

# Justice and Gender

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## DCAF, OSCE/ODIHR, UN Women Gender and Security Toolkit

This Tool is part of the DCAF, OSCE/ODIHR, UN Women *Gender and Security Toolkit*, which comprises nine Tools and a series of Policy Briefs.

### Tools:

1. Security Sector Governance, Security Sector Reform and Gender
2. Policing and Gender
3. Defence and Gender
4. Justice and Gender
5. Places of Deprivation of Liberty and Gender
6. Border Management and Gender
7. Parliamentary Oversight of the Security Sector and Gender
14. Intelligence and Gender
15. Integrating Gender in Project Design and Monitoring for the Security and Justice Sector

### Policy Briefs:

The 2030 Agenda for Sustainable Development, the Security Sector and Gender Equality  
 A Security Sector Governance Approach to Women, Peace and Security  
 Gender, Preventing Violent Extremism and Countering Terrorism  
 Gender and Private Security Regulation

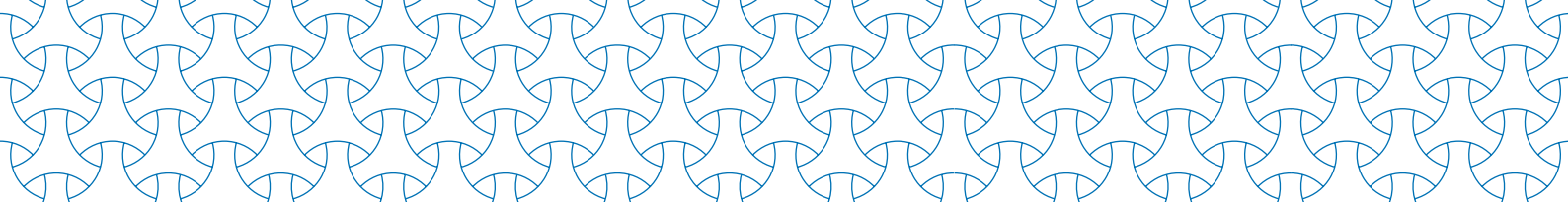
Additionally, a Compendium of International and Regional Laws and Instruments Related to Gender Equality and the Security and Justice Sector is available online.

The *Gender and Security Toolkit* builds upon the DCAF, OSCE/ODIHR, UN-INSTRAW *Gender and Security Sector Reform Toolkit* that was first published in 2008. The following Gender and Security Sector Reform Tools can be used alongside this Toolkit:

8. National Security Policy-Making and Gender
9. Civil Society Oversight of the Security Sector and Gender
11. Security Sector Reform Assessment, Monitoring and Evaluation and Gender
12. Gender Training for Security Sector Personnel
13. Implementing the Women, Peace and Security Resolutions in Security Sector Reform



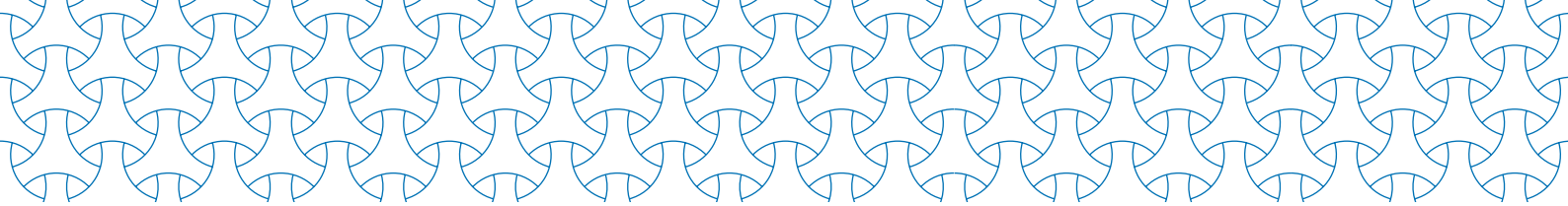




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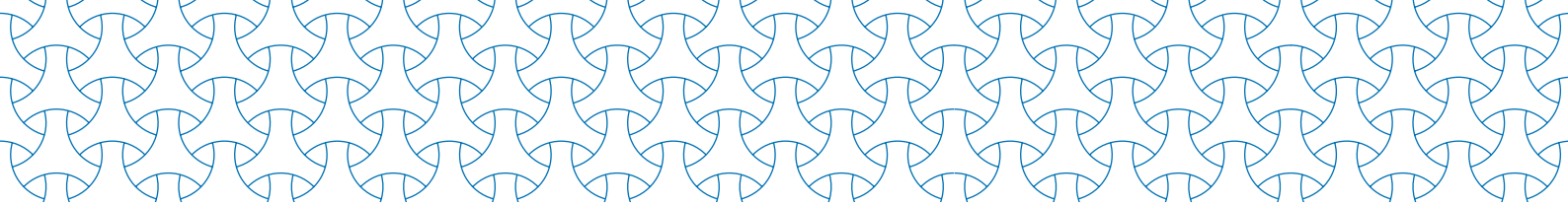
# Acronyms

<b>BiH</b>	Bosnia and Herzegovina
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CSO</b>	civil society organization
<b>DCAF</b>	Geneva Centre for Security Sector Governance
<b>EUAM</b>	European Union Advisory Mission
<b>GBV</b>	gender-based violence
<b>IDP</b>	internally displaced person
<b>LGBTI</b>	lesbian, gay, bisexual, trans and intersex
<b>NGO</b>	non-governmental organization
<b>ODIHR</b>	OSCE Office for Democratic Institutions and Human Rights
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>SDG</b>	Sustainable Development Goal
<b>SGBH</b>	sexual and gender-based harassment
<b>UN</b>	United Nations
<b>UNDP</b>	UN Development Programme
<b>UNODC</b>	UN Office on Drugs and Crime
<b>WPS</b>	Women, Peace and Security









# 1. Overview

## 1.1 Background

A decade has passed since the publication of the DCAF, OSCE/ODIHR and UN-INSTRAW *Gender and Security Sector Reform (SSR) Toolkit*, including its Tool on Justice Reform and Gender. Over the past decade significant strides have been made towards more gender-responsive and equitable service delivery in the justice sector. Today, in many countries, there is greater representation of women in the judiciary, a greater understanding of the way in which gender bias operates in the justice sector and a more concerted effort to ensure the law and its application are gender-responsive and not discriminatory. However, there is a long way to go; indeed, in recent years there has been regression in a number of countries, with changes in legislation and policy that expose women to violence.

Access to justice is a basic principle of the rule of law and a key human rights safeguard, enabling the enjoyment of a range of human rights. Access to justice is also an essential component of sustainable development, recognized in Sustainable Development Goal (SDG) 16. Where the law or the justice system discriminates against women, men, girls or boys (or groups within these groups), or discriminates on the basis of sexual orientation or gender identity, access to justice is compromised. Where the law or justice systems do not take into account gendered economic, structural and cultural barriers, access to justice is compromised. This can be compounded when the justice system is not representative of the people it serves. Where the rule of law has been weakened by conflict, access to justice becomes even more difficult for those experiencing gender-based discrimination. The result is impunity for perpetrators of crimes, and certain groups within society being vulnerable to violence, harm and discrimination. Such violence, harm and discrimination feed and are fed by gender inequality, and undermine prospects for security, development and peace for communities and the broader society.

A primary manifestation of gender inequality in the justice sector, and more broadly in access to justice, is the longstanding and historically rooted discrimination against and exclusion of women from the justice system. It should also be acknowledged that gender is not just about women, it is also about men and dominant masculinities. Efforts to promote a more gender-responsive justice sector will benefit not just women but also men. Integrating a gender perspective can, for example, challenge cultural norms which associate men with violence.

This new DCAF, OSCE/ODIHR, UN Women *Gender and Security Toolkit* draws together the key lessons of the past decade in promoting gender equality in security and justice. Its aim is

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Image: More than 25 rural courts judges and tribal leaders from North Darfur participated in the workshop on human rights organized by UNAMID in collaboration with North Darfur Executive Office of Native Administration in El Fasher  
© Albert González Farran/ UNAMID.

to share new and emerging good practices, reflecting on how they have been developed. The Toolkit is designed to help security and justice sector institutions to integrate a gender perspective: the sector needs to move beyond simply increasing the numbers of women, and become more aware of and responsive to different gendered needs of the entire population. In doing so, attention to often-neglected security and justice needs of women and girls must always be a key priority.

## 1.2 Audiences for this Tool

The *Gender and Security Toolkit* will, we hope, be used by many different audiences in many ways. It can be, for example, a resource of good practices and lessons learnt to inform new policies, programmes, strategies or procedures for the justice sector; a source of ideas for monitoring and oversight activities; and a reference for arguments and evidence to support advocacy and training.

This Tool is intended mainly for use by Ministry of Justice personnel, judges, lawyers, court administrators and others working in justice institutions, as well as those educating or training judicial and legal professionals. This Tool will also be of value to those who work with justice institutions to advance gender equality, such as civil society organizations (CSOs), national human rights institutions, parliamentary committees and international actors engaged with justice sector reform.

## 1.3 Outline of this Tool

**Section 2** describes *why* gender is important to the work of the justice sector and introduces key concepts. Fundamentally, the integration of a gender perspective and the pursuit of gender equality are integral to protecting and promoting human rights and realizing justice, because gender and gender biases strongly influence individuals in various ways.

- ◆ Experiences of crime and injustice.
- ◆ Experiences of working in the judiciary, courts and other justice sector institutions.
- ◆ Experiences of engaging with justice sector institutions, such as courts.
- ◆ Treatment under the law.
- ◆ Access to justice.

Moreover, integration of a gender perspective in the justice sector is necessary to fulfil obligations under international law. It also strengthens good governance of the justice sector and contributes to peace and development.

**Section 3** provides a *vision* of what a justice sector that integrates a gender perspective into its work and advances gender equality will look like.

- ◆ Inclusive, representative and non-discriminatory.
- ◆ Responsive to the different needs of women, men, girls, boys and people of diverse sexual orientations and gender identities and expressions.
- ◆ Equally accessible to all.
- ◆ Contributing to prevention of, protection from and response to gender-based violence (GBV) and discrimination.
- ◆ Providing oversight of the whole security sector to ensure that it is gender responsive and promotes gender equality.
- ◆ Catalysing transformational change within society towards gender equality, non-discrimination and security.

**Section 4** discusses what *measures* need to be taken to achieve a justice sector which integrates a gender perspective and promotes gender equality.

- ◆ Building an evidence base to inform policy and programme development.
- ◆ Ensuring gender reform efforts are adequately planned, co-ordinated, budgeted and supported.
- ◆ Implementing gender-responsive legal reforms.
- ◆ Reforming and/or developing policy and procedures.
- ◆ Establishing and strengthening gender-focused organizational structures.
- ◆ Addressing GBV.
- ◆ Training and capacity development.
- ◆ Developing a more representative and responsive justice sector.
- ◆ Facilitating full and equal access to justice.
- ◆ Engaging with informal justice providers.
- ◆ Strengthening gender-responsive internal and external oversight of the justice sector.
- ◆ Challenging societal gender norms and stereotypes and legally empowering the marginalized.

Throughout the Tool there are references to *case studies* in **Section 5** that illustrate where efforts to integrate a gender perspective and promote gender equality in and through the justice system have achieved sustained results or represent important progress.

**Section 6** suggests elements of a *self-assessment checklist* for justice institutions.

**Section 7** lists other *useful resources*.

The other Tools and Policy Briefs in this Toolkit focus on other security and justice issues and providers and themes (see page i). It is intended that the Toolkit be used as a whole, with readers moving between Tools and Policy Briefs to find more detail on aspects that interest them.





নিরাপদ আ  
নারী পুরুষের  
সমান অধিকার

নারী  
অভিবাসী কর্মী  
দেশের  
সম্মানিত নাগরিক

কাজের জন্য  
বিনামূল্যে যাবার  
নারী ও পুরুষের  
সমান অধিকার

নিরাপদ অভিবাসন  
অধিকার উন্নয়ন

নিরাপদ অভিবাসন  
অধিকার উন্নয়ন

UN  
WOMEN

United Nations Entity for Gender Equality  
and the Empowerment of Women

তন অভিবাসনে নারী নির্যাতনের ঝুঁকি কম  
সচেতন হওয়া চাই  
অভিবাসনে ভয় নাই





## 2. Why are gender equality and integrating a gender perspective important in the justice sector?

Gender equality is a fundamental human rights principle enshrined in binding human rights treaties, and a goal to which governments and international organizations have committed. In addition, integrating a gender perspective in the justice sector improves security and the rule of law by facilitating equal access to justice. It counters impunity for crimes, in particular crimes of GBV, and improves protection against such crimes. It contributes to laws which protect the rights of everyone, and justice institutions that are representative, effective and fair. Such gender reforms in the justice sector contribute to transforming discrimination and inequality of resources, opportunities and power within society, which themselves feed insecurity and violence and retard development.

This section explains these arguments in more detail. However, first it outlines some key concepts for this Tool associated with the justice sector, justice reform and gender.

### 2.1 Key concepts

#### The justice sector

The justice sector includes all the agencies and actors, both state and non-state (or formal and informal), involved in the provision, management and oversight of justice. While the concept of “justice” varies between cultures, it can be broadly defined as attainment of that which is just or fair. These norms are codified in law and applied, protected and enforced by the justice sector.

Legal systems vary but can generally be divided into two branches: criminal law and non-criminal law. Non-criminal law deals with, among other things, interactions between individuals relating to property, contracts, injuries, family matters, etc., and the fairness of decisions and actions by governmental agencies.

Functions of a justice sector can include:

- ◆ dispute resolution
- ◆ law enforcement
- ◆ protection of rights
- ◆ judicial review and accountability
- ◆ regulation.

The composition of the justice sector varies across national contexts as a result of different legal and political systems, cultural and historical traditions, and normative frameworks. Depending on the context, the justice sector can include a range of elements. In this Tool,

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Image: Rally in Faridpur, Bangladesh for “16 Days of Activism Against Gender Violence”, 2011 © UN Women / Humaira Farhanaz.

a “justice sector” refers to a judicial system, executive authorities and oversight bodies, as described in the top three boxes in Figure 1.

Figure 1: Elements of the justice sector

#### **A judicial system and associated personnel and agencies**

For example: courts and judges, as well as lawyers, defence and prosecution services, state legal practitioners, bar associations, legal aid bodies and public representation programmes, paralegals, court personnel (such as bailiffs and ushers) and military justice systems, as well as alternative dispute resolution mechanisms such as tribunals, mediation services and community-based resolution mechanisms, where they exist.

#### **Executive authorities responsible for justice sector administration and management**

For example: usually a justice ministry or department that is functionally independent from the judiciary. Finance authorities and audit agencies also play a role in ensuring efficiency and accountability.

#### **Institutions responsible for justice sector oversight**

For example: parliamentary committees and independent oversight authorities such as judicial councils, judicial services and law commissions, as well as independent oversight institutions with a broader remit such as ombuds-institutions, human rights commissions and anti-corruption commissions.

#### **Agencies responsible for law enforcement\***

For example: police in all jurisdictions, but also general regulatory bodies, customs and border authorities, intelligence services, civil emergency services and sometimes commercial security contractors, among others.

#### **Agencies responsible for carrying out sentencing and rehabilitation**

For example: prisons, corrections and detention authorities (including administrators and prison guards); social, medical and mental health services specifically serving the justice sector; and authorities overseeing pretrial detention and community-based sentencing, often including customary and traditional authorities or commercial companies.

In some countries people primarily access justice through non-state justice providers, particularly where state services lack reach, capacity or legitimacy. Non-state justice providers can be more accessible, affordable, trusted and transparent, and can provide a swifter and fairer response. However, they can also be discriminatory or exclusionary, and, like state structures, often replicate and reinforce dominant power structures and gender bias. For instance, non-state justice providers in parts of the Democratic Republic of the Congo have regarded rape as an attack on the family’s honour rather than on the woman, and so perpetrators provide reparations only to the family of the victim.

Countries emerging from conflict or authoritarianism may utilize transitional justice processes to deal with serious and massive violations of human rights and re-establish the rule of law. Transitional justice can provide redress for large-scale violations and identify avenues to address the root causes of violence and repression, including gender inequality.

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\* Agencies responsible for law enforcement are addressed in Tools 2, 6 and 14. Prisons and other places of deprivation of liberty are addressed in Tool 5.



Transitional justice mechanisms include criminal prosecutions, truth seeking, reparations and other guarantees of non-recurrence, including institutional and judicial reform. As an example of the latter, in 2004 Sierra Leone's Truth and Reconciliation Commission recognized that wartime violence had been part of a continuum of violence against women that was ongoing in the post-conflict period and recommended the enactment of domestic violence legislation, which was later adopted.<sup>1</sup> Dedicated gender expertise and funding are essential to ensure that a transitional justice process holistically and comprehensively addresses GBV and ensures the meaningful participation of women and lesbian, gay, bisexual, trans and intersex (LGBTI) people.

## Justice reform

The aim of justice reform is to improve the effectiveness, efficiency, fairness, accountability, impartiality and independence of justice institutions. Justice reform includes amending or drafting new laws (legal reform) as well as the development of policies, procedures, structures and mechanisms that allow for the effective implementation of laws and equal access to justice (judicial reform).

