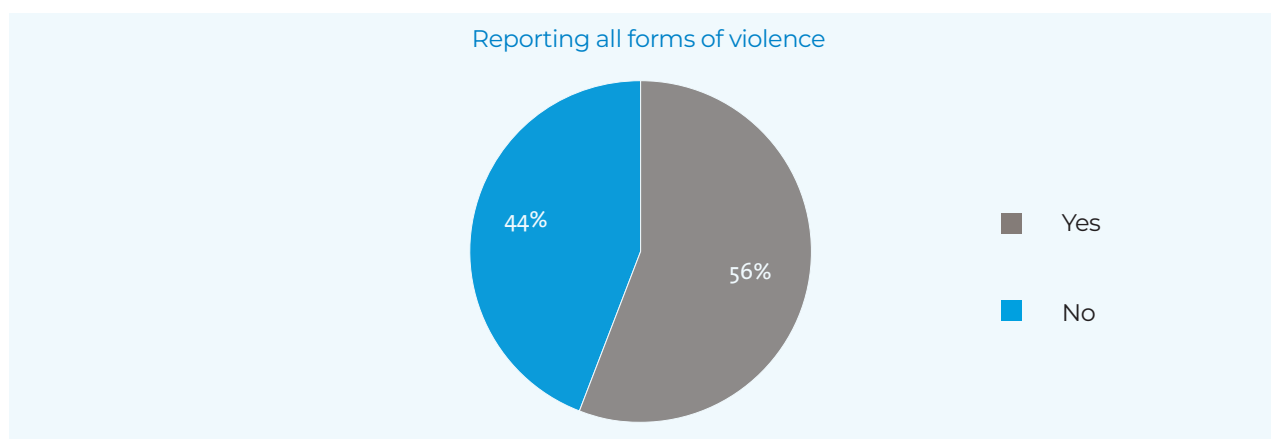
i. Reporting all forms of violence

Respondents stated that in all of the study countries, women who have experienced physical violence and those who have experienced pressure and threats could report it to the authorities and access justice. Fifty-six per cent of the respondents noted this, although 44 per cent said otherwise (Figure 12). 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 most countries' investigated courts of law. Some respondents, however,

reported disturbing trends that featured in all 10 of the study countries, where women wait until they have experienced physical violence resulting in injury before reporting cases. This increases the risks to the women affected. Some respondents from Ethiopia, Kenya, Malawi and Tanzania noted that justice institutions do not take threats and pressure seriously. They said that justice institutions often tell victims that nothing can be done about them, restricting 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 an extremist group runs.

Figure 12

Reporting all forms of violence



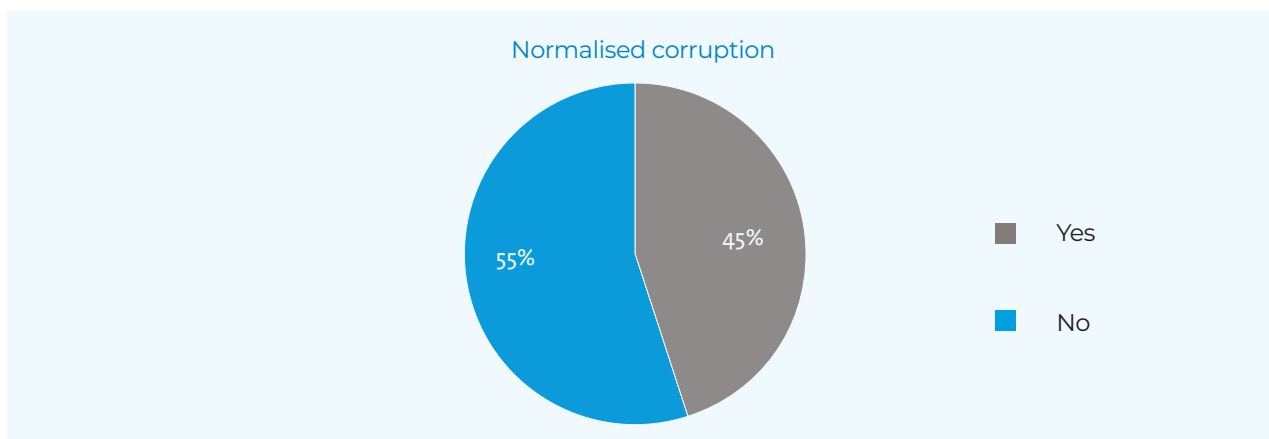
j. Corruption in the justice chain

The study examined whether respondents believe it is acceptable for public officials to ask for additional payments beyond those legally allowed in exchange for access to justice. A worrying percentage of respondents (45 per cent) reported that corruption had been normalized (Figure 13). It should be noted, however, that 55 per cent of the respondents believe it is unacceptable for public officials to ask for additional payments

beyond those legally allowed in exchange for access to justice. Although this percentage is higher than those, who believe it is customary to ask for extra fees, considered as corruption, the high percentage who say that this unacceptable practice has become normalized can affect access to justice for women. This practice is perceived in all ten countries studied.

Figure 13

Public officials normalize corruption



k. Gender-responsive access to justice

The study finds that access to justice services is not responsive to the needs of women. Almost 70 per cent of the respondents from the ten countries under study reported this. 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, therefore, calls for interventions focusing on improving the diversity of justice systems, including traditional justice systems and national justice systems (also covering the courts), to ensure they respond to the needs of women.

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 most of the disputes among women, as stated by 26.9 per cent of the respondents (Table 3).⁴ The formal justice system settled 17.5 per cent of the disputes through the court system and 13.5 per cent through the police in various countries.⁵ Other stakeholders who support access to justice for women at the national level in the study countries 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. The latter involving government officers (local governments, ombudspersons, etc.) resolved only 3.8 per cent of the disputes for women in the study countries. This affirms the critical role of the family unit and the traditional justice system

in women's access to justice despite the effects of harmful traditional and cultural practices and the lack of gender sensitivity in resolving those disputes, as reported in all study 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. They cited cost as the primary basis as they were considered cheaper than the formal justice system, which was viewed as inaccessible and expensive, requiring a lot of finance to access justice. The Malawi chieftdom 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 in Malawi, and all of the 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 because of GBV. In addition, it took less time to expedite cases sitting before committees with women representatives

than those brought before male-dominated panels of judges, who showed patriarchal tendencies that disregarded women's needs, resulting in biased judgments favouring the male perpetrators of the violence.

