



ESA QUARTERLY KNOWLEDGE SERIES

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



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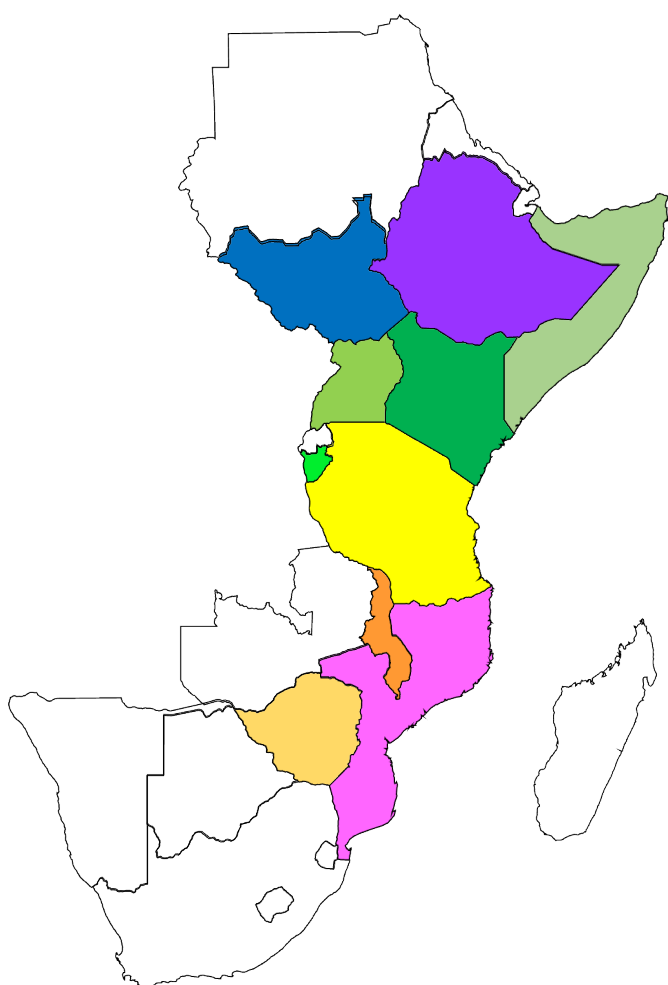
THE RIGHT TO ACCESS TO JUSTICE



The right to access justice for women is essential to the realization of all the rights protected under the CEDAW. 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. ”

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.

BACKGROUND TO THE STUDY



SCOPE

10 Countries in East and Southern Africa-Burundi, Ethiopia, Kenya, Malawi, Mozambique, Somalia, South Sudan, Tanzania, Uganda and Zimbabwe

METHODOLOGY

Qualitative and Quantitative, Snowball Sampling, Triangulation

Stakeholder Consultation

- ▶ Online questionnaires and surveys (663 respondents, 58% female; 42% male)
- ▶ Virtual meetings
- ▶ Case studies
- ▶ 30 FGDs (8-12 per group) – traditional leaders, women and CBOs
- ▶ Key informant interviews (rights holders, duty-bearers)

Secondary desk review and analysis of available publications, policy frameworks, case files and traditional and cultural laws

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.

CONCEPTUAL FRAMING OF ACCESS TO JUSTICE



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

KEY FINDINGS: ENABLING LEGISLATIVE & POLICY ENVIRONMENT

ALL COUNTRIES IN THE STUDY HAVE:

- Laws and policies addressing VAW and other protections for women and girls
 - Constitutional provisions that call for equality and non-discrimination on basis of gender
 - Provisions to protect against violence
 - Ratified Convention on the Rights of the Child
 - Ratified Convention on the Elimination of All Forms of Discrimination Against Women (Except Somalia)
 - Ratified Convention on the Rights of Persons with Disabilities and/or its Optional Protocol (except South Sudan)
 - Signed the Maputo Protocol on the Rights of Women in Africa: 7 Ratified (Except Burundi, South Sudan, Somalia)
- Committed to SDGs, Beijing Platform for Action + UN Security Council Obligations (e.g. 1325 + others on Women Peace and Security)
- **All countries (except Burundi) recognize customary law alongside statutory laws (and in some countries religious law), creating legal pluralism and complex justice structure for women to navigate**

IMPORTANT TO NOTE:



Implementation & effectiveness varies by country (e.g. contradictory legislation, disconnected laws & practices)



Having the laws has made a significant difference to people's awareness of Violence Against Women (A start, but only one step)