While a key focus of much justice reform is the criminal justice system, both criminal and non-criminal systems play important roles in promoting gender equality. Many aspects of law concerning property, family, education and employment impact upon men and women differently and can significantly contribute to or redress gender inequalities in society.

Justice reform should be a part of any broader security sector reform programme. The justice sector plays a vital role in good governance of the security sector by holding security personnel and the state to account before the law, and ensuring that powers vested in security sector actors and other branches of government are used appropriately.\*

## Gender

"Gender" refers to the roles, behaviours, activities and attributes that a given society at a given time considers appropriate based on biological sex. These attributes, opportunities and relationships are *socially constructed* and are *learned* through socialization processes. Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, and decision-making opportunities. In patriarchal societies, political, economic and social power lies with men, and attributes associated with manliness are valued over those associated with women.

Women and girls are usually in less powerful positions compared with men and boys and, as a result, face numerous forms of structural discrimination economically, politically, socially and in terms of their legal rights.<sup>2</sup> While it is crucial to address the discrimination experienced by women, it is important not to reduce the understanding of "gender" to "women", or to just "women" and "men". Attending to gender in the justice sector is about attending to the different needs, views and experiences of men, women, girls, boys and persons with the full diversity of gender identity and expression. Likewise, expectations about sexual behaviour are an important part of how societies construct gender and gender roles. So, in thinking about how gender, gender roles and gender inequality operate in society and in institutions, it is essential to include a focus on LGBTI people. Integrating a gender perspective, one must always remember that women and men are never homogeneous groups; they do not all share the same experiences, needs or values, nor have the same opportunities (discussed further on page 11).

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\* Gender and good security sector governance and security sector reform are the subject of Tool 1.

## Integrating a gender perspective in the justice sector

Integrating a gender perspective in the justice sector is about ensuring gender is attended to in all aspects of the justice system. UN Women describes a “gender perspective” as:

... a way of seeing or analyzing which looks at the impact of gender on people’s opportunities, social roles and interactions. This way of seeing is what enables one to carry out gender analysis and subsequently to mainstream a gender perspective into any proposed program, policy or organization.<sup>3</sup>

“Gender mainstreaming” is a process of *assessing the implications* for men, women, girls, boys and persons of diverse sexual orientations and gender identities and expressions of any planned action – whether it be policy development, legislative reform, restructuring of institutions, training or other programmes. As defined by the UN Economic and Social Council, gender mainstreaming is a strategy for *making the concerns and experiences* of men, women, girls, boys and persons of diverse sexual orientations and gender identities and expressions an integral part of the design, implementation and evaluation of any action, in order to ensure that all benefit equally and that inequality is not perpetuated. The ultimate aim of gender mainstreaming is, therefore, to achieve gender equality.<sup>4</sup> In the justice sector, this means achieving “gender justice” (see Box 1).

### Box 1: Gender justice

Justice can be said to refer to accountability, fairness and protection of rights. For the purpose of this Tool, by “gender justice” is meant the protection of the rights of everyone irrespective of their sex or gender identity or gender expression, and the prevention and punishment of GBV and gender-based discrimination. It also refers to a system of law and its application which is non-discriminatory and fair, and thus gender responsive. In other words, the justice system is attentive to lived realities of men, women and people of diverse sexual orientations and gender identities and expressions. Gender justice directly contributes to the promotion of gender equality and to security and the rule of law.

In this Toolkit, “gender perspective” thus means seeing and analysing the impact of gender roles, gender stereotypes and gendered power structures in society and in institutions. This includes seeing and analysing how gender in relation to sexual orientation, gender identity and gender expression affects men, women, boys, girls and persons of other gender identities. This Toolkit uses the term “integrating a gender perspective” to underscore the importance of taking action, beyond assessment and analysis.

## Gender equality

Gender equality means that the rights, responsibilities and opportunities of individuals will not depend on whether they are born male or female, and stipulates the equal right of women and men to opportunities and resources irrespective of their gender or the sex with which they were born.<sup>5</sup> Achieving gender equality includes a positive obligation to address the underlying causes and structures of gender inequality (“transformative equality”), including discriminatory norms, prejudices and stereotypes, and the transformation of institutions that perpetuate discrimination and inequality. In the context of the justice sector, gender equality means that women and men should have equal opportunities to participate in the development and application of the law, to have their rights equally protected and promoted, and to have their needs equally addressed.\*

Gender inequality remains pervasive and systemic in all societies. It sustains and is sustained by violent practices, including GBV. Integrating a gender perspective in the justice sector can provide more equal recourse to justice and equality under the law. This, in turn, helps to redress inequalities that enable the perpetuation of violence, thereby transforming gender

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\* The concept of gender equality is discussed in greater depth in Tool 1 on “Security Sector Governance, Security Sector Reform and Gender”.

power relations. Without integrating a gender perspective in the justice sector, gender power hierarchies are sustained, with their associated violence and other harms.

## 2.2 Individuals' experiences of crime and injustice are gendered

Gender matters to the justice sector because experiences of crime and injustice are gendered and because women have been the primary or only victims of certain forms of violence, usually perpetrated by men. For instance, women and men often experience violent crime differently, in different spaces and by different perpetrators. GBV is an umbrella term for any harmful act that is perpetrated against a person's will and is based on socially ascribed (gender) differences between females and males. Examples include sexual violence, including sexual exploitation/abuse and forced prostitution; domestic violence; trafficking; forced/early marriage; harmful traditional practices such as female genital mutilation; honour killings; widow inheritance; and homophobic and transphobic violence. GBV can take the form of physical, sexual, psychological, verbal or socio-economic harm.<sup>6</sup> While the nature and extent of GBV vary between cultures and societies, violence against women and girls and against LGBTI people is high in most societies. To give an indication of the scope of violence against women, the World Health Organization estimates that 35 per cent of women worldwide have experienced either non-intimate-partner sexual violence or intimate-partner physical and/or sexual violence.<sup>7</sup>

Beyond gendered experiences of crime, women and men often have different experiences of injustice more generally; for example, in relation to land ownership or inheritance.

## 2.3 Gender biases impact upon justice

Access to justice and the type of justice received are also often gendered. Women, girls, men and boys tend to have different experiences within the justice sector when a victim or perpetrator of crime. Sexual orientation and gender identity, ethnicity, race, religion, social or other status can add to and exacerbate the effects of gender-based discrimination, and need to be considered and addressed in an intersectional way.

In any society, "gender bias" shapes the way people act and are treated and can influence judges' and juries' assessments of guilt or innocence, and indeed all aspects of the operation of the justice system (see Box 2).

### Box 2: Gender bias

Gender bias refers to prejudiced thoughts and/or actions based on assumptions of inequality or *gendered stereotypes*, leading to the advantaging or disadvantaging of individuals or groups based upon their gender. Examples are assumptions about how women, men, girls and boys should behave and typically do behave; what is feminine or masculine; and what constitutes "a good woman" or "a real man". Gender bias interacts with other forms of prejudice, including against LGBTI persons.

Gender bias works at various levels and can be difficult to identify, especially if biases are implicit and so ingrained that they have become unconscious or embedded in structures and procedures. The stereotypes which have informed attitudes may not even be consciously acknowledged.

Some examples of the operation of gender bias in the justice system are as follows.

- ◆ Men are assumed to be more aggressive and criminogenic than women, and so tend to be incarcerated more. This is particularly the case if they are also young, indigenous or from an ethnic minority.<sup>8</sup>



- ◆ Assumptions about men being less natural caregivers mean that they are assigned custody of their children less frequently than women.<sup>9</sup>
- ◆ Assumptions about male strength mean that many societies do not have referral or support mechanisms for male victims of GBV, deterring reporting.<sup>10</sup>
- ◆ Assumptions about appropriate behaviour for girls and women lead to victims of GBV being considered to be in some way blameworthy. Fear of how they will be treated in court or expectation that the defendant will be acquitted deters victims/survivors from pursuing justice, resulting in widespread impunity for GBV crimes.
- ◆ More broadly, what constitutes “a good mother”, “a good wife” or “a well-behaved woman” can be the subject of considerable attention during legal proceedings. These expectations can disadvantage those who do not fit mainstream gender stereotypes, assigning blame or detracting from the credibility of her statements. For instance, research conducted in Bosnia and Herzegovina (BiH) and the United States has shown that sentencing of perpetrators of domestic violence is often influenced by factors such as whether their victims are regarded as argumentative or “difficult”.<sup>11</sup>

Integrating a gender perspective in the justice sector challenges these types of gendered assumptions about men and women, masculinities and femininities.



Image: A public awareness campaign highlighting that men, as well as women, can be victims of domestic violence  
© San Diego County District Attorney's Office.

Alongside gender bias, lack of knowledge about crimes with specific gender dimensions also undermines justice. If judges and prosecutors are unfamiliar with the dynamics of GBV crimes and the effects that GBV has on victims beyond the purely physical, they may misinterpret a victim's actions or demeanour as an indicator that they lack credibility. For instance, women often find it hard to report crimes involving GBV and, if they do, may resist testifying in court. Women victims of domestic violence may sometimes recant their testimony, as a way of managing the situation the best they can, or because they are pressured by the perpetrator's family members. As with victims of all crimes, victims of GBV often find it challenging to recall details of an incident or may make somewhat different statements at different times. Judges and prosecutors need to be knowledgeable about the effects of crimes as well as the linkages between memory and trauma to avoid miscarriages of justice.

### LGBTI people and others of diverse sexual orientations and gender identities or gender expressions\*

LGBTI people and others of diverse sexual orientations and gender identities and expressions often face particular forms of discrimination, exploitation, abuse and violence, or are denied equal access to the law and equal treatment within the criminal justice system.

\* Gender, gender roles, gender stereotypes, masculinities and femininities, and diverse sexual orientation, gender identity and expression are discussed in more depth in Tool 1.

In many countries discrimination against LGBTI people increases their risk of coming into contact with the criminal justice system. Being thrown out of home and the resultant increased risk of homelessness, for instance, can put people in conflict with the law, as can trauma suffered as a result of sustained and/or intense discrimination and violence.<sup>12</sup> They can then suffer the consequences of discriminatory attitudes within juries or among judges.

In countries where homosexuality is criminalized, LGBTI persons who are victims of a crime can be reluctant to seek justice. In Lebanon, for instance, while homosexuality is not explicitly outlawed, elements of the Penal Code criminalize same-sex intercourse. This deters LGBTI people from reporting rape for fear of prosecution and incarceration.<sup>13</sup> And while people of diverse sexual orientations and gender identities and expressions have tended to be particularly vulnerable to atrocities committed during armed conflict, transitional justice mechanisms have generally ignored their experiences.<sup>14</sup>

Integrating a gender perspective is important for the justice sector to protect the rights of LGBTI people, facilitate their access to justice and, ultimately, help reduce violence against them.

### Intersectionality\*

Recognizing that men and women, including LGBTI people, are not homogeneous groups, it is necessary for any work on gender and justice to consider how gender intersects with race, class, age, ethnicity, religion, indigeneity, disability and other demographic identifiers in different places and in different times.<sup>15</sup>

The concept of intersectionality refers to the interaction between two or more forms of discrimination or systems of subordination, such as racism, patriarchy or economic disadvantage. An intersectional analysis often shows that the dynamics of exclusion, inequality and violence are intensified when one or more of these systems of subordination intersect: for instance, when a person is also socio-economically marginalized, a member of an indigenous community or ethnic minority group, displaced, LGBTI, has disabilities and/or is an orphan.

## 2.4 Laws are often discriminatory and/or applied in a discriminatory manner

Many countries maintain discriminatory laws concerning GBV, domestic violence, land ownership, marriage, child custody, inheritance, employment and sexual orientation. The following is but a selection of examples.

- ◆ GBV laws commonly exclude certain victims. For example, in some countries laws concerning rape only recognize that females can be raped, only recognize males as perpetrators, do not recognize rape within marriage and/or do not recognize same-sex rape. Others have a long list of mitigating circumstances for rape (e.g. where it might be considered a “crime of passion”).
- ◆ In certain countries domestic violence and intimate-partner violence as forms of GBV are not criminalized.
- ◆ Many forms of GBV are not effectively criminalized in law and practice, including transphobic and homophobic violence and online abuse (see case study 1).
- ◆ Where a law is not overtly discriminatory, “neutral” application of the law can have discriminatory effects on women. For instance, in Cameroon, statutory land tenure legislation appears gender neutral but has gendered effects. The patriarchal system of inheritance means that the law leaves women vulnerable to being dispossessed of their land by family members when their spouse dies.<sup>16</sup>

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\* Intersectionality is discussed in more detail in Tool 1, and conducting intersectional gender analysis is discussed in Tool 15.

- ◆ Some laws affect women disproportionately and unjustly; for example, laws prohibiting adultery in countries where polygamy is allowed for men but not women.
- ◆ Sentencing practices may affect women disproportionately and unjustly. For instance, in most jurisdictions heavy sentences are imposed on “drug mules” (who are frequently women, often motivated by extreme poverty).<sup>17</sup> In contrast, arguably light sentences are often given for rape and other serious crimes involving GBV (where the victim is usually a woman or girl).<sup>18</sup>
- ◆ As discussed in sections 2.3 and 2.7, in some countries homosexuality is criminalized.

There is also explicit gender discrimination in evidentiary practice in some legal systems. For instance, in some countries where Sharia law is in force, the testimony of a woman is regarded in certain circumstances or courts as holding half the weight of that of a man. Practices in other legal systems, too, are affected by religious values. For instance, research has shown that evangelical Supreme Court justices in the United States tend to vote more conservatively on issues such as gender discrimination.<sup>19</sup>

Amending laws which contain implicit or explicit discriminatory provisions can be a significant step in protecting human rights and promoting justice and equality.

## 2.5 Access to justice and gender equality are mutually reinforcing

Access to justice is recognized in international human rights law as a basic human right and a means to protect other human rights. It is a means by which people can seek and secure a fair, swift and just remedy through affordable, effective and accountable formal and informal justice mechanisms, which conform with international human rights standards and which respond to the specific needs of the individual concerned. Access to justice means different things in different contexts; it may relate to appearing physically before a court, to the appropriate prosecution of a crime or to the protection of a right, such as socio-economic rights.

Because of gendered inequalities, access to justice is often compromised for women and LGBTI people for a wide and intersecting range of reasons, some of which are as follows.

- ◆ Lack of awareness – about their rights and how to exercise them.
- ◆ Gender bias and social norms – which can lead to victims not pursuing cases for fear of how they will be treated within the justice system (see section 2.3), and associated fear of societal stigma.
- ◆ Discriminatory laws – including family law, property/land law and inheritance law which give wives or non-married partners few social and economic rights, and criminal law which fails to recognize LGBTI people fully (see section 2.6).
- ◆ Institutional factors – such as ineffective witness protection or failure to issue protection orders.
- ◆ Socio-economic factors – structural inequalities often mean that women are more likely to be socio-economically disadvantaged and thus unable to afford justice (such as the cost of hiring a lawyer, travelling to court, paying for childcare, taking time off work or bribing a court official in societies where corruption is rampant). In many countries legal aid programmes are underfunded, and where legal aid is available it may be based on household income, which can discriminate against women.

Obstacles in the way of access to justice are often compounded when women or LGBTI people are from an ethnic or religious minority group, displaced, elderly, have disabilities and/or live in rural or remote areas. For example, Roma women in Southeastern Europe



experience discrimination that impedes their access to justice in both direct and indirect ways. Their other challenges often seem more important than seeking justice or protection against domestic violence: “Because they desperately need food, medicine, money, jobs, housing, or other ‘more important’ (essential) services, the women do not want to bother social workers with more ‘trivial’ problems, such as domestic violence.”<sup>20</sup> They are frequently illiterate or have limited access to sources of information about how and where to seek justice, and are often distrusted by and distrustful of the non-Roma community. Elsewhere, such as in Romania, domestic violence is regarded by outsiders as being part of Romani culture and so not often taken as seriously as it might otherwise be, which discourages Roma women from seeking justice.<sup>21</sup>

Integrating a gender perspective in the justice sector – identifying and responding to ways in which access to justice may be compromised for women and LGBTI people – creates more equitable access to justice. More equitable access to justice can, in turn, contribute to reducing poverty and socio-economic inequalities by providing avenues for the protection of the economic and property rights of women and other marginalized groups. This, in turn, helps guard against exploitation, such as unequal pay, GBV and other harms. Conversely, where gendered inequalities impede access to justice, inequalities and their manifestations can become more extreme. For instance, without adequate recourse to justice, women and people of diverse sexual orientations and gender identities and expressions are more vulnerable to exploitation in the workforce and to GBV within and outside the home – especially if they are poor and their property rights are not protected in the law. In other words, access to justice and gender equality are mutually reinforcing.

