

MODULE 1:

# The Theory and Practice of Women’s Access to Justice Programming



Empowered lives.  
Resilient nations.



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Design: Irene Ramirez

A Practitioner’s Toolkit on Women’s Access to Justice Programming

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**MODULE 1:**

# The Theory and Practice of Women’s Access to Justice Programming



*Empowered lives.  
Resilient nations.*





# THE TOOLKIT AT A GLANCE

The Toolkit comprises an Introduction and five Modules:

INTRODUCTION	MODULE 1 The Theory and Practice of Women's Access to Justice Programming	MODULE 2 Marriage, Family and Property Rights	MODULE 3 Ending Violence Against Women	MODULE 4 Women in Conflict with the Law	MODULE 5 Programming at the Country Level
Summary	Summary	Summary			Summary
Women's access to justice	Understanding the overall country context	Creating an enabling environment for women's access to justice			New generation of UNDAFs
Overarching commitments underpinning women's access to justice	Creating an enabling environment for women's access to justice	Creating effective, accountable and gender-responsive justice institutions			The programming cycle of UNCTs
Justice needs of women who face multiple and intersecting forms of discrimination	Creating effective, accountable and gender-responsive justice institutions				Cross-cutting issues to consider during implementation
Programming principles, approach and methodology	Legally empowering women	Legally empowering women			APPENDICES
Purpose and scope	Considerations for crisis-affected contexts	Considerations for crisis-affected contexts			ENDNOTES
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Above: World Conference on Indigenous Peoples participant. © UN Photo/Loey Felipe.



# 1.0 Summary

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Women who seek justice are confronted by a complex landscape of laws, systems and institutions. This Module brings together the knowledge and tools that practitioners need to build and sustain justice systems that are responsive to the rights and needs of women. It provides the basic foundations for women's access to justice programming at country level by outlining the key contextual factors to be taken into account (political, legal, economic, social and cultural) and unpacks the operationalization of the three programming entry points by highlighting common challenges and providing potential solutions. In doing so, it serves as the foundation for applying the programming principles and entry points in subsequent Modules, which provide detailed explorations of women's access to justice by thematic area.

It is modelled to facilitate a continuum in justice programming across all country contexts (development, conflict, post-conflict and other crisis situations) and all dimensions of the justice chain, while recognizing that effective access to justice requires investments beyond formal legal reform. This Module therefore, offers a broader vision for addressing structural barriers, such as gender bias among justice actors, geographic, linguistic, cultural and financial inaccessibility and underlying discriminatory societal and cultural norms.

As noted in the Introduction, this Toolkit premises the theory and practice of women's access to justice on three sets of programming principles. Firstly, it adopts the human rights-based approach to development as outlined in [The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies](#). Secondly, it utilizes the four principles for integrated programming at country level (leave no one behind; human rights, gender equality and women's empowerment; sustainability and resilience; and accountability) as defined by the UNDG [United Nations Development Assistance Framework Guidance](#). Finally, in conjunction with existing principles, it introduces three mutually reinforcing entry points for sustainable women's access to justice programming:

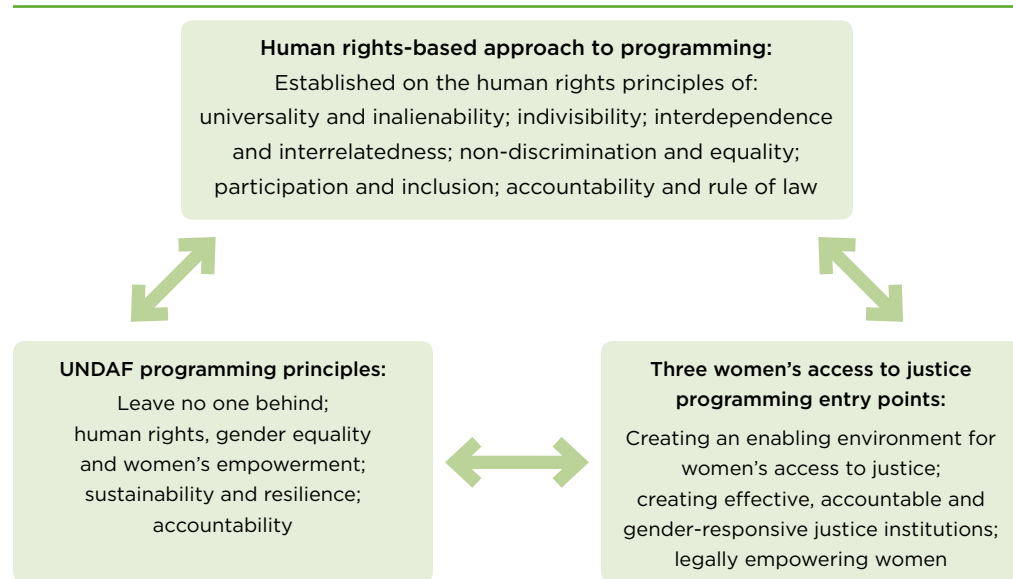
- **Creating an enabling environment for women's access to justice:** Reforming formal and informal legal norms that discriminate against women as well as making policy and financial investments more supportive.
- **Creating effective, accountable and gender-responsive justice institutions:** Reforming justice institutions and systems for effective women's participation, coordination and response to women's justice needs.
- **Legally empowering women:** Empowering women and girls with the tools to know, claim and exercise their rights and extending knowledge of women's rights to men, boys and community power structures.