Table 3

Dispute resolution mechanisms

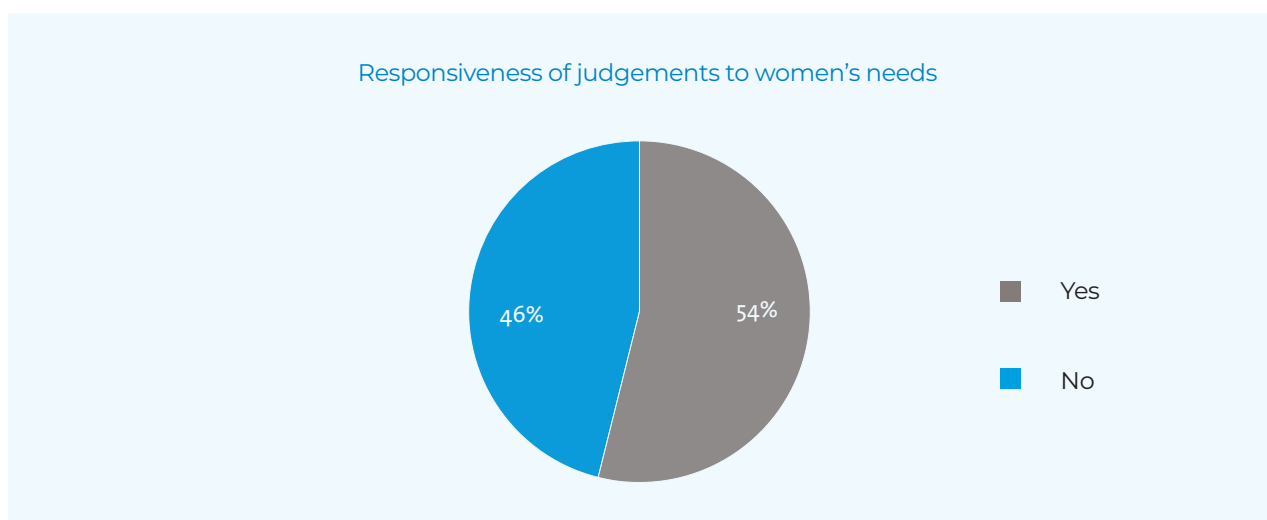
Who resolved your dispute?	Percentage of respondents (n = 663)
Family member/neighbour/friend	27.9
Traditional leaders	26.9
Court	17.3
Police	13.5
Priest/pastor	5.8
Legal aid group/NGO	4.8
Government	3.8

Regarding biased judgments, at least 54 per cent of the respondents believe that the decisions 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. In comparison, 46 per cent felt that the judgments did not consider women's

experiences when ruling on the cases (Figure 14). The respondents mentioned the informal justice institutions, the police and the court system as being insensitive to the needs of women, which decreases the opportunities for women to access justice in the study countries.

Figure 14

Responsiveness of judgments to women's needs

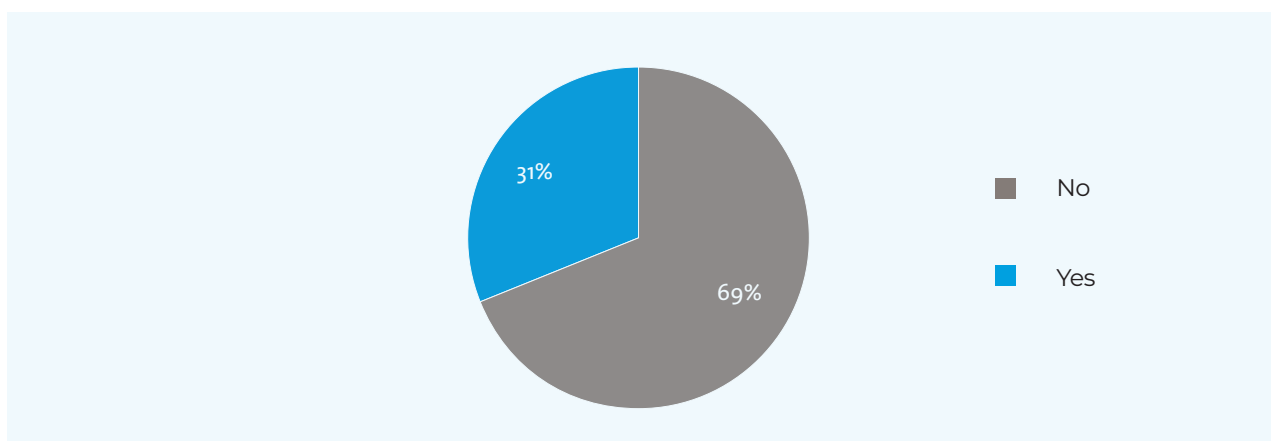


It is also worrying that more than half of the respondents (69 per cent) reported that in addition to the biases they face in their attempts to access justice, they did not receive any compensation for their cases; only 31 per cent had received compensation for their cases (Figure 15). Legally, only Burundi, Ethiopia and Uganda had no explicit constitutional provision for compensating

women and girls victims of violence. A respondent from Kenya explained how it is challenging to realize compensation even if a court of law awards it. 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 15

Public officials normalize corruption



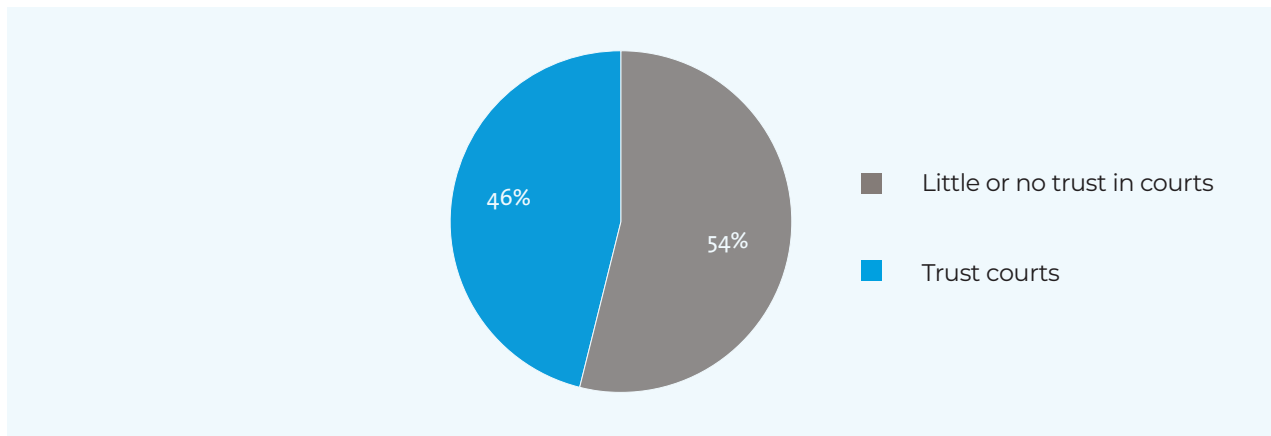
Women's trust in courts of law

The study sought to establish whether women had trust in the law courts in the study countries. The results show that 54 per cent of the respondents have little or no confidence in their courts of law, and only 46 per cent have trust in their courts of law (Figure 16). This affirms why most women prefer to have their cases resolved by informal

dispute mechanisms – traditional leaders, family members or friends, and religious leaders – as opposed to formal courts. They consider legal courts inaccessible because of the high costs of filing cases, the complex procedures and hiring a lawyer, which most women who responded to the study cannot afford.