## 2.6 A representative justice sector increases fairness, trust and confidence

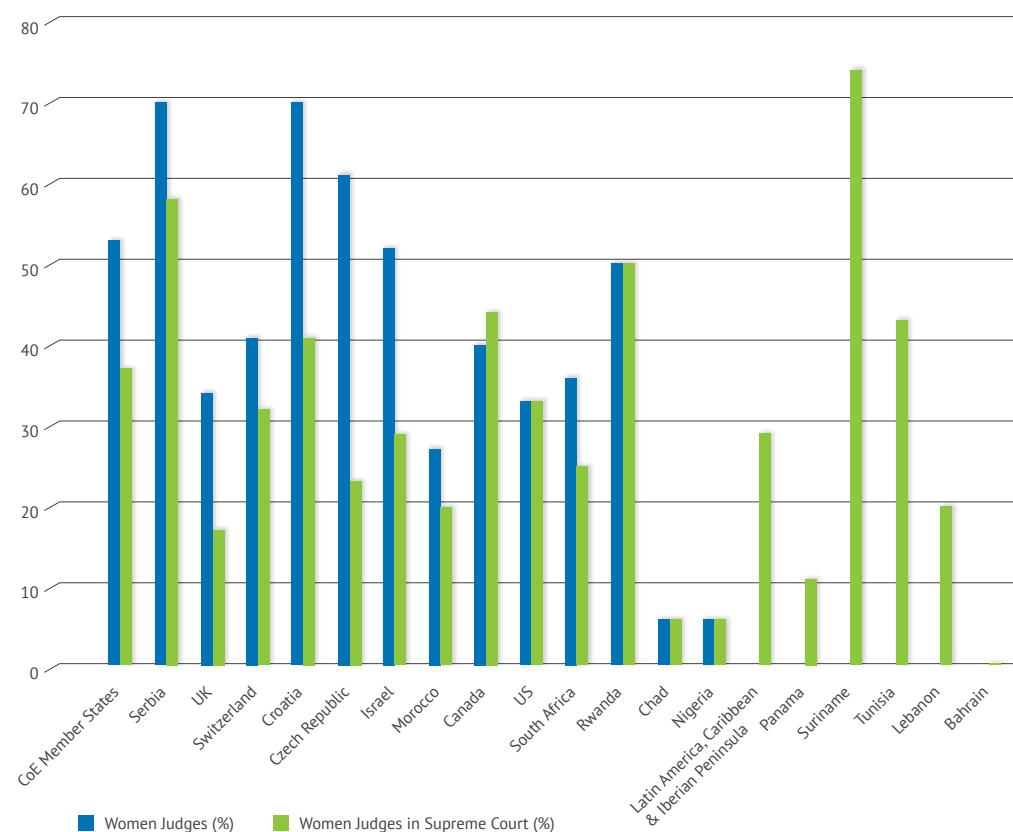
The pursuit of gender equality helps to ensure the justice sector is more inclusive and equally representative of men, women and persons of diverse sexual orientations and gender identities and expressions. While the law and the justice sector may purport to be objective and impartial, they are inherently subjective and gendered; the law is often made by men and the justice system is often dominated by men of a specific or privileged demographic. Because of the operation of gender and other biases, discussed above, this can adversely affect the ability of some people to access justice and the type of justice they receive. In essence, diversity is critical to a fair and impartial judiciary. What is more, when the demographic composition of the justice system does not mirror that of the population at large, the perception of judges and prosecutors as belonging to a “closed club” to which ordinary citizens do not have access is further reinforced, negatively impacting upon public trust and confidence in judicial institutions.

In 2017 OSCE/ODIHR conducted a study on gender and diversity among justice system actors. It examined recruitment and selection of a diverse workforce and workplace equality, and the effects of diversity on the perceived fairness of outcomes. The research confirmed that gender balance and minority representation in justice systems are important factors in fairer justice system outcomes. This is due to a number of factors, including greater public trust in justice systems where justice sector workforces are visibly more diverse. In addition, the study revealed that workplace diversity can help to make justice sector practitioners more sensitive to different considerations for different groups, and thus overcome implicit bias and unconscious stereotyping. The study found that even in states where there is gender parity among justice system actors, gender-based barriers to promotion and career advancement persist, and ethnic minorities remain underrepresented among justice system actors.<sup>22</sup>

While there are no consistently collected global comparative data on women in the justice sector, data that are available clearly show that women are underrepresented in the judiciary of many countries (although less so in civil law systems). Progress has been made in recent years, although women tend to occupy the lower levels of the justice sector. For instance, an evaluation of 47 Council of Europe member states found that in 2016 the percentage of professional judges who were female had risen to 57 per cent, from 47 per cent two years previously, but at the level of Supreme Courts the percentage of female judges was only 37 per cent.<sup>23</sup> Across Council of Europe member states and globally, the proportion of female judges and the proportion of senior female judges vary widely, as illustrated in Figure 2. Moreover, even where there is a balance between women and men in the justice system in quantitative terms, gender-based barriers to promotion and career advancement often persist.

Women are also underrepresented in the legislature in almost every country: as of November 2018, women comprise 50 per cent or more in the parliaments of only three countries (Rwanda 61.3 per cent, Cuba 53.2 per cent and Bolivia 53.1 per cent).<sup>24</sup>

Figure 2: Women in the judiciary



Data are from the most recent public sources as at November 2018, but relate to 2010 (Middle East and North Africa), 2011 (Africa), 2014 (Latin America, Caribbean and Iberian Peninsula), 2016 (Council of Europe including Morocco and Israel, and South Africa) and 2018 (United States and Canada).

Sources: Council of Europe (2018) "European judicial systems: Efficiency and quality of justice", CEPEJ Studies No. 26, Strasbourg: Council of Europe; J. Campisi and B. Griggs (2018) "Of the 113 Supreme Court justices in US history, all but 6 have been white men", CNN, 5 September, <https://edition.cnn.com/2018/07/09/politics/supreme-court-justice-minorities-trnd/index.html> (accessed 14 October 2019); US National Association of Women Judges (2018) "US State Court women judges 2018", <https://www.nawj.org/statistics/2018-us-state-court-women-judges> (accessed 26 November 2018); Office of the Commissioner for Federal Judicial Affairs, Canada (2018) "Number of federally appointed judges as of November 2, 2018", [www.fja.gc.ca/appointments-nominations/judges-juges-eng.aspx#yk](http://www.fja.gc.ca/appointments-nominations/judges-juges-eng.aspx#yk) (accessed 26 November 2018); Judges Matter (2017) "The make-up of South Africa's judiciary", 29 March, <https://www.judgesmatter.co.za/opinions/south-africa-judges/> (accessed 26 November 2018); OECD/CAWTAR (2017) Women in Public Life: Gender, Law and Policy in the Middle East and North Africa, Paris: OECD Publishing; UN Women (2011) Progress of the World's Women 2011–2012: In Pursuit of Justice,

New York: United Nations; UNECLAC (2018) "Judicial power: Percentage of women judges in the highest court or Supreme Court", <https://oig.cepal.org/en/indicators/judicial-power-percentage-women-judges-highest-court-or-supreme-court> (accessed 26 November 2018).

Women from marginalized groups – such as lower socio-economic classes or ethnic minorities – are particularly unlikely to be represented in the judiciary or legislature. For instance, in BiH over 60 per cent of judges are women, but no judges are Roma women or men. While originating from a particular background may not automatically counter implicit bias or increase sensitivity, this lack of representation contributes to inhibiting understanding of the challenges, discrimination and violence Roma people suffer in BiH (and elsewhere), and consequently further impedes their access to justice and security.

There are limited data and research on the diversity of the judiciary and the legislature in respect of sexuality and people with diverse gender identities and expressions. Nonetheless, in many legal systems it appears that LGBTI people are, at least openly or visibly, only marginally represented, if at all, although their impact can be significant in advancing the rights of LGBTI people where they are present.<sup>25</sup>

In informal justice mechanisms, women's representation varies significantly between countries and communities. While these informal structures tend to replicate societal gender power relations, and so can marginalize women, in many instances women do participate and take leadership roles. For instance, in Uganda the law establishing the local council court stipulates that at least two members, including the chair or vice chair, should be women.

A justice sector which is more representative of the people it serves is more likely to be fair and responsive to their needs and enjoy their trust and confidence, as is discussed further in Section 3.

## 2.7 Fulfilment of international obligations

Gender equality is enshrined in international law, most prominently through the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and in national constitutions and legislation throughout the world (see Box 3). States are obliged to protect the rights of everyone equally, prevent and combat GBV and gender-based discrimination, and promote gender equality. Gender equality obligations have been developed through a range of UN and regional bodies, and are reflected in the UN Security Council's Women, Peace and Security (WPS) Agenda, the OSCE Action Plan for the Promotion of Gender Equality and other OSCE commitments.\*

International human rights law obliges states to safeguard the rights of all people, irrespective of their sexual orientation or gender identity or expression.<sup>26</sup> These rights include the right to life; the right to be free from discrimination; the right to be protected from violence, torture and other ill treatment, arbitrary arrest and detention; the right to freedom of expression, association and peaceful assembly; and the right to take part in the conduct of public affairs. These translate as responsibilities on the part of the state to prevent discrimination on the grounds of sexual orientation or gender identity or expression, and to protect people of diverse sexual orientations and gender identities and expressions from hate crimes, violence, torture and other ill treatment, arbitrary arrest and detention. Under international human rights law, states are obliged to decriminalize homosexuality and repeal other laws used to punish individuals on the basis of their sexual orientation and gender identity.<sup>27</sup> Over the last decade some specific frameworks have been developed in relation to protecting the rights of LGBTI people, including the appointment of the UN Human Rights Council's Independent Expert on sexual orientation and gender identity.

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\* See the Toolkit's Policy Brief, "A Security Sector Governance Approach to Women, Peace and Security", for further detail of the Women, Peace and Security Agenda.

Because the justice sector oversees domestic implementation of these international law commitments, its rulings in relation to gender equality and the rights of LGBTI individuals can lead to transformational change in society, advancing gender equality and altering gender power relations.

Non-state as well as state justice institutions have obligations under international law. Reform is needed where non-state justice providers, for instance, restrict individuals' freedoms by holding them accountable to certain cultural or social expectations (such as not allowing freedom to choose one's spouse), or restrict opportunities for the accused to be heard or adequately represented.

### **Box 3: International and regional instruments and standards relevant to gender equality and the justice sector**

Various national, regional and global legal obligations are relevant to and/or oblige states to integrate a gender perspective in the justice sector. A compendium of international and regional legal instruments is published online as part of this Toolkit. Key instruments include the following.

**Universal Declaration of Human Rights (1948)**, which refers to the entitlement of each individual to enjoy their rights and freedoms "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Art. 2). Article 7 stipulates that "All are equal before the law and are entitled without any discrimination to equal protection of the law."

**International Covenant on Civil and Political Rights (1966)**, which states: "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 prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." (Art. 26)

**International Covenant on Economic, Social and Cultural Rights (1966)**, under which states "undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant" (Art. 1) and recognize women's right to "conditions of work not inferior to those enjoyed by men, with equal pay for equal work" (Art. 7(i)).

**Convention on the Elimination of All Forms of Discrimination against Women (1979)**, which seeks to eliminate all forms of discrimination against women and holds states parties responsible for adopting appropriate legislation and other measures to prohibit discrimination against women and establish legal protection of the equal rights of women. In particular, states parties must accord to women equality with men before the law, a legal capacity identical to that of men and the same opportunities to exercise that capacity. Women shall be given equal rights to administer property and be treated equally in all stages of procedure in courts and tribunals (Art. 15). It also calls for equal representation of women and men in areas of work and requires states to ensure women's right to the same employment opportunities, promotion, job security, equal remuneration and equality before the law. CEDAW has been ratified by 189 states.

**UN Committee on the Elimination of Discrimination against Women (CEDAW Committee)**, which has issued a number of General Recommendations on violence against women (Nos 19 and 35), women migrant workers (No. 26), women in conflict prevention, conflict and post-conflict situations (No. 30) and women's access to justice (No. 33). These General Recommendations are authoritative statements on the requirements of CEDAW.



- **CEDAW General Recommendation No. 30** on women in conflict prevention, conflict and post-conflict situations underscores the importance of “advancing substantive gender equality before, during and after conflict and ensuring that women’s diverse experiences are fully integrated into all peacebuilding, peacemaking and reconstruction” (para. 2). It obliges states parties to ensure that “all forms of discrimination against women are prohibited when re-establishing the rule of law during legal reform” (para. 81(d)); to “combat impunity for violations of women’s rights” (para. 81(i)), “address all gender-based violations” (para. 81(g) and ensure “the independence, impartiality and integrity of the judicial system [and strengthen] the capacity of security, medical and judicial personnel to collect and preserve forensic evidence relating to sexual violence in conflict and post-conflict contexts” (para. 81(j)).

To enhance women’s access to justice, General Recommendation No. 30 urges “the provision of legal aid and the establishment of specialized courts, such as domestic violence and family courts, providing mobile courts for camps and settlement settings and for remote areas, and ensure adequate protection measures for victims and witnesses, including non-disclosure of identity and the provision of shelters” (para. 81(k)). It also stipulates that “equal weight is given to the testimony of women and girls as to that of men” (para. 81(h)) as part of gender-sensitive efforts adopted to avoid further victimization and stigmatization.

Further, General Recommendation No. 30 obliges states parties to secure women’s access to justice, including by ensuring that transitional justice mechanisms are gender sensitive, promote women’s rights, address all gender-based violations (rejecting amnesties and ensuring compliance with decisions) and involve women in their design, operation and monitoring at all levels (as well as the design of all reparations programmes). It also encourages direct engagement with informal justice mechanisms to encourage compliance with human rights standards, including gender equality.

- **CEDAW General Recommendation No. 33** on women’s access to justice recognizes the impact of discrimination, inequalities, stereotypes and gender bias in the justice system as impeding women’s access to justice. It recommends that states parties take “measures, including awareness-raising and capacity-building programmes for all justice system personnel and law students, to eliminate gender stereotyping and incorporate a gender perspective into all aspects of the justice system” (para. 29(a)). It urges a gender-sensitive approach to handling cases in the justice sector and removal of other obstacles in the way of access to justice, including guarding against stigmatization and secondary victimization of women in their interactions with judicial authorities.

- **CEDAW General Recommendation No. 35** on GBV against women demands “an effective and accessible legal and legal services framework in place to address all forms of gender-based violence against women” (para. 22), “appropriate preventive measures to address the underlying causes of gender-based violence against women, including patriarchal attitudes and stereotypes, inequality in the family and the neglect or denial of women’s civil, political, economic, social and cultural rights” (para. 30(a)) and “mandatory, recurrent and effective capacity-building, education and training for the judiciary, lawyers and law enforcement officers” (para. 30(e)).

**UN General Assembly Declaration on the Elimination of Violence against Women (1993)**, which calls on states to refrain from engaging in violence against women and exercise due diligence to prevent, investigate and punish acts of violence against women. States are called upon to provide women who have been subjected to violence access to the mechanisms of justice; prevent revictimization; ensure adequate government budgets for activities related to the elimination of violence against women; and ensure “public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women” (Art. 4-i).

**UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) (2010)**, which stipulate that alternatives to prison should be developed for women by member states, particularly given “the history of victimization of many women offenders and their caretaking responsibilities” (Rule 57). Rule 64 further states that “Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.”

**Yogyakarta Principles (2006) and Yogyakarta Plus 10 Principles (2017)**, which pertain to the rights of persons of diverse sexual orientations and gender identities and expressions. These are not legally binding but are authoritative statements on the requirements of international human rights law that:

- everyone is entitled to all human rights and equal protection before the law irrespective of their sexual orientation or gender identity (Principle 2)
- everyone has a right to life and to protection by the state against violence or bodily harm irrespective of their sexual orientation or gender identity (Principle 5).

The Yogyakarta Principles, drafted by a distinguished group of human rights experts, are anchored in the universality of human rights, specifically non-discrimination and recognition before the law; rights to human and personal security; economic, social and cultural rights; rights to expression, opinion and association; rights to freedom of movement and asylum; rights of participation in cultural and family life; rights of human rights defenders; and rights of redress and accountability. The 2017 Yogyakarta Plus 10 Principles strengthen the recognition of intersectionality, and better integrate the needs of intersex persons and those with diverse gender expressions and sex characteristics. While the Yogyakarta Principles do not constitute binding law, they are distilled from the text and legal interpretation of a number of international human rights treaties, which are binding on signatory states parties.

**UN Security Council Resolutions on WPS.** The Security Council has adopted a series of resolutions addressing women and conflict, together comprising the WPS Agenda. The WPS Agenda commits the UN and states to:

- ✦ promote gender equality and strengthen the participation of women in decision-making in all aspects of conflict prevention, peace processes, peace operations and peacebuilding
- ✦ improve the protection of women in conflict-affected environments, and end conflict-related sexual violence and impunity for these crimes
- ✦ ensure international engagement in conflict-affected environments addresses the specific needs of women and improves the protection of women’s rights and women’s access to justice.

**UN Human Rights Council.** The Human Rights Council has issued a number of resolutions on eliminating all forms of violence, including sexual violence and domestic violence, against women (ensuring due diligence in prevention and protection, providing remedies for women who have been subjected to violence, attending to the specific needs of indigenous women and girls, as a barrier to women’s political and economic empowerment, and engaging men and boys), eliminating discrimination against women and girls, and promoting a human-rights-based approach to combating trafficking in persons. It has also issued resolutions on “Protection against violence and discrimination based on sexual orientation and gender identity” and “Human rights, sexual orientation and gender identity”.

**As gender intersects with race, age, disability, residential status and indigeneity, the following conventions are also relevant:**

- ✦ International Convention on the Elimination of All Forms of Racial Discrimination
- ✦ Convention on the Rights of the Child
- ✦ International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families
- ✦ UN Convention on the Rights of Persons with Disabilities
- ✦ UN Declaration on the Rights of Indigenous Peoples.