Table A.11 in the Appendices presents an overview of the entire means of implementation of women's access to justice programming across all country contexts by demonstrating the relevance of the following instruments to the three programming entry points: the [Sustainable Development Goals](#) (SDGs); the [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW); CEDAW [General Recommendation No. 30](#)

This Module applies the human-rights based approach, the four UNDAF programming principles and the three entry points for women's access to justice, which support the implementation of human rights standards and the SDGs

on [Women in Conflict Prevention, Conflict and Post-Conflict Situations](#) (CEDAW GR 30); CEDAW [General Recommendation No. 33 on Women's Access to Justice](#) (CEDAW GR 33); the WPS Goals and Indicators contained in the Annex of the United Nations Security Council, [Report of the Secretary-General, Women and Peace and Security](#); and the PSG fragility assessment indicators found in Annex 2 of the g7+ [Note on the Fragility Spectrum](#).

**FIGURE 1.1** Theory and practice is based on the four UNDAF programming principles and three programming entry points, both informed by the human rights-based approach to programming



Sources: United Nations, [The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies](#), developed at the Inter-Agency Workshop on a human rights-based approach in the context of UN reform, p. 2, (3-5 May 2003); UNDG, [United Nations Development Assistance Framework Guidance](#), pp. 9-12, (New York, 2017); [CEDAW GR 33](#); and [SDG 16](#).

In this and subsequent Modules, basic information, typical programming challenges and programming considerations and options are proposed for each of the three programming entry points. They recognize that programming challenges can be translated into opportunities.

Across all Modules, there is also a basic acknowledgement that while it may not be possible for a country to swiftly bring together all the components needed for an enabling environment for women's access to justice; effective, accountable and gender-responsive justice institutions; and legally empowering women, the aim should be to work towards them over time.

## 1.1 Definitions

**Alternative Report:** Independent reports that CSOs submit to treaty bodies on their perspective on a State's implementation of the treaty concerned. It is otherwise known as a "shadow report".

Words and phrases which are not defined in the text of the Module are defined here

**“Claw back” clause:** The watering down or withdrawing of a beneficial provision in a legal instrument.

**Complainant:** A person who initiates a case or reports a crime.

**Concluding observations and recommendations:** Substantive remarks issued by a treaty body after consideration of a State party’s report. Concluding observations refer both to positive aspects of a State’s implementation of the treaty and areas where the treaty body recommends that further action needs to be taken by the State. The treaty bodies are committed to issuing concluding observations which are concrete, focused and implementable and are paying increasing attention to measures that ensure effective follow-up to their concluding observations.<sup>1</sup>

**Derogation clause:** Derogation clauses are generally reflected in constitutions. It is defined as a measure adopted by a State to partially suspend the application of one or more provisions of a human rights treaty, at least temporarily. Some human rights treaties allow States parties, in a public emergency which threatens the life of the nation, to derogate exceptionally and temporarily from a number of rights to the extent strictly required by the situation. The State party, however, may not derogate from certain specific fundamental rights (e.g., the right to life; prohibitions against torture, slavery and servitude) and may not take discriminatory measures.<sup>2</sup> See United Nations General Assembly Resolution 2200A(XXI), [International Covenant on Civil and Political Rights](#) and United Nations Human Rights Committee, [General Comment No. 29: States of Emergency \(Article 4\)](#).

**Dualist legal traditions:** Countries which require parliamentary approval and legislation prior to the incorporation of international treaties into domestic law. The courts of such States are not bound to apply treaties in their decisions, although an increasing number demonstrate such usage.

**Fragility:** A heightened exposure to risk combined with a low capacity to mitigate or absorb these risks. This situation of vulnerability can lead to violence, conflict, chronic underdevelopment and protracted political crisis.<sup>3</sup>

**In camera:** In private or outside of public view.

**Legal domain:** A specific category or branch of the law (e.g., administrative, civil, commercial, criminal, family, investment and insurance law).

**Legal system:** The sum total of all formal and/or informal laws and institutions, including the principles which govern the interaction of laws and institutions and the manner in which human rights treaties are ratified and integrated into domestic law and practice.

**Meta-analysis:** A synthesis of findings, conclusions and recommendations from various evaluations.

**Monist legal traditions:** Countries where international treaties are regarded as an integral part of domestic law and the courts apply them in their decisions.

**Respondent:** A person who is legally required to answer to a claim submitted to a judicial forum by another person. The term is mostly used in civil, family and administrative proceedings. The corollary in criminal proceedings in which a perpetrator of a crime is involved is “accused person”.

**Rules on standing:** Regulations which determine who can set the administration of justice in motion, either for one’s own self or on behalf of another person.

**Universal Periodic Review:** A State-driven process which involves a review of the human rights records of all United Nations Member States. It operates under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations.<sup>4</sup>

## 2.0 Understanding the overall country context

### 2.1 Assessing country contexts

As noted in the Introduction, women’s access to justice programming must be anchored in the United Nations system’s broader access to justice and rule of law engagement. In as much as the legal environment is a critical cornerstone of the broader access to justice and rule of law arena, other factors such as the social, economic, political and security contexts and the degree to which women’s rights are locally accepted can impact upon the effectiveness and long-term sustainability of interventions. These considerations must be taken into account for purposes of ensuring national relevance and local ownership (see Module 5).

“Politically smart, locally led development” requires sufficient background information (including what may have happened in prior programming phases), knowledge of the political economy and a politically astute approach that focuses on issues of local relevance.<sup>5</sup> Assessments are necessary for evaluating immediate country priorities, as well as realizing the overall objective of assisting a country’s transition into peace and development. This will require a comprehensive meta-analysis of various country assessments, which may have been undertaken over an extended period of time.

This Section presents an overview of the assessments from which such information can be obtained in both development and crisis contexts. It begins with a discussion of country typologies and then provides examples of country assessments including CCAs, g7+ fragility assessments and United Nations crisis-related assessments.

#### 2.1.1 Country typologies

As a first step, programmers must be familiar with the classification of the country in which they are operating. While various sources can be used, the human development groupings of UNDP, classification of fragile States of OECD and the fragility spectrum of the g7+ are useful starting points for determining such classifications.