Figure 16

Women's trust in courts of law

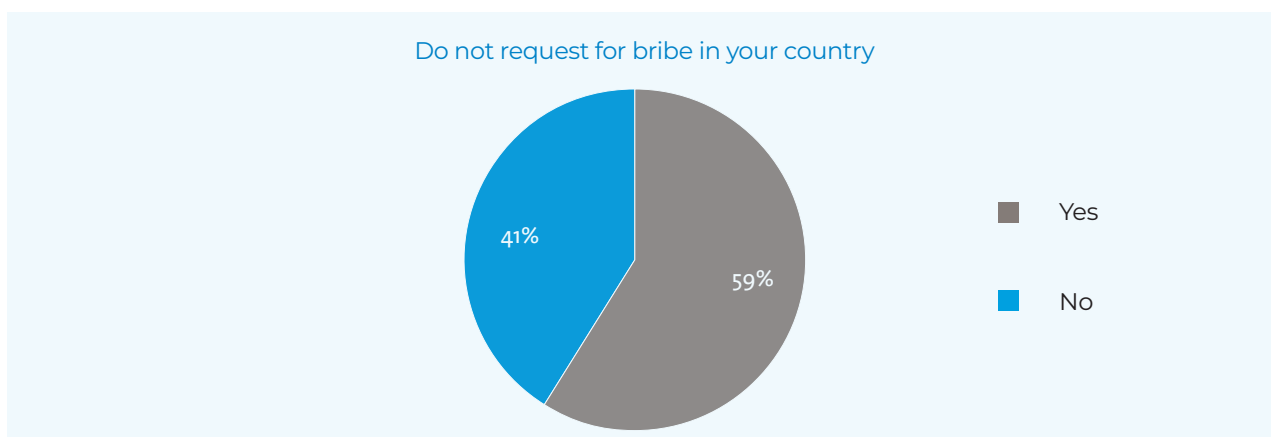


Respondents from Ethiopia, Kenya, Malawi and Tanzania cited the slow nature of their courts and the tactics of advocates delaying cases by requesting their adjournment in addition to postponements by judges and magistrates. The limited number of judges is another issue that delays cases in courts, in addition to corruption, as the study found in Kenya called *Kitu Kidogo* (something small). Respondents also mentioned that their courts handle women based on their wealth and political connections. This means wealthy women receive timely justice while poor women have their cases thrown out of court because of corruption. Such scenarios were provided 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 replicated in several other study countries. In most countries, judges remain predominantly 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 study mentioned that judges in their countries request bribes to deliver cases, which makes access to justice expensive and lacking in integrity (Figure 17).

Figure 17

Do judges request bribes?



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

The findings show that women are asked to pay bribes, informal payments, or other inducements to expedite a court process sometimes (37.5 per cent) and frequently (26.1 per cent), which shows how corruption has been normalized in the study countries (Table 4). Only 17 per cent of the respondents reported that they have never been asked to pay bribes, informal payments, or other inducements to expedite a court process,

with only 6.8 per cent asserting that they are seldom asked to make such payments to expedite a court process. A modest proportion (12.5 per cent) said that they are always invited to pay bribes, informal settlements, or other inducements to expedite a court process. The trends are worrying and, if not managed, would plunge the justice system into serious credibility issues. They inhibit women's access to justice in the study countries.

Women's trust in traditional leaders for dispute resolution

Figure 18

Do you trust traditional leaders for justice?



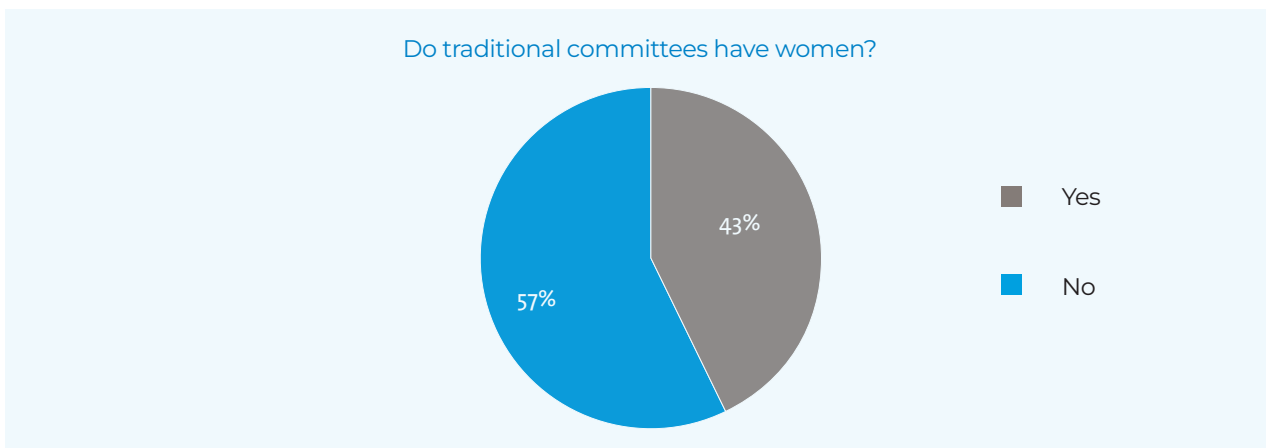
Similarly, women who were interviewed and who responded to the study said that they did not fully trust traditional leaders and cultural institutions when it came to accessing justice for women. Only 41 per cent had confidence in conventional leaders and cultural institutions in administering justice for women (Figure 18). Those who showed trust said they trusted them because they do not request as much bribes as the formal justice system. This shows the level of institutionalization of corruption in the countries studied. Those who trusted them pointed to their accessibility in the community and the fact that their service fees 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 and are widely listened to and accessible, creating the potential for conflict resolution. Those who did not trust them cited gender-blind justice principles that primarily rely on outdated cultural practices and negative forms of masculinity. They do not have women leaders on their committees and therefore are not sensitive to women's needs. This presents an opportunity for improving the gender diversity of the informal justice systems and aligning them with the needs of women in the communities.