Monitoring and enforcement of commitments is a challenge

JUDICIAL MECHANISMS

ALL COUNTRIES

- **Recognize both statutory and customary justice delivery mechanisms** (some countries, stronger in their customary justice systems than their legal framework)
- Laws recognize customary courts (except Burundi and Kenya, even though customary justice practices are used)
- Confirm that a woman's testimony carries the same evidentiary weight in court as a man's.
- Discrepancies and gaps between statutory and customary provisions on access to justice for women

JUSTICE DELIVERY SYSTEMS:

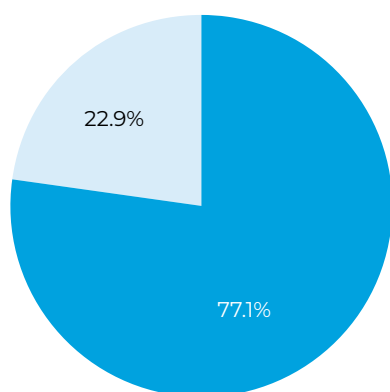
- Formal courts, traditional justice systems, religious justice systems, justice support institutions (including civil society and non-governmental institutions), community courts, specialized courts (often labour issues, corruption, commercial and administrative cases) and local justice administration, comprising chiefs, other government officials common across the countries.

VARIANCES ACROSS COUNTRIES IN:

- **Women-friendly justice principles** in law, policy regulations and training, (e.g. statement-taking from women, provision of evidence by women, court set-up when women testify, privacy and confidentiality)
- **Legislation on mandatory training for police and judicial personnel**
- **Reference to women's access to justice varies – but even when mentioned, practice can differ**
- **Laws on gender desks/courts** in SIX countries: Burundi, Ethiopia, Kenya, South Sudan, Tanzania, Zimbabwe (but not all functional)

PERCEPTIONS ON ACCESS TO JUSTICE

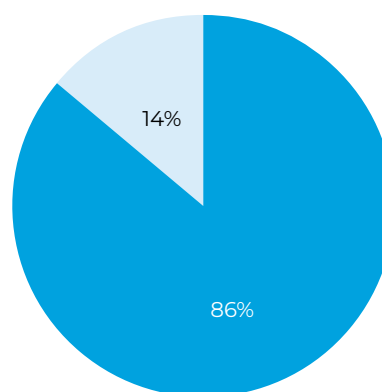
COMMUNITY PRACTICES AFFECTING AJ



They have an impact on women's access to justice

Yes ■ No ■

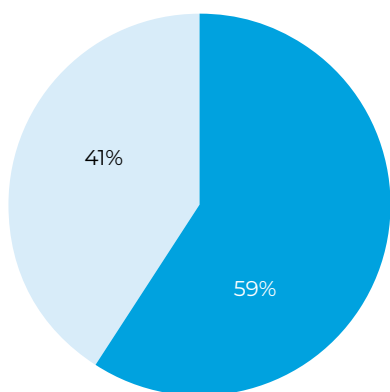
AWARENESS OF PLACES TO ACCESS JUSTICE FOR WOMEN



Majority of women are aware of where to go for justice when they are aggrieved

Yes ■ No ■

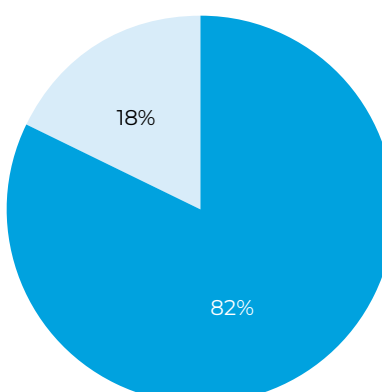
LIKELIHOOD THAT POOR WOMEN RECEIVE LEGAL AID IN ACCESSING JUSTICE



All countries provide legal aid support to poor women including through the CSOs, NGOs, Legal professional associations among others.

Yes ■ No ■

EXISTENCE OF OFFICIAL INTERNET SITES FOR LEGAL INFORMATION



All the countries have official online platforms for legal information, majority hosted at the judicial websites

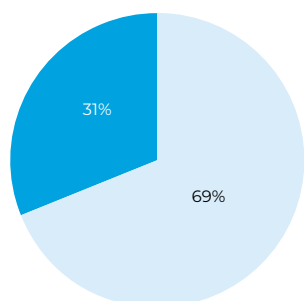
Yes ■ No ■

PERCEPTIONS OF RESPONDENTS

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

Some respondents (Ethiopia, Kenya, Malawi and Tanzania) noted that threats and pressure are not taken seriously by the justice institutions. Courts come in third as an option for women in accessing justice. Role of traditional leaders, local administration and family members emphasized.