#### **Regional laws and instruments**

There are also a number of regional laws and instruments which oblige states to promote non-discrimination and gender equality in and through the law and the justice system.

These include:

- ✦ African Charter on the Rights and Welfare of the Child (1990)
- ✦ Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003)
- ✦ African Commission on Human and People's Rights, "Resolution on the right to a remedy and reparation for women and girl victims of sexual violence" (2007) and "Resolution on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity" (2014)
- ✦ Southern African Development Community Declaration on Gender and Development (1997) and Protocol on Gender and Development (2008)
- ✦ Arab Women Organization of the League of Arab States Arab Strategy for Combating Violence against Women 2011–2020 (2011)
- ✦ European Convention on Human Rights (1950)
- ✦ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2011) (also known as the Istanbul Convention)
- ✦ Directive of the European Parliament and of the EU Council establishing minimum standards on the rights, support and protection of victims of crime (2012)
- ✦ Organization of American States Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (1994).

## **2.8 A gender perspective in the justice sector is needed to promote gender equality more broadly**

The justice sector plays key roles in the oversight of security sector institutions. When courts interpret law relating to the security sector or review the activities of the police, armed forces, border services or other security sector organizations, they should do so in a manner that applies and upholds rights to gender equality and non-discrimination. We see courts doing this: for instance, in October 2018 an Australian court granted a woman the right to sue the police for failing to enforce domestic violence orders against her husband, and in February 2019 a judge in Texas ruled that male-only conscription into the armed forces is unconstitutional.<sup>28\*</sup>

Fundamentally, a justice sector and a legal framework which promote gender equality are essential to good governance of the security and justice sector. This implies, *inter alia*, rule of law, equal access to justice for all, diverse inclusion, and transparency and accountability of public institutions.<sup>^</sup>

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\* For discussion of women's equal participation in armed forces, see Tool 3 on "Defence and Gender".

## 2.9 Gender justice contributes to sustainable peace and development

If the justice sector does not promote gender equality or integrate a gender perspective, the rule of law is undermined and this compromises peace, security and development. This has been recognized in the 2030 Agenda for Sustainable Development, which provides structures and opportunities to advance and measure progress towards gender equality, as well as to hold states accountable in this regard.\*\*

Within the 2030 Agenda, SDG 5 (gender equality) and SDG 16 (accountable and inclusive institutions) are particularly relevant to advancing a gender-equitable and gender-responsive justice sector, and identify targets and indicators to measure progress. SDG 11 (inclusive, safe, resilient and sustainable places to live) also relates to how integrating a gender perspective in the justice sector can promote development. For instance, a gender-equitable and gender-responsive justice sector and legal framework can help ensure the following.

- ◆ There are binding standards for adequate, safe and affordable housing and basic services, including transport systems, and that those who do not uphold these standards are held to account.
- ◆ Women and girls – who are often the most vulnerable to inadequate housing and lack of services due to their socio-economically marginalized status – are equally protected by the law.
- ◆ Public spaces are safe for everyone, including women, girls, boys, men and persons of all sexual orientations and gender identities and expressions.
- ◆ Efforts to improve disaster response and resilience attend to the specific needs and vulnerabilities of all.<sup>29</sup>

Promoting gender equality and integrating a gender perspective in the justice sector provides avenues for the protection of economic, property and other rights, and helps to alleviate violence and discrimination. Fundamentally, this contributes to more equitable sharing of resources and power, and to creating more equitable and peaceful societies.<sup>30</sup>

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^ The interconnections between gender equality and good security sector governance are the subject of Tool 1 on “Security Sector Governance, Security Sector Reform and Gender” and the Policy Brief on “A Security Sector Governance Approach to Women, Peace and Security”

\*\* See the Policy Brief on “The 2030 Agenda for Sustainable Development, the Security Sector and Gender Equality” for further discussion.

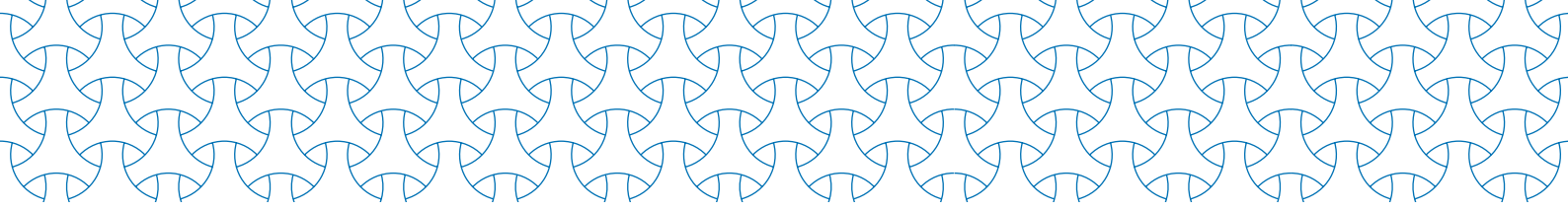
### Endnotes

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## 3. What would a justice sector that advances gender equality and integrates a gender perspective look like?

A justice sector that integrates a gender perspective and advances gender equality will be a justice sector that fairly applies the law to everyone; does not discriminate on the grounds of sex, sexual orientation, gender identity or expression; and actively promotes the transformation needed to achieve gender equality. This means attending to legal, structural, cultural and other barriers which inhibit equality of opportunity and treatment for both people accessing justice as a service and those working in the justice sector.

This section sets out the components of a vision for achieving this overarching ideal, through building a more representative workforce, putting in place measures to be responsive to diverse needs, overcoming barriers to access to justice, combating GBV and discrimination, and promoting accountability within the justice and broader security sector.

### 3.1 Inclusive, representative and non-discriminatory workplaces

A justice sector that integrates a gender perspective and advances gender equality is a justice sector with the following features.

- ◆ Women and men of diverse backgrounds reflecting all of society (i.e. including indigenous people, ethnic and racial minorities, different castes and religions, persons of diverse sexual orientations and gender identities and expressions, etc.) are comprehensively and meaningfully employed, including in decision-making and policy-making/law-making roles.
- ◆ Women and men and persons of diverse sexual orientations and gender identities and expressions have equal pay and opportunities (for education/training, promotion, etc.).
- ◆ There are facilities and policies in place which respond to the specific needs of women (care responsibilities, separate sanitation facilities, etc.).
- ◆ Institutional and cultural barriers, as well as policies (or lack thereof), which inhibit equality of opportunity and treatment have been identified and overcome, including through the provision of maternity and paternity paid leave.
- ◆ Gender-based discrimination, sexual violence, GBV, harassment and violence are not tolerated, and there are disciplinary mechanisms in place to deal with these.

### 3.2 Responsive to the different needs of diverse groups

A justice sector that integrates a gender perspective and advances gender equality is a justice sector that takes steps to be aware of and responsive to the different needs of women, men, girls, boys and people of diverse sexual orientation, identities and expressions. Gender responsiveness applies to people who engage with the justice sector, whether as

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Image: A hotline consultant receives calls on domestic violence at a facility supported by the OSCE Centre in Ashgabat, September 2009 © OSCE.



victims, witnesses, alleged perpetrators, complainants or respondents; to people as rights-holders in society; and to people working in the justice sector. Responsiveness means that the law and formal and informal justice providers will be responsive not only to the demands and needs of dominant or privileged groups within society, but will recognize (through expression in the law) and respond to (by implementing the law) harms experienced by marginalized groups, including women and LGBTI individuals.

When people come into contact with the criminal justice system, being responsive to the different needs of women, men, girls, boys and LGBTI individuals means that professionals in the justice sector are trained and knowledgeable about the types of experiences likely to have led to this contact and the needs that are likely to follow. It means that justice systems have processes and resources in place to identify and meet individuals' needs (such as for counselling, or referral to healthcare or social and housing support). It means having people, policies and processes in place to ensure that the specific context, experiences and needs of each person in each case are understood and gender bias is avoided. This means judges and prosecutors, as well as others who work in the criminal justice system, are aware of and reflect upon their own, as well as societal, biases or perspectives.

Responsiveness is connected to inclusivity and representation (section 3.1). A justice sector which is representative of the people it serves, especially at the most senior levels, is also more likely to be *responsive* to their needs. It is not, of course, a given that a more representative judiciary will be more responsive to the needs of a more diverse community. This is particularly the case if policies and processes are not in place to ensure, for example, that women are able to remain working in the sector (even when they have children), have opportunities to progress their careers and, moreover, have influence and power to effect change. However, increasing the number of female judges can create environments in the courtroom more conducive to access to justice for women. For instance, research has shown that when there has been a female judge, defence lawyers have been more respectful when questioning female witnesses in the International Criminal Tribunal for the Former Yugoslavia, and those female witnesses have spoken more freely.<sup>1</sup> In informal justice mechanisms, the same can be true. Female judges in Rwandan *gacaca* courts have encouraged women to report GBV, which is frequently not reported because of the stigma associated with being a victim.<sup>2</sup>

A justice sector which is representative and responsive is more likely to enjoy broad-based public trust and confidence and be considered legitimate.

### 3.3 Ensures equal access to justice

A justice sector that integrates a gender perspective and advances gender equality will ensure equal access to justice by men and women. Access to justice has the following characteristics:

- ◆ Women and men who are poor can seek and obtain legal remedies, if necessary, using an effective and well-resourced legal aid programme.
- ◆ Men and women who live in remote or rural areas can seek and obtain legal remedies without needing to sacrifice care or other work responsibilities. They might use mobile or remote courts and/or technology to do this.
- ◆ Women and men who cannot read and/or access the internet are nevertheless aware of their rights and know how to assert them. The government has invested in outreach and communication campaigns.



There is a gender dynamic to all constraints to accessing justice, with women often more likely to be poor and to have full-time caring responsibilities, and to be less able to read or otherwise access information. These and other constraints also affect men and LGBTI people, often in different ways. A justice sector that integrates a gender perspective and advances gender equality will be one which is cognisant of these potential constraints and barriers and takes steps to remove them.

On a more strategic level, equal access to justice means women and men, including people of diverse sexual orientation, identities and expressions, being equally able to influence and participate in shaping the law. This means being part of the justice sector (section 3.1), being equally able to be a legislator, being consulted during legal reform processes, having opportunities to lobby for change and being able to vote in elections and referenda.\*

### 3.4 Combats GBV and discrimination

A justice sector that integrates a gender perspective and advances gender equality will contribute to the prevention of, protection from and effective response to GBV and discrimination, reflecting the fact that women constitute the vast majority of its victims. It will do this through ensuring a number of measures.

- ◆ National law and its implementation (including by police, prosecutors and in places of deprivation of liberty) meet the high standards set by international and regional laws and guidelines concerning GBV.
- ◆ GBV is criminalized in a manner to include the diverse forms of victimization of women, girls, men and boys, including persons of diverse sexual orientations and gender identities and expressions, and violence taking place in public, private and online spaces.
- ◆ Prohibition of and effective remedies for other forms of gender discrimination, whether by public or private actors.
- ◆ Cases involving GBV are effectively handled, in a timely manner and with low attrition rates and appropriate sentencing.
- ◆ Police and prosecutors' investigative methods (e.g. personal searches and interviewing or interrogation practices) are gender sensitive.
- ◆ Effective victim and witness assistance and support programmes reflecting the different needs of women and men.
- ◆ Training and awareness-raising of staff on GBV, gender discrimination and gender bias, including as regards sexual orientation and gender identity and expression.

### 3.5 Oversees gender equality in security sector, and is monitored and overseen

A justice sector that integrates a gender perspective and advances gender equality will have effective monitoring mechanisms to guard against gender-based discrimination, bias and violence against anyone who works in or comes into contact with the justice sector. It will be open to and facilitate external oversight of its own gender responsiveness through formal and informal mechanisms, including by parliament, national human rights institutions, CSOs, the media and academia. This includes making available, for example, sex-disaggregated data on cases, aggregated data on handling of GBV cases and discrimination claims, and data on the diversity of the judiciary and broader workforce.

It will also be a justice sector which holds other public institutions to account, ensuring they adhere to law, including international human rights law, and are responsive to the

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\* For deeper discussion on equality in lawmaking, see Tool 7 on "Parliamentary Oversight of the Security Sector and Gender".

gendered needs of people in society. Specifically, it will play a role in gender-responsive oversight of the whole security sector.

### 3.6 Leads transformational change in society


Where gender equality is promoted in and through the justice system, both formal and informal, there is the potential for transformational change within society. Where women and men, including LGBTI people, are treated equally, where gender-based crimes and other harms are dealt with seriously, and everyone has equal access to justice (and are aware of their rights and how to assert them), significant change in the wider society – beyond the justice sector – can occur. This is because the violence which is sustained by and, in turn, sustains inequalities, is reduced. It is also because equal protection of rights gradually results in the redistribution of property and other resources and, thus, over time, power and influence. Equal access to justice and equal protection of rights can thus significantly impact gender power relations and advance gender equality within society. Advancing gender equality, in turn, paves the way towards more peaceful, resilient and prosperous societies.

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#### Endnotes

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**QUALITY MEN FEAR  
NO EQUALITY**

**WOMEN IN ACTION AGAINST  
GENDER BASED VIOLENCE  
WACameroon**



## 4. How can the justice sector advance gender equality and integrate a gender perspective?

To achieve a justice sector which integrates a gender perspective and promotes gender equality, measures need to be taken at all levels. A holistic, multisectoral approach – integrating different actors and undertaking a number of different measures – offers the greatest potential to effect lasting change. Drawing upon documented good practice from different regions, this section gives an overview of key strategies that can be considered individually, but ideally in combination. Figure 3 illustrates some of the ways that key elements in gender-responsive justice reform intersect.

Section 5 includes case studies that illustrate some of these approaches, and prompts to think about these steps for change are included in the self-assessment guide in Section 6.

Figure 3: Integrating a gender perspective in the justice sector

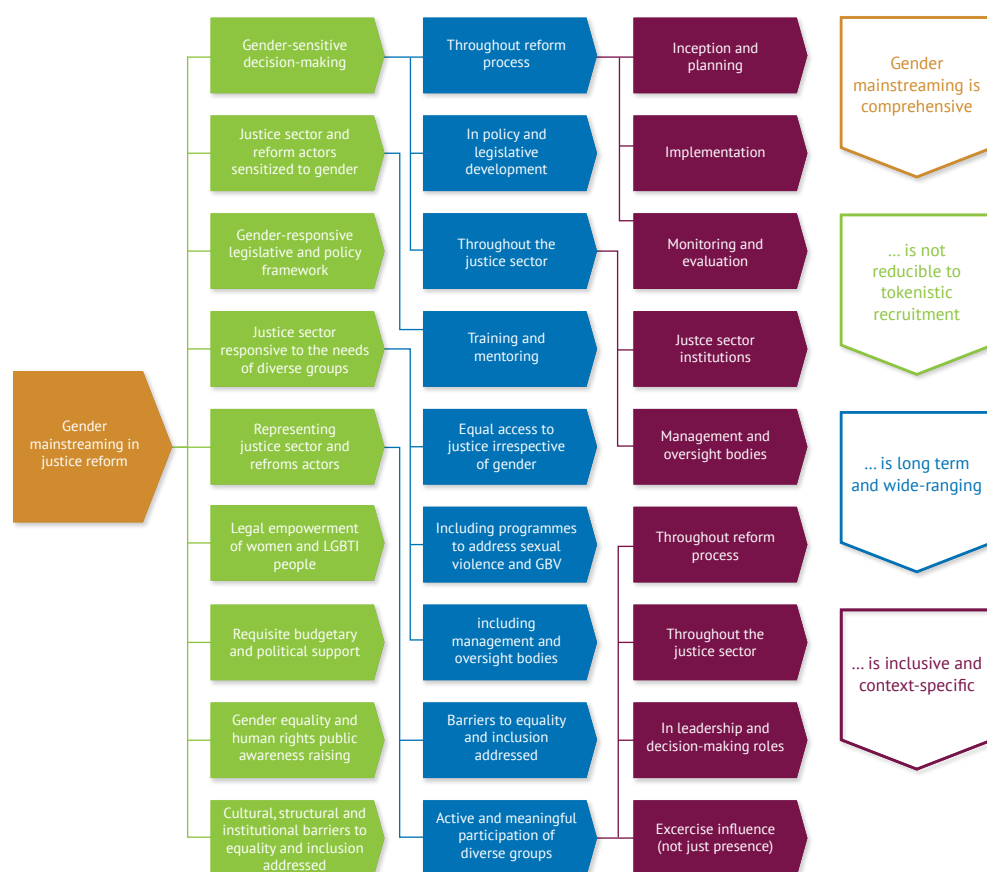


Image: Men in Cameroon participating in the campaign, "Women in Action against Gender Based Violence", 2008  
© Center for Women's Global Leadership.

## 4.1. Conditions for success

The measures suggested in this Tool are not guarantees of success that, once put in place, obviate the need for continued work. In fact, these measures will be successful in contributing to gender equality only where certain conditions are present.

Justice reform, like any change, can be challenging at individual, organizational and structural levels. It must be approached sensitively, and be informed by research, analysis and planning. It is of fundamental importance that all change efforts – including those to advance gender justice – are context-specific, inclusive, locally owned and openly communicated.