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 network or on the committee), which makes their decisions gender-blind. Fifty-seven per cent of the respondents held this view, as shown in Figure 19.

Figure 19

Do traditional justice committees have women in them? n = 663



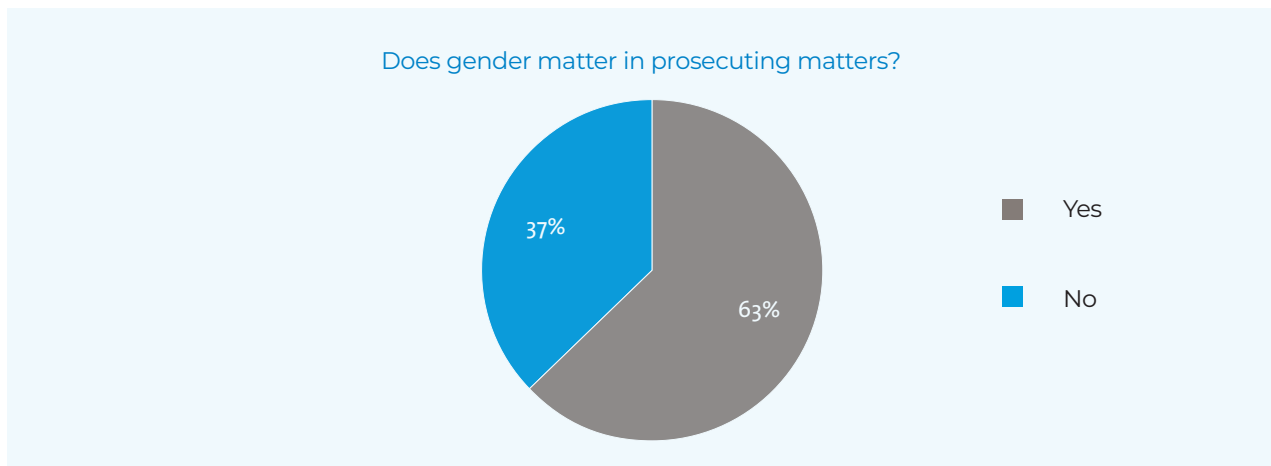
Gender considerations in prosecuting matters on gender-based violence

The study finds that a person's gender affects the delivery of justice and prosecution of matters in all countries studied. Although legislation in all 10 countries prohibits discrimination based on gender or sex, gender still plays a prominent role in court processes. Sixty-three per cent of the respondents thought that gender mattered, with only 37 per cent denying that it

mattered in prosecutions (Figure 20). In our interview with key informants, gender biases emerged as a top inhibitor of delivering justice for women who are survivors and victims of GBV. These biases occur in the community, courts, security agencies, churches, and families.

Figure 20

Does gender matter in prosecutions?



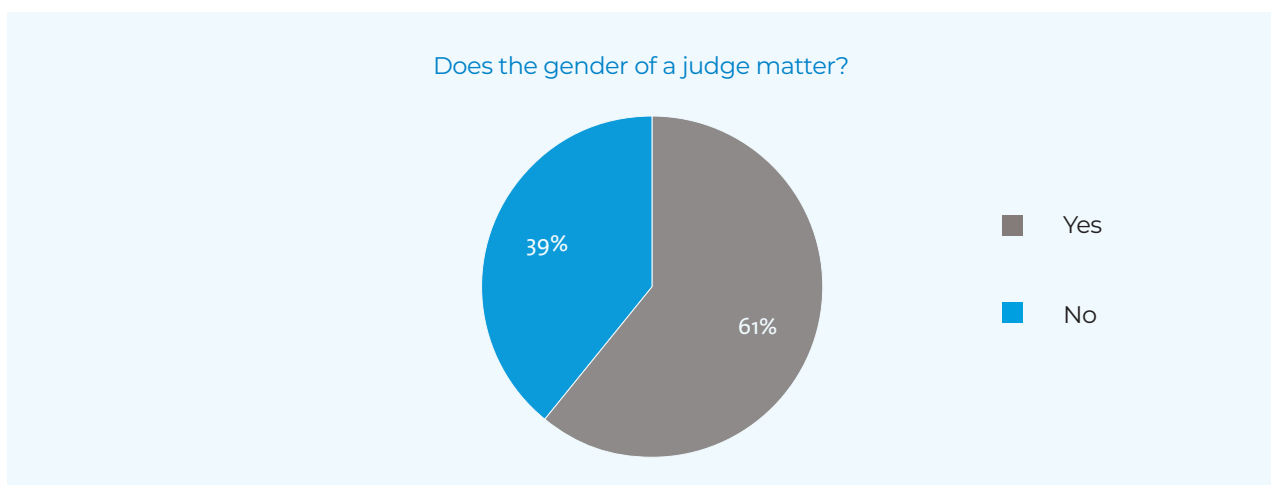
The study finds that even the gender of the advocate representing a woman survivor or victim of violence matters. This is because advocates face the same biases as ordinary women, as reported by equal percentages of respondents: 63 per cent and 37 per cent.

The study even found that the gender of the judge dealing with cases involving women

also matters (Figure 21). 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 judgments implying that women are inferior to men, a view held by patriarchal judges in their countries.

Figure 21

Does the gender of a judge matter?