Effective women’s access to justice programming is based on sound knowledge of the environment and stakeholders. The tools and entry points for undertaking country assessments are many and varied

Diverse country situations demand context-specific interventions





Above: Tunisia. View of El Kef Medina, photographed from the Grand Fort © World Bank/Arne Hoel.

#### **BOX 1.1 A description of the relationship between the phases of post-conflict and development**

There are two phases to consider in relation to post-conflict human security and law and order: the first is the immediate need to regain some degree of law and order in the state—this crisis management phase often involves peacekeeping troops, UN police, and sometimes foreign judges. The development phase, which is practically concurrent with the crisis phase, aims to set up a more long term sustainable environment of law and order in the state, and represents an even more difficult challenge ... The development phase, which must be planned from the start and must be integrated into the crisis management phase, involves the need to re-establish a sustainable law and order environment in the country. It requires a more long term strategy to address criminal behavior and assist in conflict resolution.

Source: Kirsti Samuels, “[Rule of Law Reform in Post-Conflict Countries: Operational Initiatives and Lessons Learned](#)”, Social Development Papers: Conflict Prevention & Reconstruction, No. 37, p. 8, (Washington, D.C., The World Bank, 2006).

The [Human Development Report 2016: Human Development for Everyone](#) identifies four broad human development groupings (very high human development, high human development, medium human development and low human development) based on a calculation of the Human Development Index for each country.<sup>6</sup>

[States of Fragility 2015: Meeting Post-2015 Ambitions](#) contains a compilation of fragile States to capture five factors of risk and vulnerability clustered around several dimensions of [SDG 16](#) (see Figure A.1.1 in the Appendices). These are:

- *Violence*: Reduce all forms of violence and violent deaths everywhere
- *Justice*: Promote the rule of law at the national and international levels and ensure equal access to justice for all

According to OECD, access to justice or the lack thereof is an indicator of fragility

- *Institutions*: Develop effective, accountable and transparent institutions at all levels; reduce illicit financial flows and combat organized crime
- *Economic foundations*: Reduce youth unemployment; promote economic, social and political inclusion
- *Resilience*: Reduce exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters; build adaptive capacity

Finally, the fragility spectrum of the g7+ charts a country's journey from crisis to rebuilding and reform, transition, transformation and ultimately resilience.<sup>7</sup> The spectrum therefore offers both a system for country classification and a methodology for conducting a country assessment (see Section 2.2.2). It is important to note that countries may differ in terms of how the fragility spectrum should be applied, as a country may be either fully or partially engulfed by conflict. Varying circumstances across geographic regions may therefore require multiple approaches to justice delivery to reflect different levels of vulnerability, risk and fragility.

## 2.2 Examples of country assessments

### 2.2.1 The Common Country Analysis: The development context

The CCA is the United Nations system's independent and mandate-based articulation of the country context, opportunities and challenges, encompassing sustainable development, human rights, gender equality, peace and security and humanitarian perspectives.<sup>8</sup> It is an objective assessment (a description of what is happening) and an analysis (a description of why it is happening) of the country situation. It strategically positions the United Nations at the country level and serves primarily as a programming tool for strengthening its engagement with national stakeholders, including in regard to advocating for policy change and supporting national development planning.

Furthermore, CCAs facilitate the identification of areas for integrated policy support, reflecting the interdependence of the SDGs and a country's own development priorities. Rather than adopting a fragmented approach to individual issues, CCAs combine multiple perspectives in a complementary and coherent manner. They identify national capacity gaps (e.g., analytical, institutional, statistical) that can be addressed through coordinated support by the United Nations at the country level and by enhanced policy coherence.

CCAs include a review of existing assessments, evaluations and analyses by the government, the United Nations and other stakeholders. Existing flagship publications, specific assessments and analytical tools, particularly those contributing to the global monitoring of progress on the SDGs, may be useful sources of information. Data can be gathered in partnership with governmental and non-governmental actors, ensuring soundness of methodology and reliability.

The assessment element of the CCA examines all areas of the 2030 Agenda. It encompasses the material situation of people in a country, including non-nationals, as

Assessments include CCAs that inform the preparation of UNDAFs, and those which are undertaken in crisis-related contexts

The UNDG strongly recommends CCAs for all UNDAFs

well as the political, policy and legislative environment for achieving the SDGs and other national commitments and obligations under international conventions ratified by the country. It assesses risks for different groups and geographic areas. It also identifies challenges, opportunities, potential trade-offs, national capacities and capacity gaps, policy enablers and limitations and considers these in the context of the United Nations system’s comparative advantage. Disaggregated data is fundamental to an accurate assessment of a national situation from the perspective of the 2030 Agenda dimension of “leaving no one behind”. The assessment also examines the financial system in the country in terms of the achievement of the SDGs, focusing primarily on domestic finance.<sup>9</sup>

The analysis element of the CCA identifies the immediate, underlying and root causes of multidimensional poverty, inequalities and discrimination and the reasons why particular groups are left behind. It furthermore examines gaps in the capacities of duty-bearers to fulfil their obligations and of rights-holders to make their claims. Special emphasis is paid to gender and geographical analysis at the macro-meso-micro levels. In this context, the CCA provides an important entry point for integrating an analysis of the root causes of gender inequality more broadly and the structural barriers that women face in accessing justice.

## 2.2.2 Fragility assessments of g7+ countries

The degree of fragility that exists within a country can be assessed from the fragility spectrum designed by the g7+ (see Table 1 in the Introduction). The fragility spectrum is to be read together with the justice-related PSG fragility assessment indicators listed in Table A.1.1 in the Appendices. Table 1.1 builds on the spectrum and indicators by integrating a gender lens from the perspective of CEDAW GR 30. It presents important levers for identifying women’s potential justice needs across the entire period of fragility (the fragility continuum) during the preparation of fragility assessments.