A deep *understanding of the context*, including the political economy and social or cultural norms, is necessary to ascertain what needs to be done, what can be done (and how) and what interdependencies there are (and what other measures need to be taken to ensure success). Understanding context and politics helps to identify barriers and opportunities, who has power to effect or block change and who may have vested interests. A gendered political economy analysis examines how gender intersects with the distribution of power and resources and ensures that gendered power relations and inequalities inform analysis and, in turn, are addressed in planning and programming. This is needed to ensure all engagement is not only context-specific but responds to the specific needs of women, men, girls, boys and LGBTI people in a particular place. More broadly, any reform effort needs to engage with deeper social change processes to understand how power is negotiated and rights mediated. *Flexibility* and *responsiveness* to changing dynamics and structures are also necessary, integrating continued learning and reflection.<sup>1</sup>

In any context, change can unsettle the distribution of power and other resources, and so can be resisted. In politically difficult contexts, and in conflict-affected or other insecure environments, the challenges are manifold. In these contexts, long-term strategies are required to identify the *incremental steps* required to create a more favourable environment for change, as well as investment in developing networks that can help support the case for change.

## 4.2 Building an evidence base for gender justice reform

To understand the context for justice reform and create an evidence base, analysis should be made of men's and women's different experiences of the justice system and how gender bias and discrimination operate. Gender analysis might assess such elements as:

- ◆ sex-disaggregated data on what types of cases are brought to court, what outcomes they have and whether certain cases (or cases involving certain types of complainants or defendants) have particularly high attrition or low conviction rates
- ◆ recruitment, retention and promotion of particular groups as judicial and legal practitioners and court personnel
- ◆ justice sector budget and funds allocated to promoting gender equality and improving access to justice or equal representation
- ◆ role of actors beyond the justice system in regard to gender justice; for instance, police, healthcare professionals and social workers.

In conducting gender analysis, attention should always be directed to intersectionality – the interplay of gender discrimination with factors such as poverty, religion and ethnicity, disability, age, sexual orientation and gender identity.\*

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\* This and other aspects of gender analysis are discussed in Tool 15, "Integrating Gender in Project Design and Monitoring for the Security and Justice Sector".

In-depth research is often needed to understand the causes of gendered inequalities, discrimination and violence, and ways in which the justice system might contribute to or mitigate them. Case study 1 is an example of how academic research built an evidence base for legal reform around “image-based abuse” in Australia.

### 4.3 Planning and co-ordinating gender justice reform

Achieving a justice sector which integrates a gender perspective and promotes gender equality requires sustained, comprehensive and co-ordinated efforts within and beyond the justice sector. These efforts must have the full support and engagement of other agencies in the criminal justice system and the government.

Once evidence has been gathered and analysed, a strategy and/or action plan for gender justice reform can be developed. This should involve all stakeholders from the outset, including judicial and legal professionals, court administrators, women’s groups, human rights and other civil society groups. Recognizing that men are usually overrepresented in policy-making and decision-making, the plan should include women and men of all sexual orientations and gender identities and expressions in decision-making and leadership roles. This will help ensure that the plan is sufficiently context-specific and responsive to the needs of diverse groups.

A gender justice strategy and/or action plan should stipulate, at a minimum, measures to:

- ◆ strengthen access to justice for women
- ◆ expedite investigation, prosecution and punishment of perpetrators of GBV
- ◆ promote and protect the rights of women, girls and people of diverse sexual orientations and gender identities and expressions
- ◆ promote gender diversity within the justice sector and within the justice reform programme itself.

It is important that strategies and plans are designed and monitored to achieve gender justice outcomes, rather than merely activities.\*

Any justice reform plans require co-ordination with all actors engaged in the justice sector, especially police, prisons and probation services, and across activities. For instance, if part of the plan is to encourage more people to report GBV, police, prosecutors and judges should first be sensitized to GBV crimes, their prevalence and their likely impact upon victims’ behaviour. Specialized training, new procedures and resources may be needed.^ Moreover, co-ordination should include actors beyond the justice sector that facilitate access to justice, such as CSOs providing support to victims of crime, or the Ministry of Health.

A gender strategy or action plan for the justice sector will usually be connected to a gender equality and/or GBV policy, which may be developed alongside (see section 4.6). It might be connected additionally to a WPS national action plan, given that a range of justice-related tasks are addressed in the UN Security Council resolutions on WPS, including legal and judicial reform, access to justice and efforts to eliminate GBV and prosecute perpetrators.\*\*

### 4.4 Generating budgetary, political and judicial support for gender justice reform

For any justice sector to adjust, or reform, in order to integrate a gender perspective and promote gender equality, there must be high-level political support and the requisite resources, including budgetary provision. Funding is necessary, for instance, for courts to

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\* Refer to Tool 15, “Integrating Gender in Project Design and Monitoring for the Security and Justice Sector”, for further guidance on these aspects.

^ See case study 5 on gender and justice reform in Bosnia and Herzegovina.

\*\* Tool 1 on “Security Sector Governance, Security Sector Reform and Gender” discusses WPS national action plans in more detail.

invest in infrastructure, technology or support services that protect and respond to the needs of victims of GBV; to provide legal aid; and for public information campaigns. Budgetary measures can also be designed to drive the implementation of policy or laws that support gender equality. In Nepal, for instance, a tax exemption in 2008 that created incentives for families to share property with women helped to increase women's ownership of land, which rose from 11 per cent in 2001 to 35 per cent in 2009.<sup>2</sup>

Budgetary support and investment require political commitment to advancing inclusion, responsiveness and, ultimately, gender equality. Political support can be built in a number of ways, including:

- ◆ advocacy and media campaigns
- ◆ lobbying
- ◆ developing partnerships and networks.<sup>3</sup>

Advocacy and media campaigns are often led or supported by civil society actors (see Boxes 4 and 5). They tend to be effective where a combination of factors coalesces: where the human element of the campaign is clear and persuasive; where there is a champion or key support by powerful or influential societal actors; where the campaign has a groundswell of support; and where it resonates with values cherished by society (e.g. fairness, equality, justice). In Afghanistan, for example, women parliamentarians lobbied for new laws regarding child marriage by appealing to their male colleagues “as fathers”.<sup>4</sup>

#### Box 4: “Silence is not Golden” campaign

In BiH in 2016, billboards and posters were erected in ten cities bearing the slogan “Silence is not Golden”. The campaign, organized by a network of women's organizations and other CSOs, highlighted violence against women and girls as being widespread and underreported, and challenged the social norms that made victims feel they must remain silent. Together with a petition that gathered over 15,000 signatures, the campaign generated significant public and political support and led to initiatives to amend the Criminal Codes.



Source: USAID (2017) “Silence is not golden: Bosnians stand against gender-based violence”, *Success Stories, News and Information*, Washington, DC: USAID.

Image: © Žene Ženama (Women to Women)



### Box 5: Paid domestic violence leave campaign

The Australian Council of Trade Unions used billboards to lobby the government to entitle all workers to up to ten days' *paid* time off to deal with domestic violence situations – such as being forced to leave home, resettle children, get their finances in order or seek medical or psychological help. The key message of the campaign is that people experiencing domestic violence should not be forced to choose between their income and their safety.

Three large billboards, with the words “Women are being killed”, “Paid domestic violence leave can save lives” and “Why no action?” were placed outside the offices of the Minister for Women on International Women’s Day in 2018 and displayed on trucks driving around cities. They generated significant public and media attention. Less than four months later, a new domestic violence leave entitlement for millions of employees across Australia came into effect, a first step towards paid domestic violence leave.



Source: Josh Butler (2018) “Australian unions call for domestic violence leave with ‘3 billboards’ stunt”, *Huffington Post*, 8 March.

Image: © ACTU

Social movements can also generate the political will to effect change. The “metoo movement” spread rapidly as a hashtag on Twitter and other forms of social media from October 2017, highlighting the widespread prevalence of sexual assault and harassment of (initially) women. The movement achieved global attention and can be credited with shifting attitudes about such crimes (their prevalence) and their victims (their credibility) and contributing to political will to act against GBV within many societies.

Beyond political will and public support, high-level engagement within the justice sector, particularly from senior judges and lawyers, is required. To generate this, those advocating for change need to develop mutual respect, trust and good working relationships with high-level stakeholders, and communicate reforms in ways that resonate with the interests or objectives of these stakeholders. In some contexts, private diplomatic engagement might be more effective than public pressure. In Indonesia, for instance, judges participated in drafting guidelines to address gender bias in the courtroom after non-governmental organizations (NGOs) approached them privately with research which suggested gender bias operated against female victims of GBV, rather than on the basis of public criticism.<sup>5</sup> Communication of good practice is another effective means of generating engagement and progressing change.

## 4.5 Reforming the law

An enabling environment for gender justice requires a supportive legal framework. The strongest framework is created when a country accedes to, ratifies and implements international and regional human rights treaties that include the principle of gender equality (as discussed in section 2.7).

Compliance with international and regional human rights treaties should be assured through comprehensive and regular review of national laws, including the constitution. Transitional justice processes also provide an opportunity for countries to assess how their legal frameworks can be reformed to guarantee non-recurrence of human rights violations and prevent conflict. The constitution should guarantee the equal enjoyment of human rights and gender equality, and prohibit gender-based discrimination and violence. National legislation should prohibit all forms of gender-based discrimination and violence, and include positive measures to prevent discrimination and ensure gender equality. Where the law is deficient in promoting gender equality, legal reform should be undertaken. Any legal reform process should be informed by understanding of the context, gender analysis (including of customary or informal laws where relevant) and research to ascertain the gendered effects of the law and potential effects of proposed changes. These processes are discussed in sections 4.1 and 4.2.

Legal reform can send a message that certain behaviours are not tolerated by society. For instance, after years of advocacy and legal work, when rape during wartime was first recognized under international law as a form of torture, it helped to combat the narrative that rape is an inevitable by-product of war. Likewise, over the last decade a number of countries have reformed their laws to decriminalize homosexuality and/or legalize same-sex marriage in an effort to reduce discrimination and violence based upon sexual orientation (see also case study 4 on legislative reform concerning domestic violence in Ukraine). Legal reforms do not suffice, however. They have to be implemented, and often raising awareness is needed to ensure respect for the law.

The impact of legal reform will be constrained by the broader legal framework as well as by cultural and social norms. For instance, in places where women are economically dependent upon their husbands, criminalizing domestic violence might have a limited effect in the absence of economic support for victims. So, to maximize success, legal reform needs to occur alongside other long-term activities to build motivation and capacity for enforcement and change public attitudes.

While reform is often urgently needed in criminal law, civil and administrative law are also important. Reforming family law and legislation that governs inheritance and property rights can significantly empower women and other marginalized groups, and help tackle poverty and other causes of insecurity.

It is important that legal reform processes are inclusive. This means that diverse groups should be meaningfully consulted in legal reform (see Box 6). In many countries where quotas have been used to increase the number of women in parliament (in Rwanda, Spain and Costa Rica, for instance), more progressive laws on GBV, land rights, employment and healthcare have followed, sometimes because women have organized across party lines to advocate for women's rights. This has, in turn, led to transformational change in society.<sup>6</sup>

### Box 6: Conducting diverse and inclusive consultations

Almost invariably men, particularly from dominant or elite groups, tend to be overrepresented in reform programmes. This often results in the security and justice needs of those beyond this narrow demographic being overlooked.

Representatives of diverse groups of men and women, including LGBTI persons, should be given opportunities to participate in all aspects of a justice reform process. This is crucial to ensure that communities' diverse needs are heard and addressed. In this regard, it is important to remember that neither women nor men nor LGBTI persons are homogeneous groups and, as such, to engage a diversity of groups to bring diverse experiences, needs and views to inform reform.

Participation of representatives of diverse groups in justice reform processes should be:

- ✦ comprehensive – in sufficient number
- ✦ meaningful – in decision-making roles and having influence
- ✦ throughout the whole process – from inception of reform, through implementation of reforms, to evaluation.

Tokenism (consulting just a small number of “diverse people” merely as a formal display of inclusivity) or engagement only after key decisions have been made must be actively avoided!

## 4.6 Developing policy, protocols and procedures

As with law, policies, protocols and procedures in the justice sector need to be reviewed, developed and implemented to ensure that they do not directly or indirectly lead to discrimination, that they integrate a gender perspective and, as far as possible, that they promote gender equality. Key policies and procedures for those engaging with the justice system include those concerning handling GBV cases, case scheduling, security, interpreters, complaints and outreach. Key policies and procedures for personnel within the justice sector include those pertaining to human resources, training, promotion and discipline.

Processes of review and development of policies and procedures should, as with other elements of justice reform, be informed by deep understanding of the context, gender analysis and research (discussed in sections 4.1 and 4.2). For instance, case study 5 on gender and justice reform in BiH shows how research on gender bias in the justice sector informed new policies and practices to guard against it in domestic violence cases. Policy and procedural reform should also be informed by meaningful consultation with diverse groups and communities to ascertain their needs and how policy and procedures can best respond to them.\*

A gender/gender equality policy at the ministerial (ideally, cross-ministerial) level can raise awareness, inform practice and consolidate resources to advance equality and non-discrimination in the justice sector. A gender/gender equality policy expresses commitment on the part of the government to gender equality, and ideally outlines steps to be taken to ensure or advance it. Gender/gender equality policies can be an output of, or even an impetus to establish, gender units or departments (see section 4.7). Gender policies and protocols can also be developed for the judiciary.^

Full and effective implementation of the policies and adherence to the procedures that guard against discrimination must be facilitated by regular communication and training, ongoing monitoring and reporting, and taking action where there is poor compliance (see section 4.9 on capacity building and section 4.13 on oversight).

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\* See Box 6 on conducting diverse and meaningful consultations, and case study 2 on community consultation on reform of bail and sentencing regulations in Sierra Leone.

^ See case study 6 on gender equality protocols for magistrates and judges in the Caribbean.

## 4.7 Establishing and strengthening gender-focused organizational structures

Gender-focused organizational structures – gender offices, task forces, desks, departments or units – can catalyse efforts to advance gender equality and gender responsiveness within the justice sector. There are a number of examples of such gender units established within ministries with a justice portfolio, some with a remit for a broad range of gender-related issues and some for a specific issue. In 2018 the Ministry of Justice in The Gambia established a unit to assess what can be done to address GBV and better respond to the needs of victims. The majority of its staff are from the Ministry of Justice, with some seconded from the Police Prosecution Unit, the Police Gender Unit and the Ministry of Health.<sup>7</sup> Elsewhere, justice ministries have permanent structures responsible for advancing gender equality. In Afghanistan, for instance, the Ministry of Justice Gender Department was established in 2011, with responsibility to promote gender equality, increase the representation of women in the sector, support women in the sector and create equal opportunities for recruitment and advancement.<sup>8</sup> In Palestine the Ministry of Justice Gender Unit, among other tasks, co-ordinates the work of the Gender Fair Legislation Committee. This committee is composed of legal advisers from across ministries and institutions responsible for drafting legislation, and is tasked with reviewing legislation from a gender perspective.<sup>9</sup> In the United States gender task forces have been established to identify and examine the consequences of gender bias in the courtroom and develop mechanisms to mitigate its effect.<sup>10</sup>

It is also considered good practice for a truth commission to have a gender unit or subcommittee to support the transitional justice mechanism to address obstacles to women's participation and adequately and sensitively reflect GBV and human rights violations.<sup>11</sup> In 2018 the truth commissions in Mali, Tunisia, Colombia and The Gambia had gender units or subcommittees.

Gender networks, portfolios or platforms can also be effective in engaging judicial and legal professionals in identifying innovative ideas and supporting reform efforts.

## 4.8 Handling GBV cases better\*

### Protecting victims and witnesses

Special measures for the protection of victims and witnesses, especially in cases involving GBV, need to be in place and effective. Witness and victim protection should include safe houses, temporary shelters and protective orders, the removal of perpetrators of domestic violence from their household, and protection from blackmail or threats. Measures should ensure that the police are informed when victims/survivors are considered to be at risk of being harmed during the legal process.

Beyond providing physical protection, measures need to be taken to avoid retraumatizing victims, which can lead to high attrition (drop-out) rates. It is important that GBV cases are handled efficiently and sensitively, with a victim-centred and trauma-informed approach that centres on the needs and concerns of the victim/survivor. This includes the following.

- ◆ Unnecessary delays are avoided, but short recesses are allowed when the victim/survivor is distressed.
- ◆ Victims/survivors are permitted to be accompanied throughout the trial by a support person such as a family member, friend or professional support person.
- ◆ Questioning which is discriminatory, unnecessarily persistent, irrelevant (such as a person's sexual history when unrelated to the case) or informed by gender bias is disallowed.

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\* Proper handling of GBV cases is also addressed in Tool 2 on "Policing and Gender".



- ◆ Steps are taken to minimize and closely manage direct contact between the victim/survivor and the alleged perpetrator at the court and during the trial. This can help reduce distress on the part of the victim/survivor, and can be facilitated by:
  - disallowing direct examination of the victim/survivor by the defendant
  - allowing the victim/survivor to testify behind screens or via CCTV.
- ◆ Steps are taken to protect the privacy of the victim/survivor by restricting media and public presence during trials, using pseudonyms and removing identifying information from the public records of the court.

Special consideration should be given to victims/survivors of GBV who have been charged with criminal offences, by considering the impact of GBV and claims of self-defence. Likewise, in civil, family or administrative law cases, the courts should be made aware of all relevant information regarding GBV. For example, a woman's decision to leave a family home to protect herself and/or her children from further violence should not prejudice civil proceedings in child custody cases.<sup>12</sup>

Remedies should be reviewed to consider whether they address the needs and rights of victims/survivors, and to ensure they enable access to medical, psychological and social care.