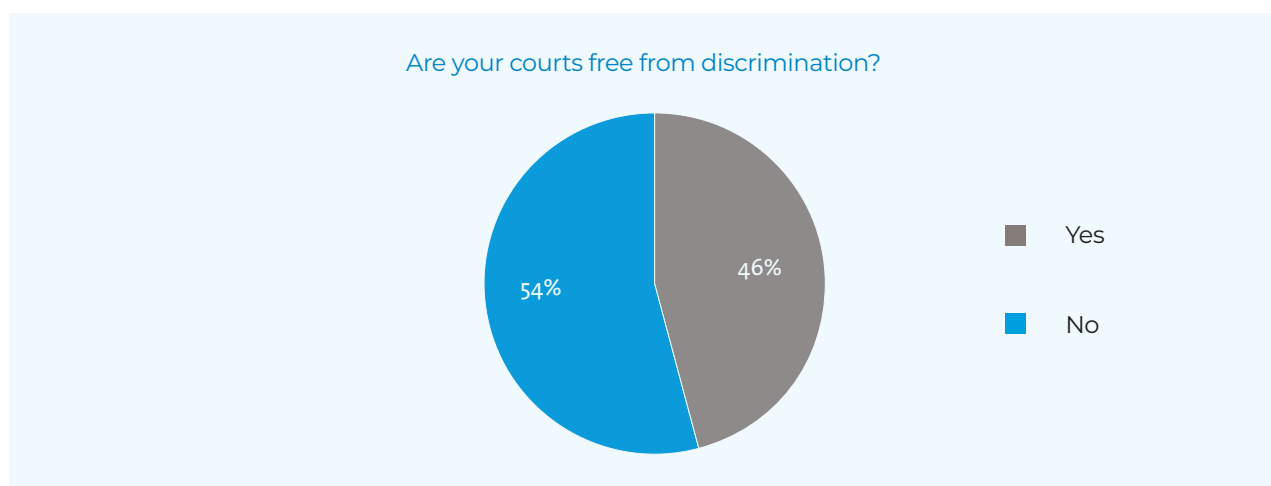


The study finds that justice in the courts of the countries studied is characterized by discrimination based on income, gender, ethnicity, religion, nationality, sexual orientation, and social and economic status (marginalization), which worsens the situation of women with disabilities and rural women in particular as reported by 54 per cent of the respondents (Figure 22). 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 ten 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, "Sexist and corrupt judges, some of whom are perpetrators of GBV, are a barrier to addressing gender discrimination." Key informants and our literature review on the subject matter echoed this aspect.

Figure 22

Are your courts free from discrimination?



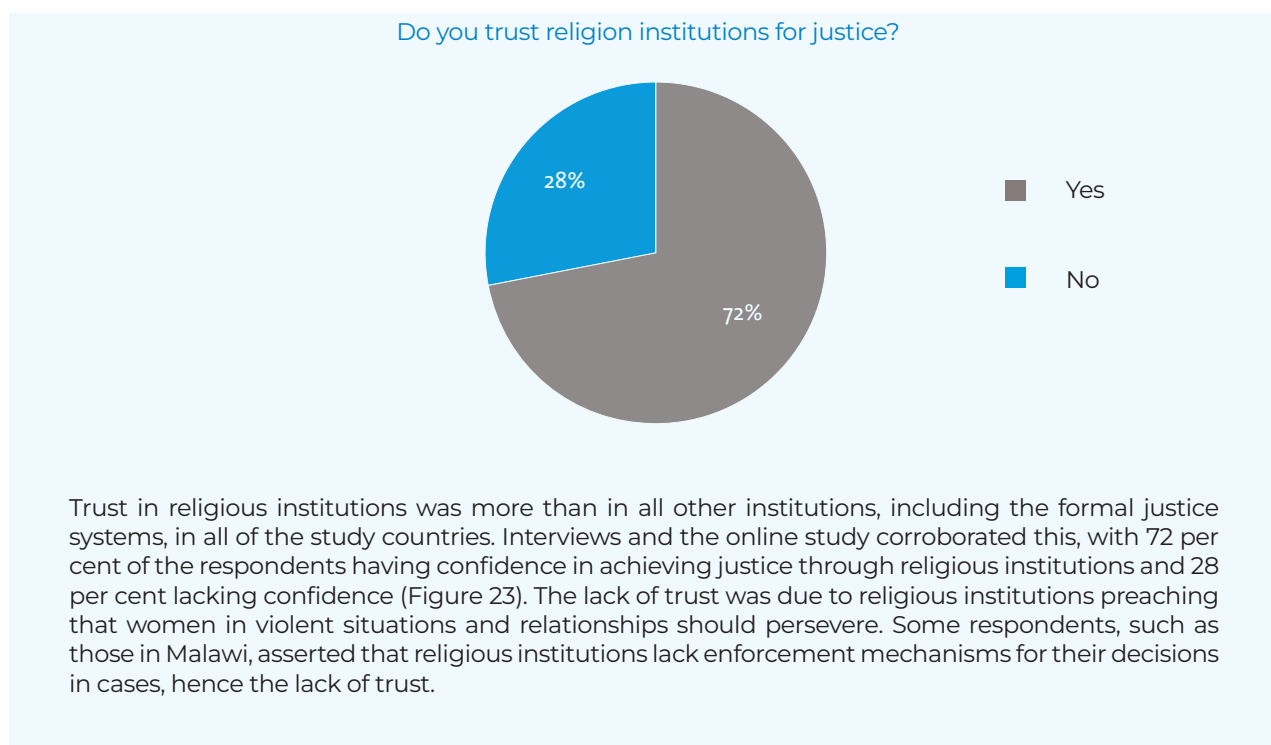
The study concludes that judges have no equal application of the law because they impose different punishments for the same type of crime based on a defendant's or victim's personal or gender characteristics (women vs. men). This assertion has been

confirmed by previous data and information from respondents in the study. Hence, judicial decisions in the study countries are affected by gender bias, which constrains access to justice for women.

I. Trust in the religious community in offering justice for women

Figure 23

Trust in religious institutions offering justice



Two respondents from Ethiopia and Uganda said that focusing 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 the focus group discussions in Mukuru kwa Njenga remarked, "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

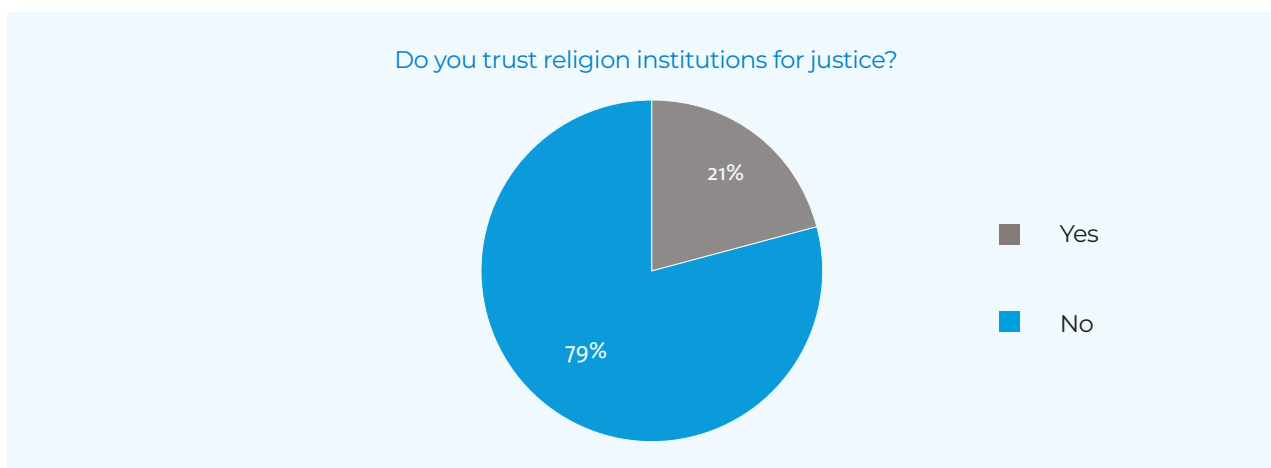
security and sacrifice their well-being," which undermines the welfare of women accessing justice in these institutions. This position was repeated in several key informant interviews with various respondents from the countries studied. One key informant reported the same status through her assertion 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.

m. Do the courts have disability-friendly access to justice services for women with disabilities?