**TABLE 1.1 Understanding the fragility spectrum from a gender perspective**

Stages of conflict and fragility through the g7+ fragility spectrum	Integrating a gender lens
<p><b>Stage 1: Crisis</b> Countries in crisis experience acute instability, with the presence of various armed groups and increased levels of violent conflict or the potential for a lapse into more generalised violent conflict.</p>	<p>Conflicts exacerbate existing gender inequalities, placing women at a heightened risk of various forms of gender-based violence by both State and non-State actors. Irrespective of the character of the armed conflict, its duration or the actors involved, women and girls are increasingly deliberately targeted for and subjected to various forms of violence and abuse, ranging from arbitrary killings, torture and mutilation, sexual violence, forced marriage, forced prostitution and forced impregnation to forced</p>

Fragility assessments have been undertaken for selected g7+ countries. The first five countries to undertake fragility assessments were the Democratic Republic of the Congo (DRC), Liberia, Sierra Leone, South Sudan and Timor-Leste

	<p>termination of pregnancy and sterilization. Conflict-related gender-based violence results in a vast range of physical and psychological consequences for women, such as injuries and disabilities, increased risk of HIV infection and risk of unwanted pregnancy resulting from sexual violence. There is a strong association between gender-based violence and HIV, including the deliberate transmission of HIV, used as a weapon of war, through rape. Perpetrators of conflict-related gender-based violence include members of government armed forces, paramilitary groups, non-State armed groups, peacekeeping personnel and civilians.</p>
<p><b>Stage 2: Rebuild and reform</b>  During this phase, renewed efforts towards political dialogue to resolve political differences and to move towards disarmament may be in progress. Security issues remain a challenge to stability, with a proliferation of small arms.</p>	<p>SGBV often escalates in post-conflict settings, even after the official ceasefire or the signing of the peace agreement. While the forms and sites of violence change, violations of women's rights can persist.</p>
<p><b>Stage 3: Transition</b>  Transition is often associated with consensus-building among parties to the conflict. This stage often leads to efforts to strengthen institutions and reform laws. While there should be increased stability in the country, there is also the likely presence of corruption in service delivery and weak oversight capacity from the legislature. There may be an increased control of security by the State, although this continues to be weakened due to lack of resources and capacity. There may also be an increased confidence in security and justice institutions and a commensurate reduction in the use of violence to resolve disputes. Efforts to decentralize justice systems can be found, including the presence of alternative dispute resolution (ADR) mechanisms. During transition, there may be increased access to basic infrastructure, but mainly in urban areas. Stronger basic services are provided, with an enhanced but poorly implemented regulatory framework.</p>	<p>The most egregious and pervasive violations that occur during conflict often remain unpunished by transitional justice mechanisms and are normalized in the post-conflict environment. Efforts to strengthen and/or complement domestic justice systems notwithstanding, transitional justice mechanisms may not adequately deliver justice and reparations for all harms suffered, thereby entrenching the impunity enjoyed by perpetrators of women's human rights violations. Transitional justice mechanisms have not succeeded in fully addressing the gendered impact of conflict.</p>

<p><b>Stage 4: Transformation</b></p> <p>In the transformation stage, a country may have increased resilience within society and conflicts are more often resolved peacefully, supported by non-violent and democratic political processes. The security situation has typically remained stable and peaceful for a considerable amount of time, often for at least five years. More likely, one should encounter the presence of security personnel throughout the territory, but with limited numbers and capacity. Also, it is expected that there is increased public confidence in security institutions and that potential abuses are more frequently sanctioned. Usually, a decentralised approach is implemented to extend the delivery of basic services to the whole country.</p>	<p>Justice and security sector institutions may lack capacity to deliver services to all women. Although there could be a greater uptake in rule of law and responding to human rights abuses more broadly, institutions may not be able to provide specialized services to address the multifaceted impacts of conflict e.g.,</p> <ul style="list-style-type: none"> <li>• Medical and psychosocial support to address sexual violence, forced pregnancies, abortions or sterilization</li> <li>• Women’s limited and unequal access to property and interventions to leverage opportunities for women’s economic empowerment</li> <li>• Women’s new roles in the family and community, especially when they have lost husbands or close male relatives</li> <li>• Female-headed households emerge</li> </ul>
<p><b>Stage 5: Resilience</b></p> <p>Resilience can be understood as the capacity of a society to deal with challenges and to absorb shocks without relapsing into crisis. Every stage in the fragility spectrum represents growing resilience, but at this stage the resilience of the society has been institutionalised in its social customs, cultural practices, social contract and formal State institutions to the degree that a relapse into crisis is so unlikely that the country in question can no longer meaningfully be considered a post-conflict country. The focus therefore shifts away from socio-political consolidation to long-term social and economic development. During this period, political stability has been seen for a prolonged amount of time, often for more than 20 years, and the country should have created a strong culture of democracy and good governance. There should be reasonable numbers of security personnel throughout the country and a high level of confidence by the population that they will maintain the rule of law. There is demonstrated political will to fight impunity that operates in favour of elites and widespread awareness of how the justice</p>	<p>When conflict comes to an end, society is confronted with the complex task of dealing with the past, which involves the need to hold human rights violators accountable for their actions, putting an end to impunity, restoring the rule of law and addressing all the needs of survivors through the provision of justice accompanied by reparations. Challenges relating to access to justice are especially aggravated and acute in conflict and post-conflict situations because formal justice systems may no longer exist or function with any level of efficiency or effectiveness. Formal and informal justice institutions are not fully operational and may not possess the capacity to effectively prevent and respond to violations of women’s rights. Barriers that women face in gaining access to justice before the national courts prior to the conflict, such as legal, procedural, institutional, social and practical barriers, in addition to entrenched gender discrimination, are exacerbated during conflict, persist during the post-conflict period and operate alongside the breakdown of the police and judicial structures to deny or hinder women’s access to justice.</p>

system operates. Public institutions function both at the national and the sub-national level and the State increasingly becomes the main service provider for basic services.