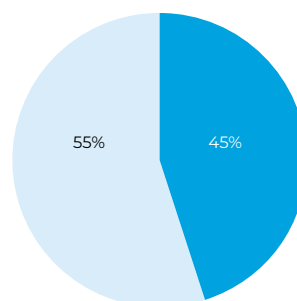
COMMUNITY PRACTICES AFFECTING AJ



Even where a judgement has favoured women, majority do not receive compensation pronounced in courts

Yes ■ No ■

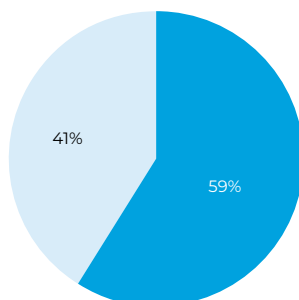
COMMUNITY PRACTICES AFFECTING AJ



Corruption is a major barrier for access to justice by women in the region.

Yes ■ No ■

DO JUDGES REQUEST FOR BRIBES IN YOUR COUNTRY?

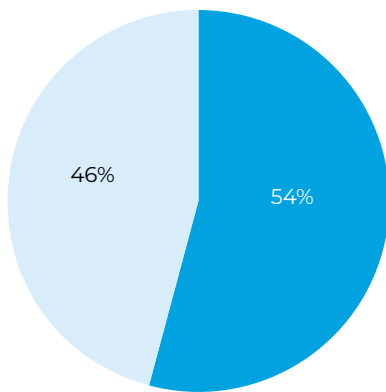


Judges still accept bribes to skew judgement which inhibits justice for women in the region.

Yes ■ No ■

WOMEN'S LEVELS OF TRUST IN JUSTICE INSTITUTIONS

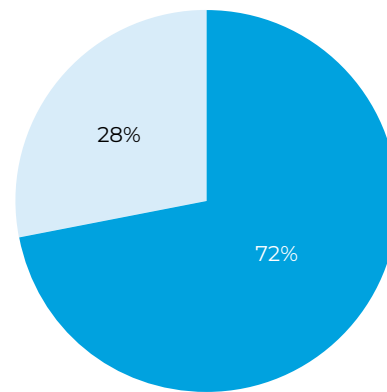
WOMEN'S TRUST IN COURTS OF LAW



Majority of women do not trust courts of law in their countries.

- little or no trust in courts
- trust courts

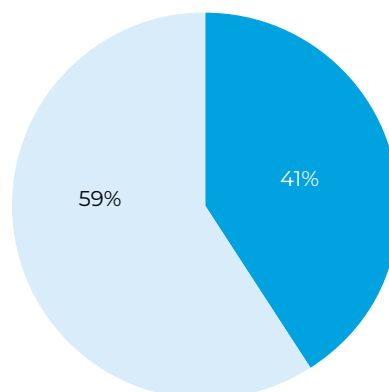
AWARENESS OF PLACES TO ACCESS JUSTICE FOR WOMEN



Majority of women believe in the religious institutions for their access to justice as opposed to other available justice options.

- Yes
- No

DO YOU TRUST YOUR TRADITIONAL LEADERS FOR JUSTICE?



Women do not trust traditional justice system. This is due to negative cultural practices that place women at disadvantage with male counterparts.

- Yes
- No

KEY BARRIERS FACED BY WOMEN IN SEEKING JUSTICE

Overlapping forms of exclusion

- Sex and gender identity
- Poverty
- Disability
- Ethnicity
- Geography
- Sexual orientation
- Migratory status
- Language

Attitudinal and societal barriers

- Stigma
- Police victimization
- Gender stereotypes
- Limited knowledge of the law and rights
- Low trust in formal justice and police

Systemic challenges

- Limited capacities to process GBV cases and understand needs of specific group
- Financial - under-resourcing
- Inadequate implementation and enforcement mechanisms
- Case manipulation and delays
- Corruption
- Costs of pursuing formal justice

Structural & legal discrimination (on paper / in practice)

- Exclusion of women from traditional arbitration committees
- Low representation of women in formal justice
- Inconsistencies in law and between plural legal systems
- Discriminatory laws and decisions
- Legal identity barriers

Access to Justice?