Article 9 of The Convention on the Rights of Persons with Disability mandates the Member States to create environments where people with disabilities can live independently and participate exhaustively in all dimensions of life. Accordingly, Member States should equally facilitate access to all aspects of life. In all of the countries studied, the courts, which form a significant justice institution, 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 24). Only 21 per cent of the respondents in the study said that their courts have disability-friendly access to justice services for women with disabilities. These services include court sign interpretation, Braille services, physical and inclusive access

to the court facilities, availability of assistants and support mechanisms while in court, and disability-friendly judges. The considerable percentage of respondents reporting that their countries lacked these services means that governments and other stakeholders must prioritize this to accelerate progress toward access to justice for women with disabilities. In addition, countries such as Kenya have a female judge with a disability, an aspect seen as accelerating progress toward disability-friendly 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 deployment and career progression for female judges with disabilities.

Figure 24
Do courts have disability-friendly services?

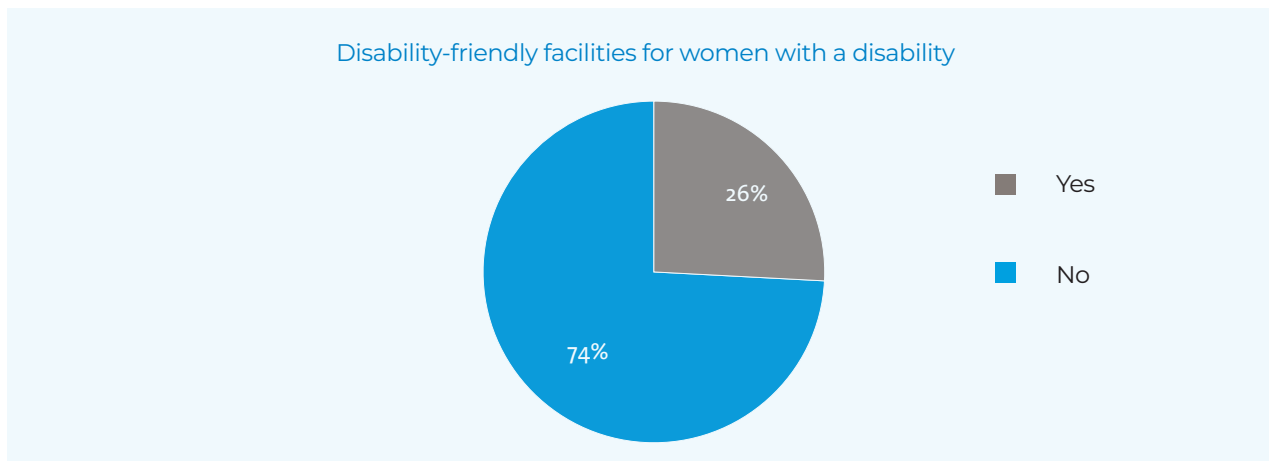


One of the significant challenges reported in the study is that most of the courts in the countries studied do not have ramps or sign language interpreters, do not use Braille, and do not have arrangements to support people with visual impairments and are guided appropriately. This position has been reported by key informants and 74 per cent of the respondents (Figure 25). Only 26 per cent said that some courts in their countries provide such facilities for people with disabili-

ties. The study concludes that justice in the courts in the countries studied is not disability-friendly and does 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 25

Disability-friendly facilities for women with a disability



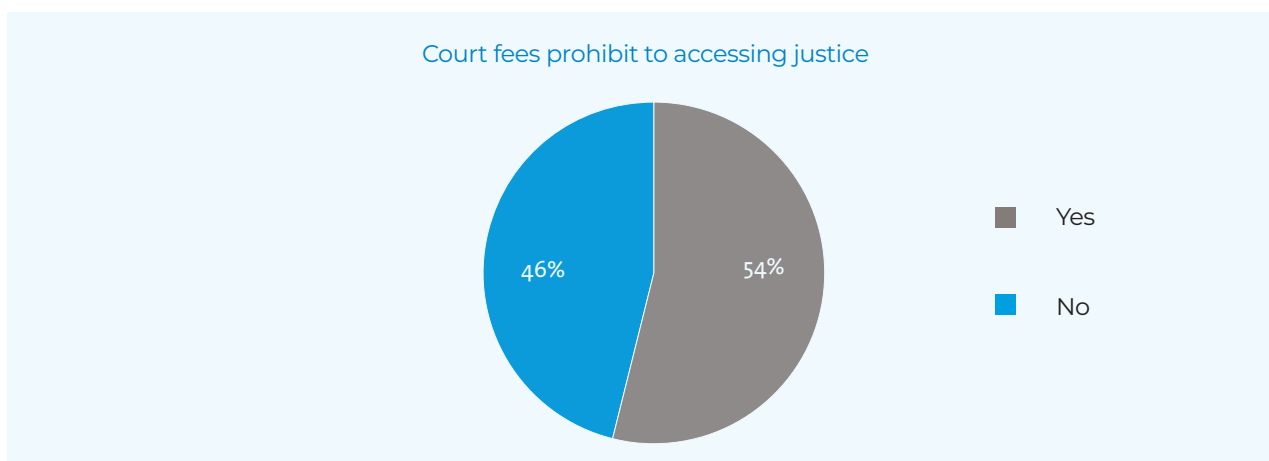
n. Are court fees hindering women’s access to justice?

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 critical 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 26). 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 thought the fees were a recipe for corruption, as court clerks still request user fees. In Kenya, P3 forms⁶ are charged against the set norm, as women have to pay to obtain the documents for the onward processing of their cases. This challenges access to justice for poor women and encourages corruption.

Figure 26

Do court fees prohibit access to justice?