Sources: g7+, [Note on the Fragility Spectrum](#), pp. 10-13, (Kinshasa, 2013) and [CEDAW GR 30](#), paras. 34-35, 38(e), 49, 52(b), 63, 74, 76.

The requirement for undertaking a fragility assessment under [A New Deal for Engagement in Fragile States](#), endorsed by g7+ countries in 2011 to guide international engagement in conflict-affected countries, provides the United Nations system and other actors with an opportunity to mainstream gender into all phases of the assessment and to use the results to influence future justice and security sector policy design and implementation in g7+ countries. By way of example, Table 1.2 summarizes the results of the fragility assessment of Sierra Leone, which was conducted during the resilience phase of its fragility experience and utilizes the fragility assessment indicators and guidance provided by CEDAW GR 30. It demonstrates that fragility assessments can serve as robust instruments for identifying and addressing women’s justice priorities from crisis to development.

**TABLE 1.2 A completed fragility assessment of Sierra Leone with reference to access to justice**

Progress	Challenges	Policy actions to be taken
<ul style="list-style-type: none"> <li>Local Court Act (2011) made access to informal justice more timely and affordable</li> <li>Efforts made to decentralize formal system, with circuit court sittings and increased accessibility to paralegals</li> <li>Establishment of the Justice Sector Coordination Office built synergy between security and justice sectors</li> <li>Increasing confidence in formal and informal justice systems, with rights of individuals increasingly protected and human rights violations prosecuted</li> </ul>	<p><b>Justice conditions:</b></p> <ul style="list-style-type: none"> <li>Formal justice system is inaccessible outside of major urban centres</li> <li>Formal justice is expensive, poorly understood, and incurs long delays</li> <li>Very limited access to representation (legal aid)</li> <li>Low prosecution capacity</li> <li>Limited support to vulnerable victims</li> <li>Perception of political interference in justice remains high</li> </ul> <p><b>Capacity and accountability:</b></p> <ul style="list-style-type: none"> <li>The Judiciary is perceived to be overly politicised, with some political interference in the application of justice</li> </ul>	<ul style="list-style-type: none"> <li>Develop awareness of the formal justice system based on visible fairness of the system</li> <li>Improve coordination between the formal and informal justice system and across the justice and security sectors</li> <li>Develop well capacitated system with modern budgets, vehicles and logistics</li> <li>Issue guidelines to reduce judicial discretion in sentencing</li> <li>Progress efforts to ensure that traditional and formal justice systems are fully harmonized and working together</li> </ul>

The fragility assessment of Sierra Leone pays attention to justice and its gender dimensions

<ul style="list-style-type: none"> <li>• Human rights organisations have increasingly made it possible for elites to face justice</li> <li>• Alternative Dispute Mechanisms available and accepted by both formal and customary systems, helping to build collaboration and cooperation between both systems of justice</li> </ul>	<ul style="list-style-type: none"> <li>• Magistrates are allowed too much discretion in their judgements</li> <li>• Court staff are insufficiently paid so resort to corruption</li> <li>• Delays in justice occur due to a lack of sufficient magistrate court sittings, low capacity and resistance to change amongst local court officials</li> <li>• High prison overcrowding and lack of remand homes for juveniles</li> </ul> <p><b>Performance and responsiveness:</b></p> <ul style="list-style-type: none"> <li>• Little effective partnership between formal and informal systems</li> <li>• Limited codification of customary law and unclear if codification will make customary law less arbitrary because of regional differences</li> <li>• Law Reform Commission established but making limited progress</li> <li>• Lack of awareness of laws among citizens</li> <li>• Citizens and adjudicators are often unaware of updated laws</li> </ul>	
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Source: Sierra Leone, [Fragility Assessment: Republic of Sierra Leone – Summary of Results](#), pp. 7-8, (Freetown, 2013).

### 2.2.3 Crisis-related assessments by the United Nations

The United Nations is obliged to undertake assessments of the nature and scope of different crisis situations, informing its determination of how and when it should respond. Basing a response to crisis on shared assessments will improve the credibility of the responsible organization, helping to align the work of different entities towards common goals.<sup>10</sup>

#### United Nations integrated assessments and Strategic Assessments

An assessment is considered as “integrated” when it carries implications for multiple United Nations entities at the strategic, programmatic or operational level. A key

United Nations crisis-related assessments must include a conflict analysis for a deeper understanding of the root causes of crisis



category of integrated assessments is the Strategic Assessment, which aims to bring United Nations political, security, development, humanitarian and human rights entities together to develop a shared understanding of a conflict or post-conflict situation in order to propose options for engagement.<sup>11</sup> Strategic Assessments should complement and draw on existing analytical processes going on within the United Nations system, and must be undertaken in consultation with relevant interlocutors such as national authorities, civil society and key Member States.<sup>12</sup> A Strategic Assessment for any given conflict or post-conflict situation should include:

- *A conflict analysis* centred on the aim of the Strategic Assessment
- *An analysis of priority objectives* for peace consolidation
- *An articulation of the United Nations strategic options* to address the situation in the country (ideally, a maximum of two to three strategic options should be presented in the Strategic Assessment report)
- *A risk assessment* for each strategic option<sup>13</sup>

The decision to launch a Strategic Assessment can only be made by the Secretary-General, the Executive Committee on Peace and Security or an Integrated Task Force at Director level or above. It can take place ahead of the start-up and planning phase or during the life-cycle of established United Nations missions, providing a basis for developing recommendations on the nature and (re)configuration of United Nations engagement. These recommendations are then submitted for the consideration of the Secretary-General and, when necessary, the UNSC as well.<sup>14</sup>