### Training, sensitization and monitoring

Policies and skills training for police, prosecutors and judges are needed to avoid the types of gender bias and discrimination discussed in section 2.3. Justice professionals should be supported to develop expertise in dealing with cases involving GBV. Training is discussed further in section 4.9.

The handling and resolution of GBV cases should be monitored, including case attrition rates, conviction rates and penalties. Monitoring should be done within the justice system and be subject to external review by formal and civil society actors. Oversight is discussed further in section 4.13.

### Victim/survivor services

Special measures should be taken to support victims/survivors of GBV. Free 24-hour hotlines can offer advice, assistance and referral to other services, such as healthcare, emergency shelter and counselling. Considering that women and girls are the overarching majority of all victims of GBV, specialized services should be in place for women victims of violence. In addition, specialized services for other groups of victims/survivors should be considered, including, for example, services for men and boys, or persons of diverse sexual orientation and gender identity.\* Interpreters and translators should be available and properly trained. Provisions also need to be made for the children of victims/survivors, in terms of ensuring that shelters, facilities and services can appropriately accommodate children so victims/survivors are not forced to choose between seeking justice and looking after their children.

### Specialized institutions and co-ordination

Justice institutions that specialize in GBV can, if properly resourced and supported, better respond to the specific needs of victims/survivors. Such institutions include GBV or sexual offences courts and prosecution offices, mobile courts and legal clinics. Their existence sends a message that such crimes are taken seriously by the state and its institutions. For example, in Sierra Leone "Saturday Courts" helped clear a massive backlog of GBV cases, and provided an environment more sensitive to the needs of victims/survivors. The courts also had a significant impact on attitudes that GBV is unacceptable and would not be tolerated, thus contributing towards protecting women's rights and facilitating the peace process.<sup>13</sup>

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\* For more detailed guidance on services for men and boys, see DCAF (2014) *Preventing and Responding to Sexual and Domestic Violence Against Men: A Guidance Note for Security Sector Institutions*, Geneva: DCAF.

Mobile courts, ideally supported by legal aid, can likewise provide access to justice for victims/survivors of GBV who live in remote or rural locations, or lack the means to travel to major cities.<sup>14</sup> Specialized bodies and gender units are discussed further in section 4.10.\*

Specialized services can include formalized arrangements where key actors and services, including judges, prosecutors, police and social services, co-ordinate their work and decision-making. “One-stop centres”, such as the New York Family Justice Centers in the USA, can house relevant services in one place. These may include forensics, legal advice, healthcare and psychosocial support, and information on self-help and other support groups. This can make a victim’s search for help and justice more efficient and effective. Victim/survivor safety and concerns about treatment, confidentiality or potential stigma can generally be better attended to through bespoke structures and support. In South Africa the Thuthuzela Care Centres have led to conviction rates for rape cases reaching 89 per cent, compared with a national average of 7 per cent.<sup>15</sup>

Where formalized arrangements or one-stop centres are not in place, integrated services and referral systems should be promoted. CSOs often plug gaps in referral pathways and services.

## 4.9 Training and other capacity development for justice professionals<sup>^</sup>

Training on gender equality needs to be developed for all judicial and legal professionals and court administrators, referent to national, regional and international laws and obligations. This should include, at a minimum, the principle of non-discrimination, ethics, human rights, women’s rights, legal procedures for GBV, protection of the human rights of LGBTI people and how “gender bias” operates in the justice system to affect men and women. Specific training on investigation methods and requirements for crimes involving GBV should be provided to staff who work on such cases.

There should be an ongoing commitment to and investment in sustained professional gender and GBV training, which could be provided by national schools for judges or prosecutors, or similar. Where these do not exist, bar associations or law societies as well as the relevant ministry and civil society actors can provide or support training initiatives. External actors (such as DCAF, UNODC, the Council of Europe and national bar associations) may also be engaged in providing professional training for judicial and legal practitioners.

It is important that judicial and legal professionals receive such training before they are licensed to practise, so professional, technical and academic institutions should ensure that curricula include gender equality.

In professional training there needs to be a focus on transformative education, recognizing that most legal professionals will know the law but may apply it in a discriminatory manner. When specifically considering justice professionals:

- ◆ peer-to-peer training (rather than relying on external trainers who are not judicial experts and/or not from the same country) can help ensure core messages resonate and continue to be communicated after any external programme has concluded
- ◆ outside speakers might include victims/survivors of crimes involving GBV, to deepen the understanding among judicial and legal professionals of the harms these crimes have beyond the evidentially physical, and the context in which such crimes occur
- ◆ mentoring, study visits and coaching can be effective.

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\* See also case study 3 on approaches used in Iraq to increase access to justice for survivors of GBV.

<sup>^</sup> Effective gender training practices in the security and justice sector are discussed in more detail in Tool 1 on “Security Sector Governance, Security Sector Reform and Gender”.

Capacity building beyond formal training should also occur, such as providing guidance on how to build effective working relationships with stakeholders, develop networks and communicate and engage with diverse communities. Technological skills may need to be enhanced (when using technology to protect the anonymity of complainants in sensitive cases, for instance).

An international initiative which can be integrated into training is the Feminist Judgments Project. This engages feminist lawyers to rewrite judgments from a feminist perspective, applying different reasoning or different conclusions within the bounds of the same legal codes. The project helps demonstrate how much the perspective or world-views of the judge or lawyer can impact upon the implementation of the law.<sup>16</sup>

Judicial and legal professionals, who often come from privileged social strata, may be unfamiliar with the experiences of marginalized groups, including people with physical disabilities. In BiH the NGO Atlantic Initiative has invited people with disabilities to training workshops for judicial professionals, which has enabled a better understanding of the experiences and challenges they face in accessing justice. For instance, in one workshop a blind woman spoke about the vulnerabilities of women with disabilities in relation to GBV. In another, the mother of a child with profound disabilities spoke of the challenges faced in divorce and custody cases where standard solutions and amounts of alimony commonly awarded by judges are ill-fitted to families of children with disabilities.

#### 4.10 Creating a more representative and responsive justice sector

To develop a justice sector which is representative of the people it serves, it is necessary to identify and remove any barriers standing in the way of equality of opportunity or equality of treatment. Barriers can be assessed through analysis and research, as discussed in sections 4.1 and 4.2.

Addressing barriers to equal participation of women (and other underrepresented groups) or particular groups of women (such as indigenous or ethnic minority women) in the justice sector requires measures such as:

- ◆ setting targets for equal participation of women and men, ideally aiming for 50/50, and for participation of specific underrepresented groups of women and men
- ◆ initiatives addressing recruitment, retention and advancement of women and underrepresented groups
- ◆ internal and external recruitment campaigns targeting women from a wide range of backgrounds
- ◆ scholarships for women to attend law school and gain other legal education or training
- ◆ incentives, policies or practices that support justice professionals who are primary or sole caregivers, such as flexitime, remote working and childcare facilities, or simply a professional culture that takes their need to look after children or parents into account in the scheduling of hearings, meetings, travel, etc.
- ◆ support for associations of women and LGBTI justice professionals
- ◆ comprehensive efforts to address sexist institutional culture, gender bias and discrimination among judges, lawyers and court administrators, including the establishment and support of effective monitoring mechanisms (see section 4.14 on oversight)
- ◆ initiatives to promote women's advancement, such as professional development and training opportunities for women, mentoring schemes and peer support mechanisms.

At times such efforts are given strong impetus through affirmative action, such as quotas and reserved places for underrepresented groups in the legislature and judiciary. For instance, in 2015 in the State of Victoria, Australia, a 50 per cent quota for women was introduced for the judiciary. By March 2019 42 per cent of judges and magistrates were women, up from 37 per cent when the quota was set.<sup>17</sup> While there is strong evidence to show that quotas can be effective, efforts to increase the representation and empowerment of women need to be context-specific and take into account how quotas might work with other parts of the political and justice system.<sup>18</sup> There can be similar initiatives or policies stipulating a certain proportion of women in informal mechanisms. For instance, government policy in Rwanda directs that a third of judges in *gacaca* tribunals should be women.<sup>19</sup> In Ecuador the constitution obliges indigenous justice institutions to ensure the participation of women and respect for international human rights standards.<sup>20</sup>

Evidence suggests that increased representation of women among justice professionals increases access to justice.<sup>21</sup> It should not be assumed, however, that simply increasing opportunities for women to join the justice sector will result in more women being employed in the sector. Cultural, structural and other obstacles preventing recruitment, retention and promotion need to be addressed. Moreover, it should not be assumed that recruiting more women alone will *necessarily* result in more gender-responsive policies and practices: women can have gender bias, or may lack the knowledge, support or inclination to press for change. While a justice sector more responsive to the specific needs of women requires that women are meaningfully and comprehensively represented throughout the system, the additional measures described in this section are needed.

## 4.11 Improving access to justice

All the measures discussed in this Tool are broadly directed at facilitating access to justice. When working from an access to justice perspective, it is particularly important to include the following elements.

- ◆ Legally empowering women, marginalized men and people of diverse sexual orientations and gender identities and expressions (discussed further in section 4.14).
  - Education on legal rights and how to assert them. Community-based paralegal programmes can be used to teach people what their rights are, how to utilize available legal resources and how to access the justice system. Free or subsidized hotlines to get legal advice should be available in all local languages. Innovative methods and new technologies can be used to reach out to women and marginalized groups.
  - Engaging women, marginalized men, people of diverse sexual orientations and gender identities and expressions and civil society in legal reform and oversight (see section 4.13).
- ◆ Removing socio-economic obstacles.
  - Providing legal aid for those who cannot afford legal representation.
  - Providing transport or covering transport, accommodation, childcare and other livelihood costs associated with attending court.
  - Fee waiver or reduction programmes. In Indonesia an increase in state funding in 2008 for the religious court's fee waiver programme was partially responsible for a 14-fold increase between 2007 and 2010 in the number of people accessing religious courts; thus it significantly increased the number of poor people and women accessing justice.<sup>22</sup>

- ◆ Investing in infrastructure.
  - For protection, such as witness protection screens, and separate and safe sanitation facilities (see section 4.8). Women and girls will often avoid places where toilets are shared with men, or privacy and security are not assured.
  - To enable those who live in rural or remote places to access justice, for instance by establishing mobile courts and ensuring transport and accommodation for justice professionals who are deployed to remote areas.
  - To enable those who have disabilities, including being blind or deaf, to access justice by making courtrooms physically accessible; and having readers for people who are illiterate or blind, interpreters for all ethnic groups in an area and sign-language interpreters.
  - To ensure childcare is available at courts.
- ◆ Building trust and confidence in the justice system.
  - Publicly communicating efforts being undertaken to be more representative and responsive to the needs of the people (by the justice ministry or, when appropriate, justice professionals themselves), which can increase public confidence and trust over time.

In working to increase access to justice, the *intersectional* nature of discrimination and disadvantage should always be kept in mind. For example, while women may have limited access to justice, this can be compounded when they are also from an ethnic minority. Special consideration needs to be given to ensuring access to justice for *particularly disadvantaged* women and girls. This includes those who are poor, but also those who are from ethnic or religious minority groups, LGBTI, displaced, have disabilities, are illiterate or do not speak the official language(s) in a particular country.

## 4.12 Engaging with informal justice providers

In many societies the majority of the population seek to resolve legal disputes through informal justice providers, so it is necessary to engage strategically and meaningfully with these providers if women, vulnerable men and LGBTI people are to be able to access justice.<sup>23</sup> This is particularly necessary where informal justice providers are patrilineal and marginalize women.

Ways to encourage informal justice providers to uphold human rights without any discrimination based on gender, and to ensure gender equality, include:

- ◆ sensitizing them to ways in which human rights are being violated, the resultant harms and the obligations to guard against such violations under international law
- ◆ advocating for gender balance in these informal justice mechanisms
- ◆ raising awareness of human rights among communities, and thereby increasing expectations and incentivizing community-led reform efforts
- ◆ identifying and supporting advocates within informal justice providers
- ◆ establishing and supporting oversight or accountability mechanisms.

Any engagement with informal justice providers needs to be informed by an understanding of their normative framework, power structures and the vested interests of key stakeholders. It is also important that engagement is informed by an understanding of how those seeking justice interact with informal providers, what needs they have and what challenges they face.<sup>24</sup>



In Bangladesh, efforts to promote more gender-inclusive and responsive community justice mechanisms (*shalish*) to improve outcomes for women highlight the long-term, multipronged approach required. While women's access to and influence within *shalish* remain somewhat restricted, progress has been made through the long-term engagement of civil society actors alongside institutional and legal reform, for instance to require that a woman is present for cases involving women or children. Civil society actors, notably the social mobilization NGO Nagorik Uddyog, have worked for decades to build women's leadership through training and creating networks, and facilitate alternative NGO *shalish* in which these women leaders mediate. This has been instrumental to women's participation in *shalish*.<sup>25</sup>

#### 4.13 Strengthening gender-responsive internal and external oversight of the justice sector

To enhance accountability and help ensure the justice sector promotes gender equality and non-discrimination, robust gender-responsive oversight mechanisms need to be in place. These should include internal oversight mechanisms (such as monitoring and disciplinary and complaints mechanisms within the justice sector) and external oversight mechanisms (through parliamentary committees, civil society actors, the media, ombuds offices and other stakeholders).

##### Internal oversight

Internally, robust and effective disciplinary policies and procedures (including a code of conduct for both judges and lawyers) need to be in place and contain provisions which prohibit discrimination or harassment on the basis of sex, sexual orientation or gender identity. There should be trusted processes by which to challenge and repress sexist practices among the legal profession and judges. Such processes may include complaint mechanisms through regulatory bodies such as judicial commissions, law societies and bar associations. Members of the judiciary and legal practitioners need to be subject to mandatory training on these codes of conduct and how to adhere to them. Professional membership bodies (e.g. law societies and bar associations) can ensure that lawyers comply with their obligations to undergo continuous professional development (i.e. training) and understand their professional conduct obligations (including ethics). In addition, there needs to be an independent authority which regulates the conduct of judges and lawyers and handles complaints made against them. This might be a separate commission, such as a legal services commission; the type and specific name of the regulatory authority vary between countries and legal systems.

Complaints mechanisms should be accessible to women and men of all sexual orientations and gender identities and expressions, and the handling of complaints and investigations should be responsive to their specific needs. This can be facilitated by policies and protocols developed through consultation with these groups.

Complaints against judges are dealt with differently from complaints against lawyers, and in many legal systems are rare. Complaints against judges can be made on the grounds of judicial bias: if a party to a court case has a reasonable suspicion of bias, it may be grounds for judicial review or appeal to a higher court. Oversight of judges is thus not carried out by an external authority, but generally by higher courts in the legal system. In some legal systems judges have membership bodies which can provide guidance but do not have any disciplinary authority.

A ministry or department of justice, or similar governmental agency, is responsible for overseeing the administration of justice. As such, it plays a role in overseeing the courts – but is constrained by principles of judicial independence.

## External oversight

External oversight plays a critical role in ensuring the justice sector operates in a fair, equitable and transparent manner. Myriad actors are involved.

- ♦ Civil society actors (including CSOs, the media, think-tanks and educational institutions) can investigate abuses, keep the public informed on justice matters and raise awareness of gender equality and human rights issues. They are essential in mobilizing impetus for change (including legal reform) and support for victims (through the provision of legal aid and psychosocial services, for instance).\*
- ♦ National human rights institutions (including national human rights commissions, ombuds offices and thematic commissions) can investigate human rights violations and make recommendations for improving legislation and its application in a way that better responds to the specific needs of women, vulnerable men and people of diverse sexual orientations and gender identities and expressions.^
- ♦ Parliamentary oversight, including through parliamentary committees, helps ensure that the justice sector functions properly and concerns are addressed.\*\*

Building the capacity of these oversight actors, or establishing them where they do not exist, can help to hold justice institutions to account, including ensuring compliance with gender policies and programmes (on the elimination of gender bias and discrimination, for instance). Capacity building can involve new resources, new staff posts and training, as well as creating a legal framework conducive to a vibrant civil society and building relationships between judicial providers and CSOs.

National human rights institutions, parliamentary committees and civil society actors can consider judicial decision-making and sentencing in cases with a particular gender dimension, such as GBV. They can look at gender-disaggregated statistics on attrition and conviction rates, sentencing and recruitment and retention. Cases and judgments can be assessed for potential bias. Retention of women in legal and judicial professions, for instance, can be cross-checked with men's retention rates and analysed against seniority, age and caring responsibilities. Analysing these data over time can help hold the justice sector to account in respect of being gender responsive, non-discriminatory and representative. In BiH, for example, trials are monitored and cases are regularly and systematically reviewed to identify how gender interacts with the application of the law (see case study 5).

Oversight of informal justice providers is also important to ensure adherence to human rights and gender equality principles – recognizing that lack of data and logistical challenges can pose difficulties for monitoring and evaluating compliance.

More broadly, formal monitoring and evaluation programmes should accompany all programmes, plans and policies to advance gender equality and non-discrimination, and there should be an inclusive approach to developing evaluation criteria. Criteria should include public perceptions, and a diverse range of members of the community should be consulted on their experiences with the justice sector to inform monitoring and evaluations (see Box 6).