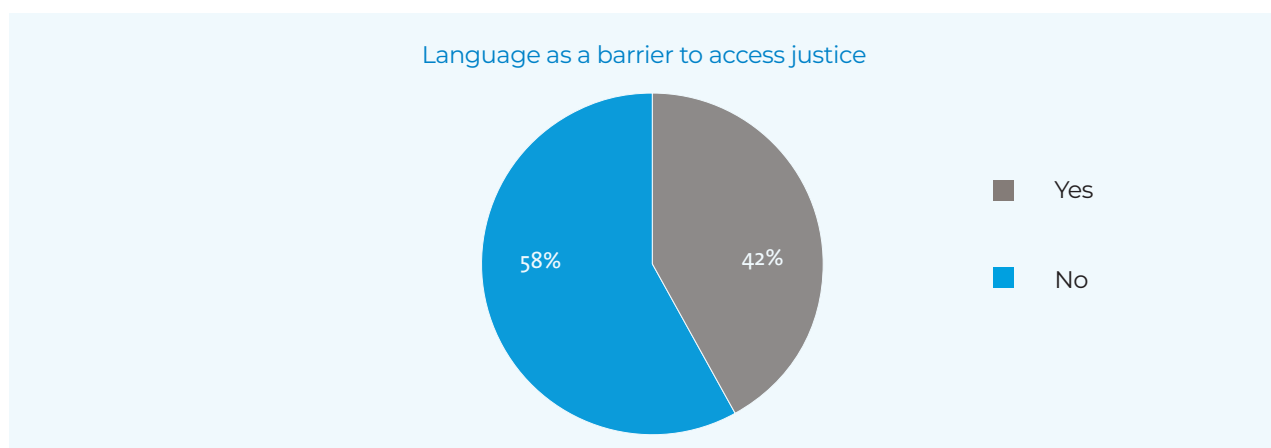
o. Language as a barrier to women's access to courts

Language interpreters are available for all ten countries studied for all court users. Thus, key informants reported that only 42 per cent of the respondents felt that language could be a barrier to women's access to justice (Figure 27). Fifty-eight per cent said that, as they have language interpreters in their countries,

language is not a barrier to accessing justice for women. Key informants also held these views in Burundi, Ethiopia, Kenya, Malawi, Tanzania and Zimbabwe. The study also found that language interpretation is available to women detainees and women with disabilities without any form of discrimination.

Figure 27

Language as a barrier to access to justice for women



p. The length of time it takes to resolve a case

Key informant interviews and online study respondents reported that GBV cases could take 6 to 24 months. During the study, 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 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 between 12 and 24 months. Most 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 with the court procedures without causing unnecessary delays.

Table 5

Case dissolution duration

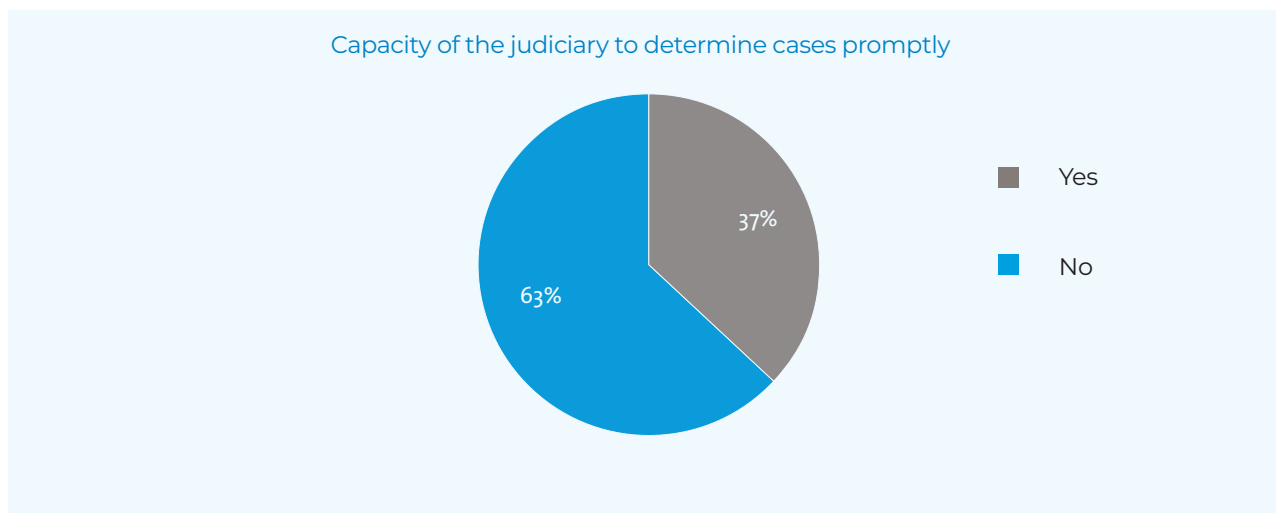
The average duration of a case	Percentage of respondents	Number of respondents
Less than 6 months	33.8	211
6–12 months	18.8	117
12–18 months	10.0	62
18–24 months	6.3	39
More than 24 months	31.3	195

Over 60 per cent of the respondents felt that the judicial system could not 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 study countries' civil/criminal justice systems are not free from undue government influence. This affects the independence and decisions of the system about access to justice for women (see Figure 28).

Figure 28

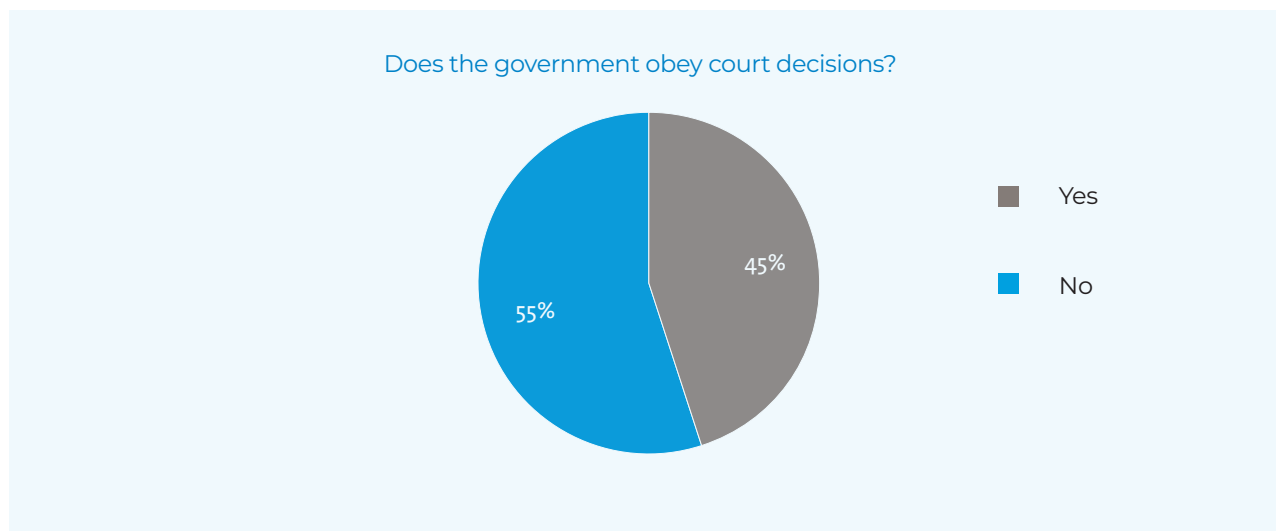
Capacity of the judiciary to determine cases promptly



q. Does the government obey court decisions?