### Conflict analysis

A conflict analysis is a constituent component of a United Nations Strategic Assessment, forming the starting point and foundation for all integrated assessment and planning.<sup>15</sup> Such analyses help to establish an accurate and shared understanding of the root causes, proximate causes, triggers, dynamics and trends of conflict, as well as the stakeholders involved.<sup>16</sup> A wide range of conflict analysis methodologies exist: some exercises will be conducted over an extended period of time, such as those used to inform a Strategic Assessment, while others may require a shorter time span in response to urgent developments on the ground.<sup>17</sup> At a minimum, all conflict analyses should include a situation profile, a causal analysis of conflict factors, a stakeholder analysis and an understanding of conflict dynamics, which involves an examination of the resulting interaction between the profile, causes and stakeholders.<sup>18</sup> Additionally, United Nations conflict analyses should include a context-specific analysis of gender issues and the relationship between human rights issues and violent conflict.<sup>19</sup> This means conducting assessments with reference to the Inter-Agency Standing Committee (IASC) [Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action: Reducing Risk, Promoting Resilience and Aiding Recovery](#), which offer guidance for assessments, analysis and strategic planning for governments, humanitarian coordinators and other stakeholders. Examples of questions that humanitarian coordinators must explore for integrating SGBV-related concerns during assessments are highlighted in Table 1.3.



**TABLE 1.3** Examples of what humanitarian coordinators must prioritize for addressing SGBV\* in conflict analysis

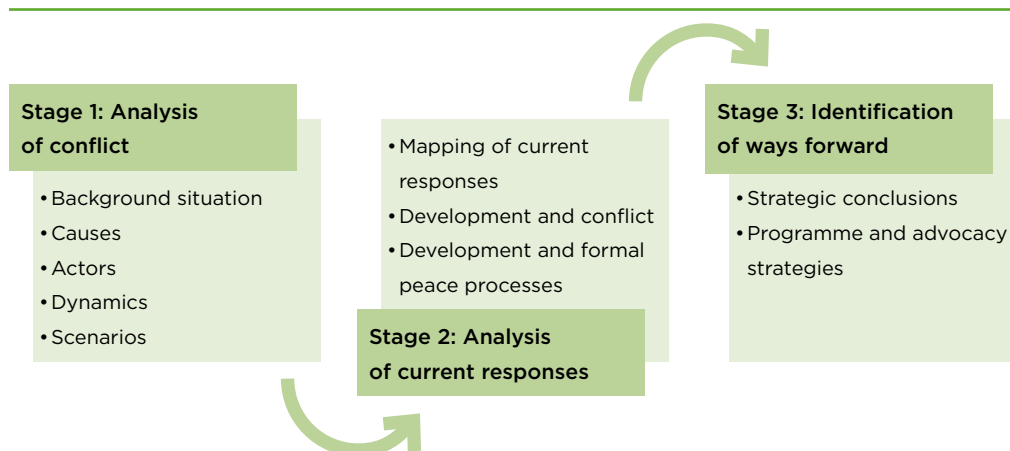
<p>Request GBV specialists as part of the overall protection assessment capacity, e.g. within the United Nations Disaster Assessment and Coordination (UNDAC) and other assessment teams deploying to the emergency to:</p> <ul style="list-style-type: none"> <li>• Lead on ensuring that appropriate GBV-related questions are included in initial rapid multi-cluster/sector assessments (with input from GBV specialists on questions and data collection methods)</li> <li>• Ensure that GBV is specifically addressed in assessment reports and the overall Protection Strategy</li> </ul>
<p>Support the work of GBV specialists (national and international) to:</p> <ul style="list-style-type: none"> <li>• Undertake mapping on GBV (e.g. nature and scope; risk and vulnerability factors; national legal framework; cluster/sector capacities to prevent, mitigate and respond to GBV)</li> <li>• Ensure design and implementation of safe and ethical data collection, storage and sharing</li> </ul>
<p>In preliminary scenarios of emergencies, ensure that any available data on affected populations' risks of and exposure to GBV are safely and ethically included</p>

\*Note that the Guidelines refer to GBV and not SGBV which this Toolkit references.

Source: IASC, [Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action: Reducing Risk, Promoting Resilience and Aiding Recovery](#), p. 20, (n.p., Global Protection Cluster and IASC, 2015).

The absence of accurate conflict analysis could lead to missed opportunities for preventing violence or to ill-informed interventions that trigger or exacerbate conflict. Particular attention should therefore be paid to conflict analysis during the start-up, reconfiguration or drawdown of missions or when a new strategic plan is being created.<sup>20</sup> While the composition of the analysis team may vary, the approach should be multidisciplinary, politically astute and include personnel with both technical and contextual expertise in order to identify a broad range of conflict causes and accurately determine the motivations and relationships of stakeholders.<sup>21</sup>

**FIGURE 1.2** A snapshot of the UNDP conflict-related development analysis



Source: UNDP, [Conflict-related Development Analysis \(CDA\)](#), p. 6, (New York, 2003).