### 4.14 Challenging society's gender norms and stereotypes, and legal empowerment

Awareness-raising of the importance of gender equality, human rights and equal access to justice as well as the harms caused by discrimination, inequalities, GBV and other gendered crimes (such as child, early and forced marriage) needs to occur beyond formal and informal justice institutions, and within the community. Unless societal gender norms

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\* The role of civil society in oversight of the security and justice sector is discussed in detail in DCAF, OSCE/ODIHR, UN-INSTRAW (2008) "Civil Society Oversight of the Security Sector and Gender", Tool 9, *Gender and Security Sector Reform Toolkit*, Geneva: DCAF, OSCE/ODIHR, UN-INSTRAW.

^ For more detailed guidance for national human rights commissions and ombuds institutions see DCAF, OSCE, OSCE/ODIHR (2014) "Integrating gender into oversight of the security sector by ombuds institutions and national human rights institutions", Geneva: DCAF, OSCE, OSCE/ODIHR.

\*\* For more detailed guidance on how parliaments can integrate gender in security sector oversight see Tool 7 on "Parliamentary Oversight of the Security Sector and Gender".

and stereotypes are addressed, efforts to promote the recruitment and retention of women to build a judiciary which is more representative will be more difficult, as will efforts to protect people against GBV and facilitate equal access to justice. Outreach activities and public information campaigns that highlight and challenge stereotypes and biases related to gender over time can help change attitudes which perpetuate violence, such as what it means to be “a real man” or “a good wife”. Likewise, raising awareness of legal rights and how to assert them is critical to legal empowerment for women and marginalized groups.

Public campaigns can take a range of forms, including billboards, television advertisements, TV and radio programmes, community events, town-hall meetings, workshops, online spaces, school visits and so on (see section 4.4). In Nepal, for instance, broad public outreach campaigns have been undertaken to raise awareness of women’s rights and their understanding of the justice system. Information was communicated via TV, radio and social media, and taken to schools and other public meeting places in a number of communities with a mobile documentary show. Members of the community, including non-state justice providers, were invited to visit justice system institutions to demystify the system and develop mutual understanding.

The internet is an increasingly effective means of sharing information, but due regard should be given to communities that lack internet access or may be illiterate, and to the fact that in some communities women constitute the majority of those illiterate, or otherwise have their access to education and information restricted. Regard should also be given to the misinformation that can be disseminated via the media, which can counter efforts to educate and increase respect towards others.

Targeted education programmes, consultations, workshops and public events can be used to raise awareness and empower. Often such initiatives require prior liaison and confidence-building with gatekeepers and leaders to ensure they secure the necessary buy-in, are sensitive to context, are likely to be attended and convey the intended messages.

Legal empowerment also requires that women, marginalized groups and others are aware of their own agency and capacity to affect change. Confidence-building measures may be needed, as well as specific programmes and safe places to meet.

Challenging societal norms and stereotypes can be supported by building the capacity of CSOs, as well as building relationships between justice sector institutions and civil society actors working on women’s rights and gender equality issues.

Challenging societal gender norms and stereotypes which cause harm and compromise efforts to promote gender equality can significantly contribute to efforts to develop a more representative and responsive justice sector. These efforts help counter impunity, promote security, advance women’s empowerment and achieve gender equality. Taken together, a justice sector which promotes gender equality and non-discrimination can lead to transformational change within society – towards more equitable gender power relations, improved security and equitable access to justice.

## Endnotes

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## 5. Case studies

### Case study 1: Using academic research to build support for law reform around image-based abuse (Australia)

Research undertaken in Australia by Monash University and the Royal Melbourne Institute of Technology on revenge pornography and “image-based abuse” has had a significant impact on legal reform and public awareness, nationally and beyond.<sup>1</sup> The term “image-based abuse” was coined by the research team (and has since been adopted in national law and policy) to describe three behaviours:

- ◆ the non-consensual creation or taking of nude and/or sexual images
- ◆ the non-consensual distribution or sharing of nude and/or sexual images
- ◆ the threat to share nude or sexual images.

Survey and interview research demonstrated the extent of image-based abuse, with survey results showing one in five people in Australia had been the victim of such abuse, and that it was used as a tool of coercion and harassment.<sup>2</sup> Research also demonstrated that *gender is a significant predictor of prevalence* in relation to the non-consensual distribution of images: women aged 18 and over are twice as likely (15 per cent) as men aged 18 and over (7 per cent) to have experienced this form of abuse. Young women are particularly at risk, with 24 per cent of women compared with 16 per cent of men having experienced image-based abuse. Furthermore, the research showed that women experienced all three forms of image-based abuse in a much more damaging way and suffered higher rates of psychological distress, such as post-traumatic stress disorder and suicidal thoughts. Women described feeling violated, almost at the level of sexual violence, with their bodies now being out there for anyone to view. Research also showed that as a result of the harm caused, victims could become reclusive, experience breakdowns in relationships, drop out or fall behind in their studies and be forced to leave their jobs. Significantly, some groups within the community, including LGBTI people, women with disabilities and indigenous Australians, were much more likely to experience image-based abuse.

A high-profile case which underscored the inadequacy of the law involved an explicit image of a woman patient taken by a female nurse while the victim was in hospital, under anaesthetic awaiting surgery. The image was then circulated to the nurse’s colleagues. At this time (2013) there was nothing in the law which could provide justice for the victim. The harm led to the victim losing her job because of taking so much time off sick, as well as relationship problems, a fear of hospitals and other manifestations of trauma.<sup>3</sup>



## Around 20% of Australians have experienced IBA.\*

If you have experienced image-based abuse, you are not alone. 1 in 5 Australians aged 16–49 have experienced image-based abuse. Although women aged 18–24 are more likely to be targets\*, IBA impacts people regardless of their age, race, religion, gender, sexual orientation, education or bank balance.

\*Henry, Nicola & Powell, Anastasia & Flynn, Asher & Gendered Violence and Abuse Research Alliance & RMIT University, Centre for Global Research et al. (2017). Not just 'revenge pornography': Australians' experiences of image-based abuse: a summary report. RMIT University, Melbourne. [eSafety Office Research](#)

Image: N. Henry, A. Powell, A. Flynn, Gendered Violence and Abuse Research Alliance, RMIT University, Centre for Global Research and Office of the e Safety Commissioner.

### Impact

This research on image-based abuse was used to support recommendations for legislative change across Australia and directly shaped the development of two new internationally ground-breaking laws on intimate image abuse. These laws include the *threat* to distribute/share images, which the research found is often particularly damaging for victims: 80 per cent of victims surveyed reported experiencing psychological distress from this form of image-based abuse. This means that an image does not need to be circulated, nor even to exist, for an offence to occur (e.g. the perpetrator could claim they took photos of the victim without her knowledge or consent while she was sleeping or during a sexual encounter and then threaten to distribute these). In such cases perpetrators can be charged even where they later claim there was no intention to circulate, or the images did not exist or had been deleted. These laws also address “Photoshopped” images, making it an offence to threaten, create or distribute a doctored image of the victim. Beyond Australia, the research is informing legislative developments in this field in the UK, South Korea, the USA and elsewhere.

The research has not only had a direct impact on legal reform, but has helped raise the profile of image-based abuse nationwide and beyond. There has been a positive effect on victims, with their experiences being validated with a clear message that the abuse was not their fault and should not have happened. The possibility that others might not suffer, thanks to legal reform and raised awareness, has had a positive psychological impact on victims. Furthermore, as a result of this and other evidence-based research, Facebook and other social media companies have taken steps to redesign their current tools and policies to improve takedown and reporting mechanisms for victims of image-based abuse. The researchers have also briefed police and members of the judiciary to inform practice.

### Lessons learned

- ◆ Use media to generate support for legal reform, raise awareness and change attitudes (away from victim-blaming and harm minimization, for instance).
- ◆ Adopt an intersectional approach to reform, recognizing that women, and among them those from marginalized groups in particular (such as LGBTI people, women with disabilities, indigenous Australians, ethnic and religious minorities, youth), may disproportionately suffer harm and insecurities.
- ◆ Focus beyond the immediate need for legal reform and on the need for cultural shifts in attitudes, which can take longer but are instrumental if harm is to be effectively addressed. Cultural shifts can be facilitated through awareness-raising and educational programmes.

- ◆ Awareness-raising programmes about the law should be targeted at all stakeholders, including victims, witnesses, potential perpetrators, bystanders, justice sector agencies and the general community. They should provide guidance on what the law is, what the harms are and what support is available, and include messages that focus on the abusive actions of the perpetrators and not the actions of the victim.
- ◆ Awareness-raising and training programmes for the judiciary and broader criminal justice system should include components which raise awareness that harm suffered is likely to be among a series of harms – a continuum of violence or abuse suffered – and how such harm can affect the victim beyond any immediate or obvious harm (including to her/his perceived credibility as a witness).

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1. This case study is primarily based upon an interview with Dr Asher Flynn, Monash University and chief researcher. The research was funded by the Australian Criminology Research Council and the Office of the eSafety Commissioner (Australian Government). Subsequent comparative research is being conducted across Australia, New Zealand and the UK, at the time of writing funded by the Australian Research Council and including the Universities of Auckland, Durham and Birmingham.
  2. A national mixed-methods study involving two national surveys (n = 4,274 and n = 4,222) and interviews with 58 stakeholders.
  3. S. Scott (2015) "Sydney nurse who took explicit photo of patient under anaesthetic still practising in NSW", *ABC News*, 11 June, <https://www.abc.net.au/news/2015-11-06/sydney-nurse-takes-explicit-photo-of-patient/6916174> (accessed 15 October 2019).
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## Case study 2: Community consultation on reform of bail and sentencing regulations (Sierra Leone)

New gender-sensitive bail and sentencing regulations and guidelines have been developed in Sierra Leone and are in the process of being adopted.<sup>1</sup> The Bail Regulations and Sentencing Regulations became binding in May 2018 when they were adopted by the Rules of the Court Committee: the Bail Regulations became a statutory instrument in August 2018 when they were passed by Parliament; but, as of the start of 2019, the Sentencing Regulations are pending the passage of a revised Criminal Procedure Act. The process of developing the regulations was led by the chief justice and a Supreme Court judge, with the engagement of CSOs and the support of the UN Development Programme (UNDP).

To raise awareness and invite input into the new regulations and guidelines, national consultations were held in 11 sites across Sierra Leone in 2016. In each site there were 100–300 participants and a series of radio programmes. The consultations were also designed to show that the issues of justice and the justice sector were open for discussion. Key stakeholders in the justice system, including the Supreme Court judge, participated in these outreach activities and had discussions with people – which was a unique endeavour.

During the consultations, members of the public raised concerns about detention of pregnant women, including some specific women. The articulation of these concerns led to the new Bail Regulations stipulating that courts shall consider alternatives to remand when making a bail decision where the defendant is a pregnant woman, lactating mother or primary caregiver (male or female). Likewise, the Sentencing Regulations state that pregnant women, lactating mothers and primary caregivers may not be given custodial sentences unless the crime committed is of a serious or violent nature or the defendant is a repeat offender. Additionally, some individual cases of detained pregnant women that were raised in the consultations were swiftly acted upon, simultaneously with the longer reform process. Being able to see responses to concerns raised increased public confidence in the reform process and in the justice system more broadly, including among women and girls.



Image: Judiciary Public Relations Officer Moses Lamin Kamara, Kenema district - Okada (Bike rider) Unionist © Ministry of Political and Public Affairs of Sierra Leone.

## Lessons learned

- ◆ *Consider gender from the outset of reform efforts.* Even if sensitive, it is essential that efforts to promote gender equality and a gender perspective are integrated into reform processes from inception and throughout. The longer consideration of gender equality is postponed, the less likely it is to be considered and the less likely that efforts will have traction. Waiting for policies to be developed, structures to be built or awareness to be raised before considering gender will be too late.
- ◆ *Engage the public early and comprehensively.* The opinion of the population needs to feed into legal reform. The public need to be engaged and see that change is occurring. For example, in consultations when people mentioned concerns about pregnant women being held in detention to members of the judiciary who were present, it was possible to address the issue immediately in practice and feed into the drafting of the regulations.
- ◆ *Demonstrate responsiveness.* Being able to respond quickly and substantively to concerns raised about elements of the justice system can build trust and confidence in the system and reform efforts.
- ◆ *Be context-specific.* It is of utmost importance that efforts to promote justice or reform the justice sector are context-specific and respond to the specific needs of the people concerned. This necessitates widespread consultations or outreach with a broad cross-section of the public before efforts to reform the law or the justice system begin. In this regard, it is particularly important to ensure that people who may have limited



access to justice and/or specific justice concerns are reached, such as women, and in particular those from marginalized groups and living in rural or remote locations. Being responsive to context also means attending to low levels of literacy, for example, and ensuring guidelines and informational materials are easily understood (not least because high levels of poverty may mean that many people do not have legal representation, so awareness of the guidelines is particularly important). Context-specificity involves being able to adapt to institutional and political conditions and calibrate ambitions for change accordingly, while ensuring adherence to the principle of doing no harm.

1. This case study is based upon an interview with Louise Simonsen Aaen, INL Project Manager, UNDP Sierra Leone (4 July 2018, via Skype). The project was implemented by the Judiciary of Sierra Leone and UNDP in partnership, and funded by the US Department of State Bureau of International Narcotics and Law Enforcement Affairs.

### Case study 3: Increasing access to justice for survivors of GBV (Iraq)

Since 2012, in the Kurdistan region of Iraq, the UNDP, alongside local NGOs and other organizations, has been supporting legal aid and referral services for displaced survivors of GBV, including conflict-related sexual violence. Legal aid centres inside the main camps for internally displaced persons (IDPs) and refugees house social workers and lawyers, providing psychosocial support as well as legal advice and support under one roof. They can also make direct referrals to other services, such as health service providers, livelihood programmes, child protection organizations and camp management. A mobile legal team provides legal advice and support for IDPs and refugees outside camps. The legal aid centres assist male as well as female survivors of GBV, which has helped avoid stigma associated with visiting a centre.

Alongside these services, since 2017 hundreds of awareness-raising events have been conducted in and outside camps, highlighting issues such as GBV, conflict-related sexual violence and child marriage (what it is, how it can be prevented and who to contact if someone needs help regarding such issues). These events target the whole community, not just women and girls, which is necessary if such events are to be successful in influencing attitudes and beliefs.



Image: © UNDP Iraq/  
Martins/2016.

The project also builds the capacity of the Directorate for Violence against Women through mentoring, observation and training. Training has been provided for directorate staff, NGO partners and members of the Independent Board of Human Rights on GBV, conflict-related sexual violence, human rights, legal aid, case tracking, reporting, documentation and investigations. Standard operating procedures have been established where there were previously none. The project has ensured that females are substantially represented in the staff of structures delivering assistance to GBV survivors; today the majority of staff in the directorate and the engaged NGOs are women.<sup>1</sup>

## Impact

- ◆ *Access to justice for survivors of GBV, including conflict-related sexual violence.* Between 1 January 2017 and 31 March 2018 the legal aid centres served 13,147 IDPs and refugees (10,668 women and 2,479 men). The mobile team was particularly effective in reaching those unable to travel or who lacked the financial resources to access justice otherwise. Training and mentoring provided through the project have resulted in the Directorate for Violence against Women addressing GBV cases more effectively and sensitively.
- ◆ *Awareness-raising.* Awareness-raising activities have helped to break down taboos concerning GBV, conflict-related sexual violence and related issues. The project itself has also raised the political importance of the topic of conflict-related sexual violence, resulting in a joint communiqué between the government of Iraq and the United Nations in December 2006 on the need to address conflict-related sexual violence and support victims.
- ◆ *Collaboration between government and civil society.* The project not only increased access to justice and helped build the capacity of national actors providing assistance to GBV survivors, but also provided a platform for the Directorate for Violence against Women to work with NGOs. By promoting collaborative efforts it has maximized the assistance provided by both the directorate and the NGOs for those in need, and ensured that support for survivors can be sustained beyond the lifetime of the project.



Image: © UNDP Iraq/  
Martins/2016.

## Remaining challenges

- ◆ *Lack of understanding of GBV and conflict-related sexual violence among judges and judicial officers.* Judges and other members of the judiciary lack knowledge of conflict-related sexual violence and broader GBV, and specialized expertise to adjudicate such cases. In future programming it is important to invest in training and awareness-raising for members of the judiciary in dealing with GBV cases, to ensure that cases are dealt with fairly and sensitively.
- ◆ *Lack of sufficient financial support.* The current funding trajectory for GBV and conflict-related sexual violence projects is short term and piecemeal. This undermines efforts to address the problems and help survivors.
- ◆ *Legislative gaps in the Iraqi legal system.* The atrocities committed by ISIL in Iraq since 2014 present new and challenging legal issues, including the registration and legal status of children born to ISIL fighters. Many of the mothers of these children, hundreds of whom were forced to marry ISIL fighters, cannot register their children, as they are required to have the father's support to do so but the father's whereabouts are unknown or he is presumed dead. Gaps in the law are hindering the process of justice for survivors of conflict-related sexual violence and their children.



Image: © UNDP Iraq/  
Martins/2016.