Figure 29

Does the government obey court decisions?



Respondents reported that their governments do not always obey the courts' decisions, even when the justice system has tried its best. This was the view of 55 per cent of the study respondents, who stated that their governments do not follow their court decisions (Figure 29). Only 45 per cent said their governments obey court decisions, especially on issues of government obligations. A key informant interview respondent from Uganda stated, "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." Somalia mentioned a changing situation in which courts have increasingly gained authority and imposed decisions taken on the government, affecting court judgments. Some respondents were frustrated by government influence to the extent that they felt that the government has a direct effect in that it controls the court and decisions are reached by the government, not the courts.

CONCLUSIONS FROM THE STUDY

While individual countries have made efforts to end gender-based violence (GBV), glaring statistics and stories remain on the problem's continued significance, especially concerning intimate partner violence, non-partner sexual violence, conflict-related GBV, and harmful practices. The establishment of institutions and the adoption of internal reforms of different agencies aimed at creating systemic responses to reduce GBV are essential foundations but have had limited success. It, therefore, requires urgent attention to increasing 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 the pursuit of accessing justice, whether from customary or statutory structures. The 10 countries studied have enabling policies, legal frameworks, standards and laws that promote the rights of women to access justice. However, some legal frameworks exist alongside harmful cultural practices and discriminatory statutes, including a 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 due to 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 primarily 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 most issues for fear of stigma and a lack of confidence in the criminal justice system. In Kenya and many countries in the region, religious and customary laws coexist with statutory regulations, creating legal pluralism and a 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 court or justice system support is hardly 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). There is a lack of state accountability for women and girls with intellectual impairments, as manifested through insufficient disaggregation of GBV cases for people with intellectual disabilities. There is limited knowledge of the reproductive health rights of women and girls with intellectual impairments among office bearers and a lack of progressive laws on sexual violence against women and girls with intellectual impairments. Legal causes include discrimination against women and girls with intellectual impairments, who may have a lower legal status either by 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 cruel treatment of women and girls with disabilities by the police and judiciary. These challenges reveal that there are still many gaps and loopholes that need to be addressed if women and girl survivors with intellectual impairments are to find justice. Generally, there are no sufficient 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 10 study countries and the 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 study's findings 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. They 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 prohibiting gender inequalities. However, gender inequalities remain common in the countries, with polygamy, child marriage, and prohibiting 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 have openly failed to define men's and women's property rights. Notably, the Divorce Act gives men more power to decide 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 and sexual violence. 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 violence against women and girls (VAWG) by locking them in their homes with their abusers and 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 innovative and remote services, such as first responders and crisis hotlines or helplines, have been valuable links to legal aid. In contrast, innovative solutions such as courts adopting technology to deliver and hear cases remotely have enhanced accountability and efficiency. Addressing barriers to and gaps in accessing these technologies for women and girls is essential. For instance, women in remote areas have internet connectivity challenges. Even when they do not, they may have no opportunity to make calls and

report GBV cases if they reside with abusive partners. It has also emerged that Ethiopia, Kenya, South Sudan, Uganda and Zimbabwe, among others, have established toll-free telephone numbers for survivors of GBV to report their cases which are exemplary forms of intervention.

The legislative and legal analysis revealed that all countries this study covered recognize statutory and customary justice delivery mechanisms. Countries like South Sudan seem stronger in their traditional 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 harmonizing customary and statutory justice delivery mechanisms to end impunity for the perpetrators of VAWG in the region.

RECOMMENDATIONS FROM THE STUDY

The study recommends a framework of agreed commitments in which access to justice is part of achieving gender equality and women's empowerment and brings together peace and security, human rights and development agendas. By doing so, programming and policies can better address the continuum of violations of women's rights, including in contexts where transitional justice processes have been concluded. The study recommends the following actions as a priority to ensure that women have full access to justice and to uphold a justice system responsive to the needs of women and girls in their diversity.⁷

- 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.
- 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.
- Use the available justice systems to hold perpetrators who violate women's rights accountable. 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.

- Create a sector in the judiciary that solely addresses 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.⁸
- Create justice avenues that protect women from economic exploitation, unfair labour practices, physical harm, and unequal pay by accessing justice to address emerging unfair practices.
- 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 they bring 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. Women judges may provide litigants with holistic justice solutions, making formal justice systems more appealing.
- 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 boys' 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.

- Identify and eliminate obstacles and barriers women face 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); keeping women informed throughout the justice process.
- 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.
- Provide information and diverse options to women seeking justice who may be disenfranchised because of the patriarchal system and cultural and religious laws, which make women refrain from reporting to the police, seeking treatment, guidance and counselling, and giving evidence during court proceedings.
- 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.

- 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. Traditional justice systems led by women and where women were part of decision-making proved more gender-sensitive in issuing their judgments and were more responsive to women and girls seeking justice following GBV. The time taken for cases sitting before committees including women was less than that for cases heard by male-dominated judges, who showed patriarchal tendencies to disregard women's needs and ended with biased judgments favouring the male perpetrators of the violence.
- Ensure that the customary laws are in line with constitutional provisions on fundamental rights and international human rights standards.
- Declare customary laws that illegally discriminate against women and girls (e.g., child marriage).
- Continue the engagement with traditional and religious leaders and cultural authorities to improve the gender sensitivity of the traditional dispute resolution systems at the 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 through an engagement strategy.
- Develop coordinated community responses on matters of VAWG to facilitate women's and girls' access to justice in the community.

ENDNOTES


- 1 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>.
- 2 National Council for Law Reporting. 2020. .
- 3 Abyssinia Law. 2020. "Abyssinia Law." Accessed 24 June 2021. <https://www.abysinialaw.com/>.
- 4 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>.
- 5 Field data, 2020.
- 6 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).
- 7 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>.
- 8 See, for example, in countries such as Kenya, where there are children-only courts.





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