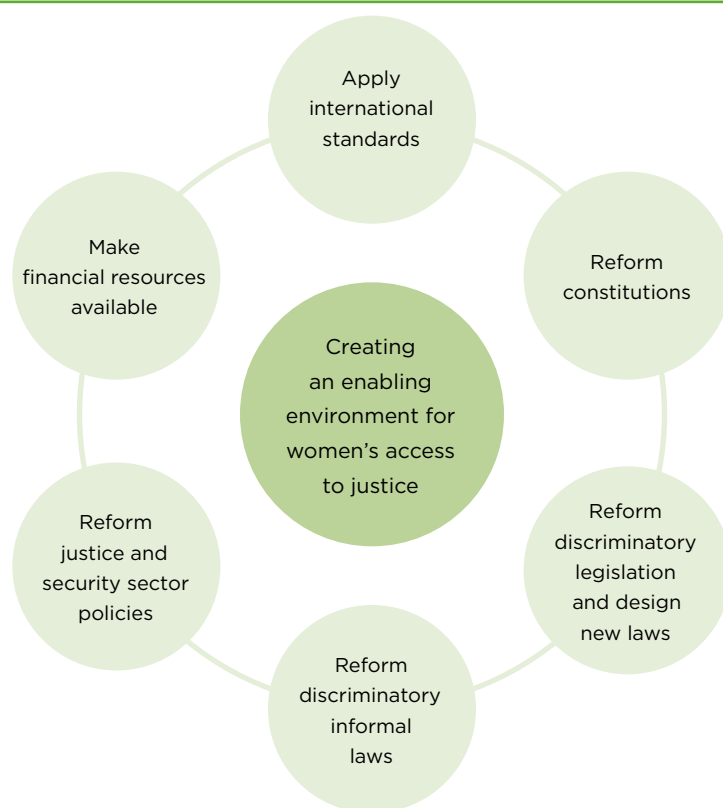
The UNDP conflict analysis model brings convergence to crisis and development. This facilitates a planning continuum across both phases of a country's experience

### 3.0 Creating an enabling environment for women’s access to justice

An enabling environment for women’s access to justice creates the regulatory, policy and financial basis for national justice interventions

For purposes of this Module, the term “enabling environment” is used to describe the basic conditions that must exist within a State for women to access justice systems and for justice actors to effectively respond to women’s justice needs. This environment needs to be acknowledged by practitioners because it is shaped by the prevailing political, social, economic and cultural climate within a country. An enabling environment is supported by international and regional standards and norms, domestic laws, policies and budgets.<sup>22</sup> SDG Target 10.3 clearly articulates the linkages between law, policy and practice and reducing inequality, calling on States to “ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard”. Creating an enabling environment for women’s access to justice is therefore central to the goal of reducing inequality and achieving gender equality across the world.

FIGURE 1.3 Elements to create an enabling environment for women’s access to justice



Support for national standards on gender equality has gained traction over the past 30 years, starting from the inclusion of equality and non-discrimination clauses in 192 constitutions.<sup>23</sup> The UN Women report, [Progress of the World’s Women 2015-2016: Transforming Economies, Realizing Rights](#), finds that 119 countries have passed laws against domestic violence and 125 have taken action with respect to sexual harassment.<sup>24</sup> While this represents an important inroad in legal protections, significant work remains

The enactment of laws is not necessarily matched by implementation, therefore gaps in reforms persist

to strengthen and improve women’s ability to seek redress for violations of the rights contained in these laws.

In many contexts, both formal and informal laws and policies remain biased against women. Some laws are outright discriminatory, explicitly recognizing that women have fewer rights than men. For instance, to date, 25 countries deny women the right to pass their nationality to their children on an equal basis with men.<sup>25</sup> Over 50 countries maintain some form of gender discrimination in their nationality laws, such as denying women the equal right to confer nationality to spouses or linking women’s nationality to their marital status.<sup>26</sup> Women also often have fewer rights than men in marriage, divorce and inheritance, particularly when customary law governs these areas. In some domains of customary law, women may even be held to different legal standards than men.<sup>27</sup> Gender-neutral language in laws can be detrimental to women when the definition of crimes and the design of punishment regimes and remedies are tailored towards men. In many ways, these laws are less favourable because they appear gender-neutral, but in practice deny women the rights and protections that they supposedly provide. Such laws fail to take into consideration the different conditions and obstacles that women face as rights-holders in comparison to men.

There are also areas of law where rights and protections are largely absent or implemented poorly. For instance, women who work in the domestic domain (e.g., family, home-based and domestic workers) are often not legally protected.<sup>28</sup> The absence of laws prohibiting discrimination in the workplace can also affect the ability of women to engage in activities which are vital for empowering them in such settings. These may include policies and regulations against sexual harassment, equal representation in labour unions and maternity protection.

To foster a legal system that is responsive to women’s justice needs, programming should focus on providing technical and policy advice to decision makers on addressing critical gaps in women’s legal protections. This should include reforming existing statutory and customary laws and policies that create barriers to women’s access to justice or designing new laws and policies in response to women’s justice needs. This Section offers programmatic guidance for five important elements of the enabling environment for women’s access to justice: international law, domestic law (constitutions, formal laws and informal laws), justice sector policies and financial allocation for women’s justice needs.

### 3.1 International law

When States sign and ratify international conventions, they accept binding obligations to abide by those standards through domestication and implementation. International human rights law represents the broader framework within which domestic laws are set for advancing gender equality and women’s empowerment. The [Charter of the United Nations](#) espouses equality between men and women<sup>29</sup> and is reinforced by the [Core International Human Rights Instruments](#) and their associated Optional Protocols. These include CEDAW, which establishes not only “an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights”.<sup>30</sup> The [Vienna Declaration and Programme of Action](#) (Vienna Declaration), adopted by the World Conference on Human Rights, affirmed that human rights are inalienable, universal, indivisible and interdependent.

Effective programming provides informed and sound policy advice on critical gaps in reforms, as well as measures to address them

ILO Conventions also create relevant, binding commitments such as equal work for equal pay (Equal Remuneration Convention No. 100), non-discrimination in employment relationships (Discrimination (Employment and Occupation) Convention No. 111), equality of opportunity and treatment of workers with families (Workers with Family Responsibilities Convention No. 156), maternity rights and protections (Maternity Protection Convention No. 183) and the protection of domestic workers (Domestic Workers Convention No. 189).<sup>31</sup>

These global standards operate alongside region-specific obligations in regional human rights treaties (e.g., League of Arab States, Arab Charter on Human Rights; Organization of African Unity, African Charter on Human and Peoples' Rights; Organization of American States (OAS), American Convention on Human Rights "Pact of San Jose, Costa Rica"; and European Union, Charter of Fundamental Rights of the European Union) and other gender-specific regional instruments (e.g., African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol); OAS, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belem do Para"; Council of Europe, Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention); and Association of Southeast Asian Nations (ASEAN), Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN).