1. UNDP (2018) "Rule of Law Programme: Project summary", Baghdad: UNDP Iraq, [https://www.iq.undp.org/content/iraq/en/home/operations/projects/democratic\\_governance/rule-of-law-programme.html](https://www.iq.undp.org/content/iraq/en/home/operations/projects/democratic_governance/rule-of-law-programme.html) (accessed 18 October 2019).

## Case study 4: Legislative reform concerning domestic violence (Ukraine)

On 7 January 2018 a new law on preventing and combating domestic violence came into force in Ukraine.<sup>1</sup> This was the first substantial step taken by Ukraine to criminalize domestic violence, the scale of which is huge. Human rights groups estimate that over 60 per cent of Ukrainian women have been the victims of domestic violence.<sup>2</sup> The new law was expected to be followed by further legal reform in preparation for the prospective ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention).

The European Union Advisory Mission (EUAM) Ukraine has provided training to police and prosecutors to familiarize them with the new domestic violence law and enable its appropriate interpretation and effective implementation. Training has included presentations by CSOs and social services with real-life case studies to help illuminate the scale and impact of the problem of domestic violence. Supported by DCAF, EUAM Ukraine is developing curricula for the National Prosecution Academy and working with the Public Prosecution Service to develop guidelines on documenting evidence and prosecuting techniques.

### Lessons learned

- ◆ Involve the judiciary from the outset in the design and implementation of assessments of challenges for victims of domestic violence in accessing justice. This builds their commitment to be engaged in improvement.
- ◆ Involve civil society from the outset in the development and implementation of training programmes to provide the perspective of victims of domestic violence.
- ◆ Use the media to raise awareness of domestic violence, including that this abuse is not acceptable and that advice, support and information are available to those in need or at risk. It is particularly important to raise awareness among victims, as many do not see domestic violence as a crime, nor know where and how to get help.

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1. This case study is based upon an interview with Veronika Kristkova, Senior Adviser on Legislative Reform, EUAM Ukraine.
  2. EUAM Ukraine (2018) "EUAM training guides police in enforcing law on combating domestic violence", 19 July, [www.euam-ukraine.eu/news/euam-training-guides-police-in-enforcing-law-on-combating-domestic-violence](http://www.euam-ukraine.eu/news/euam-training-guides-police-in-enforcing-law-on-combating-domestic-violence) (accessed 15 October 2019).
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## Case study 5: Gender and justice reform (Bosnia and Herzegovina)

Comprehensive gender and justice reform has been undertaken in BiH since 2013, to improve the capacity of judicial staff to integrate gender awareness into their procedures and practices, to improve judicial response to domestic violence and GBV, and to be more cognizant of gender bias within the judiciary.<sup>1</sup> This has been achieved in part through a project by BiH's Association of Women Judges, local NGO Atlantic Initiative and DCAF to strengthen the justice system's delivery of non-discriminatory services and enhance the role of women in the justice sector, particularly at decision-making levels.

### Strategies

The main aims of the project have been achieved through research, training judicial professionals to train their peers, creating and supporting a group of highly motivated, well-trained and mutually supportive gender champions (judges and prosecutors) and developing guidance materials.

### Research

Comprehensive research, drawing upon surveys and in-depth interviews with judges, attorneys, prosecutors and court associates, played a critical role in persuading judges and prosecutors of the need for this work.<sup>2</sup> Research demonstrated that gender-based stereotypes can result in gender bias within the judiciary, which affects collegial relationships, the court atmosphere and legal decision-making. Judges and prosecutors were typically uninformed about sexual and gender-based harassment (SGBH) and had not received training on the topic. Legal decision-making was found to be particularly affected by gender bias in certain areas, including domestic violence, rape and child custody. The research showed judges that





Image: © Atlantic Initiative.

gender bias can influence interactions and outcomes, even where they firmly believe they apply the law in a strictly impartial manner and are professional in their conduct.

Later qualitative research on experiences of survivors of domestic violence likewise helped to change attitudes among judicial professionals.<sup>3</sup> It painted a picture of the dynamics of domestic violence and the precarious position in which survivors often find themselves. It demonstrated that systematic domestic violence was not regarded as a serious criminal violation by agencies of the criminal justice system, and how this placed survivors and others at heightened risk. The research was ground-breaking in showing judges how survivors of domestic violence experience their judgments.

### Training and cultivating gender champions

Training of trainers (on domestic violence, SGBH, GBV and gender bias) was interactive and sustained over some time: eight judges were trained for one weekend every month for a period of eight months. This allowed reflection between each training session, and helped to build a critical mass of people able to critique their own profession (and cases). Training materials were generally developed jointly by BiH judges and other stakeholders, including academics and state representatives. This approach enabled buy-in and helped ensure the training materials were context-specific and understood by and relevant to those who would participate in the training. This approach also enabled early sensitization to abstract or difficult concepts such as “gender bias”. Success was secured by starting small and working from the needs and interests identified by the Association of Women Judges.

### Guidance materials

The project involved the development of key resources for the judiciary, including a textbook on gender bias and the law.<sup>4</sup> Policies, guidelines and other resources for the judiciary in relation to domestic violence were jointly developed by BiH judicial professionals with the support of DCAF and Atlantic Initiative.

Since August 2017 the work has broadened to family law, judicial responses to rape and critical examination of domestic violence cases, while paying continued attention to research and training in domestic violence, sexual harassment and gender bias. From 2018 Atlantic Initiative has been supporting a small group of judges, trained in critical analysis, to review selected domestic violence cases. With the participating judges uncovering issues through their analysis, including a lack of understanding about domestic violence and problems with how the law is applied, the learning and prospective impact of their analysis among their peers are magnified.





Image: © Atlantic Initiative.

## Impact

The project has had significant success.

- ◆ In 2015 a comprehensive policy on SGBH for the judiciary was developed and adopted by the BiH High Judicial and Prosecutorial Council, followed by the appointment of trained SGBH advisers throughout the justice system.
- ◆ Training has been delivered to all SGBH advisers, and SGBH orientation sessions have been delivered to other staff.
- ◆ A comprehensive gender bias curriculum was developed and delivered to law students by professors and practitioners, and eventually translated into a textbook for widespread use, as mentioned above.
- ◆ Gender champions were created across BiH through training activities addressing gender bias, domestic violence and GBV.
- ◆ In response to the in-depth research, sustained training and advocacy, and guidance and resource material developed jointly by legal practitioners in BiH, DCAF and Atlantic Initiative, courts across BiH have adjusted the way in which they deal with cases of domestic violence and GBV.<sup>5</sup>

## Lessons learned

- ◆ Successful implementation of reform programmes can be facilitated by identifying, creating and supporting gender champions. Training judicial professionals (especially the more senior professionals) to train their peers, rather than relying on external trainers, is an effective way in which to create and support these champions. Ownership is critical: stakeholders take ownership of the ideas and the programme, identifying what needs to be done and how. In this way, training is effective and the learning becomes their new reality/accepted knowledge.
- ◆ Sustained and interactive training is often more effective than short-term, even if intensive, and traditional classroom-based tuition (lecturing). It enables reflection, active learning and a deeper understanding. In this case, weekend residential courses with a heavy emphasis on group work and discussion were particularly effective.
- ◆ Effective training can also be facilitated by engaging local stakeholders (i.e. the institutions themselves) in the development of training materials. This can ensure buy-in and context-specificity.
- ◆ Training should address knowledge and skills. In BiH, as well as being given substantive knowledge (knowing there is a wider picture to domestic violence than simply the injuries sustained, for instance), judges were trained in how to critique domestic violence judgments.

- ◆ Addressing gender bias and influencing attitudes within the justice sector can begin when prospective members of the judiciary are still in law school.
- ◆ Undertaking evidence-based research can help persuade people of the need for a gender-sensitive approach where normative arguments may not be effective.
- ◆ Expert speakers who can speak authoritatively on certain issues (such as a woman with disabilities speaking about the challenges faced by women with disabilities when coming into contact with the justice system) can enlighten judicial professionals about various challenges.
- ◆ Big ideas or big projects do not need to start big. This BiH gender and justice project started with a modest initial contact with the Association of Women Judges, which wanted to “do something” but needed some guidance. This then led to work with institutions on training, and further elements evolved through ongoing monitoring and development of the work.

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1. This case study is based upon an interview with Dr Majda Halilović, Head of Research and Policy, Atlantic Initiative, Sarajevo, BiH, 6 July 2018 (via Skype). The project has been supported by DCAF and Atlantic Initiative, with the financial support of the Norwegian Ministry of Foreign Affairs, and the leadership and engagement of the judiciary (including the Association of Women Judges of BiH, the Centres for Judicial and Prosecutorial Training in the Federation of BiH and Republika Srpska, the High Judicial and Prosecutorial Council of BiH and judges and prosecutors across BiH).
  2. M. Halilović and H. Huhtanen (2014) *Gender and the Judiciary: The Implications of Gender within the Judiciary of Bosnia and Herzegovina*, Geneva: DCAF.
  3. M. Halilović (2015) *Survivors Speak: Reflections on Criminal Justice System Responses to Domestic Violence in Bosnia and Herzegovina*, Geneva: DCAF.
  4. DCAF and Atlantic Initiative (2017) *Gender Bias and the Law: Legal Frameworks and Practice from Bosnia and Herzegovina and Beyond*, Geneva: DCAF.
  5. N. Galic and H. Huhtanen (2014) *Judicial Benchbook: Consideration of Domestic Violence Case Evaluation in Bosnia and Herzegovina*, Geneva: DCAF.
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## Case study 6: Gender equality protocols for magistrates and judges (The Caribbean)

In April 2017 Barbados became the first country among the 20 countries that comprise the Caribbean Community (CARICOM) to develop a draft Gender Equality Protocol for magistrates and judges. The following year, in August 2018, Trinidad and Tobago became the first Commonwealth Caribbean nation to approve such a protocol. Similar protocols are expected to follow in Guyana, Belize and Jamaica.

This work was led by the Caribbean Association of Judicial Officers through the Judicial Reform and Institutional Strengthening (JURIST) Programme, which is a partnership between the regional judiciaries led by the Caribbean Court of Justice and the Canadian Department of Foreign Affairs, Trade and Development. The JURIST Programme aims to increase the efficacy of courts and the judiciary to resolve cases effectively and fairly in the Caribbean region. This work has been supported by UN Women as part of efforts to increase access to justice and respond to cases involving GBV and, in so doing, to support countries in the region to achieve the SDGs.

The impetus behind the development of Gender Equality Protocols for countries in the Caribbean came from an understanding that even though overt gender discrimination may not be commonplace, unconsciously held bias impacts on outcomes for those working in or coming into contact with the judiciary. This can undermine efforts to ensure a fair trial or equal treatment of judicial staff.

## Impact

While it is still too soon to attribute outcomes for those who work in or otherwise come into contact with the justice sector, a number of advancements have been made.

In the first instance, these Gender Equality Protocols draw the attention of judicial professionals to how gender bias can influence outcomes for women, men and people of diverse sexual orientations and gender identities and expressions. The protocols also encourage reflection on assumptions and behaviours for possible bias.

The Gender Equality Protocols establish standards for judicial professionals to adhere to, and aim to equip judicial professionals with the skills and knowledge required to enable adjudication without gender bias. Rather than relying on stereotypes and unquestioned assumptions, the protocols encourage judicial professionals to be responsive to the gendered realities of women and men of all sexual orientations and gender identities and expressions, and better respond to sensitive cases, such as those involving GBV, trafficking and child custody. The protocols aim to improve the ability of judicial professionals to conduct gender analyses to ensure equal access to justice, and enable equitable outcomes for women and men of all sexual orientations and gender identities and expressions. The protocols are also intended to inform judicial training.

The overarching aim is to improve the effectiveness of the justice system and increase public trust and confidence in the judiciary, and in this way to contribute to the advancement of justice and progress towards gender equality.<sup>1</sup>

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1. UN Women Caribbean News (2017) "LAC South-South cooperation leads to Caribbean first judicial gender protocol", 13 April, <https://caribbean.unwomen.org/en/news-and-events/stories/2017/4/lac-southsouth-cooperation-leads-to-caribbean-first-judicial-gender-protocol> (accessed 15 October 2019).

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HAVE JOINT  
DISCUSSIONS  
BEFORE MAKING  
DECISIONS

SEND A  
POSITIVE  
MESSAGE



## 6. Guiding questions for institutional self-assessment

The following guiding questions for institutional self-assessment are intended as a starting point for assessing how the justice sector promotes gender equality and integrates a gender perspective. They outline the kinds of data that would need to be gathered and processed, and what some steps for improvement could be. They are not an exhaustive set of questions, and should be developed and adapted for any context.\*

Questions to be addressed	Examples of data to be collected and analysed	Examples of steps for improvement
<b>Are the constitution and national laws in conformity with international and regional human rights obligations, including as regards gender equality?</b>	Identify which international and regional human rights instruments have been ratified by the state  Identify which laws do not conform to international and regional human rights obligations	Ratify international and regional human rights instruments  Amend all discriminatory laws  Disseminate information on new/reformed laws, and ensure understanding and compliance
<b>Do individuals and bodies within the justice sector have appropriate knowledge of their role in ensuring their country fulfils its gender equality commitments and strategies?</b>	Percentage of judicial and legal professionals (including judges and prosecutors) and court administrators who have completed gender training (disaggregate by sex, position, seniority, location and other relevant factors)	Deliver gender training and sensitization/awareness-raising programmes, and evaluate such programmes  Update terms of reference for all staff and bodies with support of ministries responsible for gender  Introduce or review a gender policy or gender action plan
<b>Do equal opportunities exist within the institution for recruitment, promotion and remuneration?</b>	Percentage of judicial and legal professionals and court administrators in the institution and at each level of seniority who are male, female and trans (disaggregated)  Number of work-based crèche/care facilities, flexitime and/or home-based work policies (where possible), and equal and paid maternity and paternity leave provisions  Gender-disaggregated data on staff turnover and retention  Gender-disaggregated data on remuneration	Introduce and ensure compliance with non-discrimination policies, ensuring everyone has equality of opportunity  Introduce crèche/care facilities, flexitime and/or home-based work policies (where possible)

Other key resources to support gender assessment of a justice system include UNODC (2010) "Gender in the criminal justice assessment tool", New York: United Nations; M. Bastick (2011) Gender Self-Assessment Guide for the Police, Armed Forces and Justice Sector, Geneva: DCAF.

See also OSCE/ODIHR (2019) "Gender, diversity and justice: Overview and recommendations", Warsaw: OSCE/ODIHR.

Image: Walk against domestic violence and commemoration of International Day for the Elimination of Violence Against Women in Chaguanas, Trinidad & Tobago, 19 November 2008  
© Center for Women's Global Leadership.

Questions to be addressed	Examples of data to be collected and analysed	Examples of steps for improvement
<b>Do equal opportunities exist within the institution for training?</b>	<p>Percentage of judicial and legal professionals and court administrators (male, female and trans) who have received training in the last one, five and ten years (disaggregated)</p> <p>Number of crèche or care facilities at training locations</p> <p>Existence of policies aimed at sole/primary carers</p>	<p>Introduce and ensure compliance with non-discrimination policies, ensuring everyone has equality of opportunity</p> <p>Provide crèche or care facilities at training locations</p> <p>Deliver training remotely or at times/places suitable for carers</p> <p>Introduce policies which support sole/primary carers and enable equal access to training</p>
<b>Are people in the justice sector treated equally and not discriminated against on the grounds of gender identity or expression (whether judges, prosecutors, other court staff, victims, witnesses or accused)?</b>	<p>Number of internal and external complaints and disciplinary proceedings that explicitly involve gender discrimination, harassment or violence</p>	<p>Evaluate whether and how gender bias operates in the institution, and act upon findings</p> <p>Introduce policies and guidelines which guard against discrimination</p>
<b>Are GBV cases, including domestic violence, dealt with appropriately?</b>	<p>Number of crimes involving GBV dealt with and their outcomes (dropped, dismissed, acquittal or conviction, and sentence), including number of cases of domestic violence where mitigating factors were accepted</p> <p>Existence of specialist prosecution units, judges and courts with trained staff and adequate resources to deal with gender-related crime</p> <p>Percentage of victims/survivors satisfied with treatment and outcome of their cases</p> <p>Percentage of judicial and legal professionals who respond to a survey that GBV is or is not a serious crime</p>	<p>Sensitize judicial practitioners to the harms caused by GBV beyond the physical, and the contexts in which GBV occurs</p> <p>Amend policy and guidance to respond to the specific needs of victims/survivors of GBV</p> <p>Monitor adjudication of crimes involving GBV to ensure compliance with aforementioned policy and take action where necessary</p>







## 7. Additional resources

### Websites

CEDAW, [www.ohchr.org/EN/HRBodies/CEDAW/Pages/Introduction.aspx](http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Introduction.aspx)

DCAF, “Gender and security”, [www.dcaf.ch/gender-and-security](http://www.dcaf.ch/gender-and-security)

Free & Equal United Nations, [www.unfe.org](http://www.unfe.org)

International Association of Women Judges, [www.iawj.org](http://www.iawj.org)

International Center for Transitional Justice, [www.ictj.org](http://www.ictj.org)

International Development Law Organization, [www.idlo.int](http://www.idlo.int)

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Image: Volunteers look on as Al-Manarah square in Ramallah is lit orange in support of International Day for the Elimination of Violence against Women. 26 Nov 2016 © Office of the European Union Representative in Jerusalem.



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