KEY BARRIERS FACED BY SPECIFIC GROUPS OF WOMEN IN SEEKING JUSTICE



Photo Credit: UN WOMEN



Women and girls with disabilities (physical, hearing, visual, cognitive or intellectual impairments) – different attitudinal, institutional and environmental barriers related to lack of knowledge by service providers, stigma and misperceptions around disabilities, processes and institutions not accessible



Lesbian, Gay, Bisexual, Transgender and Intersex Persons (Discrimination, criminalization and stigma from service providers, family and community and limited access to assistance to pursue justice)



Migrant, displaced and refugee women and girls: Different set of rules, practices, discrimination

PROMISING PRACTICES

SURVIVOR-CENTRED APPROACH



Legal aid clinics, paralegal support systems for women survivors of violence (e.g Kenya FIDA capacity development with women on self-representation, innovative interventions equipping women with skills to

represent themselves in court with the remote help of a lawyer)

Burundi and Ethiopia have specific courts for gender and rape and other sexual crimes against women and children

LEGISLATING FOR THE PROVISION OF FUNDING



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. 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. The provision of free legal assistance and legal education for survivors has received significant support in Ethiopia through university legal centres.

STRENGTHENING THE JUSTICE SYSTEM (FORMAL AND TRADITIONAL)



Tanzania, since 2005, the curriculum of police training institutions for officers updated to encompass issues of violence against women and women’s rights. All officers, peacekeepers and other police personnel receive training on gender based violence

The Judicial College of Zimbabwe equips magistrates with the practical

skills to preside over cases, and the Zimbabwe Republic Police trains police on handling abuse

Malawi created the Paralegal Advisory Service to train paralegals to educate, provide advice and support communities in the criminal justice system.

INTER-AGENCY COORDINATION



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

INITIATIVES FOCUSING ON THE NEEDS OF SPECIFIC GROUPS



Malawi: perpetrators of sexual violence against persons with psychosocial or intellectual disabilities are prosecutable under Section 139 of the Penal Code. According to this section, people who knowingly take sexual advantage of such people are liable for 14 years' imprisonment.

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

MONITORING AND EVALUATING THE IMPLEMENTATION OF LEGISLATION OR POLICIES.



Mozambique NGO Association of Disadvantaged Women 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.

Kenya: Wangu Kanja Foundation, a local gender based violence organization, developed a first-ever police application called 'SV_Case Study,' used to enhance support, documentation, tracking and monitoring of sexual violence cases in Kenya.

RECOMMENDATIONS

Eliminate gender based violence and discrimination as a pillar of sustaining peace and the rule of law, by removing retrogressive laws, enforcing and raising awareness of laws and standards that uphold women's rights, and criminalizing all forms of violence against women and girls.

Ensure proper enforcement of the legislative provisions on protection of women throughout the justice system-seeking process, including through investment in managing case records and administrative data, coordination among and between justice and other service providers and monitoring implementation.

Create provisions for compensation for women and girls who are victims of violence and discrimination, including inheritance rights and child support.

Promote women's property rights and economic status through provisional avenues of access to justice. These include land ownership and inheritance, access to assets such as housing and machinery. Access to justice plays a role in protecting women's rights, personal security and entitlements.

Use the available justice systems to hold accountable perpetrators who violate women's rights. Sustain efforts against impunity, effective and respectful communication with those seeking justice and remove burden of seeking justice from survivors of violence.

Create a sector in the judiciary that solely addresses issues of access to justice for women, by training more female judges on women's rights and addressing violations of them. Consider establishing women-only courts or specialized courts for processing violations of women's rights, which can meet the needs of women GBV survivors.

Create justice avenues to protect women from economic exploitation, unfair labour practices, physical harm and unequal pay.

Feminize the justice sector to improve women's

experience of justice via increasing women in leadership, including police services and the judiciary

Institutionalize and sustain training for judicial personnel, police officers and prison staff on matters related to improving access to justice for women.

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.

Strengthen victim and survivor protection given the cultural fear of negative consequences and backlash from the community (reprisals and revictimization) against survivors. This should cover women's immediate, medium and long-term safety needs, assess risks and cover safety planning, enforcement, and coordination of protection 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 prevent women from reporting to 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 (e.g. architecture of buildings, sign language interpretation, facilities and aid to women with disabilities, addressing attitudinal barriers, and adapting the justice process, including reducing the procedures that could delay the delivery of justice).

COMMUNITY-LEVEL RECOMMENDATIONS:

Ensure traditional authorities understand gender issues, support their committees to be gender-sensitive and have women represented. Support for traditional justice systems led by women and where women are part of decision-making.

Ensure customary laws align with constitutional provisions on fundamental rights and international human rights standards.

Declare customary laws that discriminate against women and girls illegal (e.g. child marriage).

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.

Develop coordinated community responses on matters of violence against women and girls to facilitate women's and girls' access to justice in the community.

POINTS FOR REFLECTION

How do the findings reflect what you see in your own communities and countries?

Please reach back to us on jack.abebe@unwomen.org for any feedback on the series.



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