In the area of criminal justice administration, there are also important guidelines adopted by the United Nations. They include: United Nations General Assembly Resolution 70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules); United Nations General Assembly Resolution 65/229, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules); United Nations General Assembly Resolution 67/187, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems; UNODC, United Nations Standards and Norms in Crime Prevention; United Nations General Assembly Resolution 45/110, United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules); and United Nations General Assembly Resolution 65/228, Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice.<sup>32</sup>

### 3.1.1 Enforcing human rights standards through global and regional complaints procedures

A range of global and regional human rights treaties and institutions provide standards, procedures and platforms for an individual or a group of individuals to submit complaints when the provisions of a treaty are violated.<sup>33</sup>

#### Examples of complaints procedures at global level

Eight out of the nine core international human rights instruments are complemented by Optional Protocols, which permit their respective monitoring bodies to consider complaints (or communications) of violations of rights which are protected under the specific instrument. As a basic condition for setting such a process in motion, the Optional Protocol in question must have been ratified by the State concerned. The full

Both individuals and groups are recognized claimants of international and regional dispute mechanisms

preconditions for setting the CEDAW Committee's [Communications Procedure](#) in motion are listed in Article 1 to Article 4 of United Nations General Assembly Resolution 54/4, [Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women](#).<sup>34</sup> See the [CEDAW Committee's recent jurisprudence](#).

### Examples of complaints procedures at regional level

- Communication procedures of the African Commission on Human and Peoples' Rights in relation to the African Charter on Human and Peoples' Rights.<sup>35</sup> See the [Commission's jurisprudence](#).
- The application procedure of the European Court of Human Rights, which rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights. See the [Commission's judgments and decisions](#).
- The petition system of the Inter-American Commission on Human Rights in relation to the [American Declaration of the Rights and Duties of Man](#), the [American Convention on Human Rights](#) and other inter-American human rights treaties.<sup>36</sup> See the [Commission's jurisprudence](#).

#### 3.1.1.1 Addressing reservations

Many countries have made reservations to: (a) Article 2(c), which indicates that States parties undertake to establish legal protection of the rights of women on an equal basis with men ... (b) Article 5(a), which indicates that States parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women ... (c) Article 15, which indicates that States parties shall accord to women a legal capacity in civil matters identical to that of men and the same opportunities to exercise that capacity.

In view of the fundamental importance of women's access to justice, the Committee recommends that States parties withdraw their reservations to the Convention, in particular to articles 2(c), 5(a), 15 and 16.

Source: CEDAW GR 33, paras. 65-66.

A reservation is a statement made by a State by which it seeks to exclude or alter the legal effect of certain provisions of a treaty in their application to that State.<sup>37</sup> When a State makes a reservation upon signing, it must confirm the reservation upon ratification, acceptance or approval. However, human rights treaty bodies are generally agreed that reservations cannot be contrary to the object and purpose of the treaty in question.<sup>38</sup>

Out of the 189 parties to CEDAW, 62 countries entered reservations upon ratification of the treaty.<sup>39</sup> Some reservations are procedural (i.e., reservations to Article 29 regarding dispute resolution), but others obstruct specific State responsibilities to uphold substantive women's rights in areas such as non-discrimination, holding public office, equal nationality rights and marriage and family (see Module 2).<sup>40</sup>

#### 3.1.2 Typical programming challenges/opportunities

- **Incorrect perceptions of international human rights treaties.** Some decision makers perceive international human rights treaties such as CEDAW as codifying norms

**Reservations to a human rights treaty can serve as a major bottleneck to the implementation and enforcement of that treaty**

Lack of political will and incorrect perceptions about the intentions and sources behind international and regional instruments can further weaken the ability of a State to enforce treaty obligations

Programming interventions can focus on advocating for the ratification of human rights instruments and their respective Optional Protocols, in addition to their dissemination throughout all sectors of society

that are more compatible with Western cultures. This results in limited political will for implementing “externally imposed values”.

- **The integration of treaties into domestic law and policy can be prolonged in some country contexts.** States have different requirements for incorporating international law standards into domestic law, which makes them binding domestically. In dualist States, there are substantial hurdles, such as requiring the legislature to adopt the treaty in order to achieve domestic enforcement (see Section 1.1).
- **Limited knowledge and understanding of treaty obligations among State actors.** The CEDAW Committee and other treaty bodies have noted that poor implementation of human rights treaty obligations is in part due to government actors’ inadequate or incorrect knowledge of the rights provided under CEDAW and their implications for women’s rights.<sup>41</sup>
- **Weak enforcement.** While each of the nine core human rights treaties are assigned monitoring bodies to assess implementation among States and eight of the treaty bodies have communications procedures, States are not “sanctioned” for lack of implementation of their treaty obligations.<sup>42</sup>

### 3.1.3 Programming considerations and options

1. **Support States parties to ratify relevant treaties and protocols, withdraw reservations and establish domestic mechanisms to support the implementation of international instruments.** International and regional frameworks play an important role in realizing women’s rights, by serving as building blocks for the development of domestic law and policy.<sup>43</sup> References that may help to inform targeted programming include the CEDAW Committee’s concluding observations and recommendations, recommendations of other relevant treaty bodies and recommendations of UPR sessions.
2. **Develop mechanisms for strengthening familiarity with, and understanding of, CEDAW obligations across the State, and particularly within the justice sector.** This could be combined with other State-wide gender mainstreaming initiatives, such as ensuring that all members of staff and not just gender focal points are aware of their obligations to implement women’s rights.
3. **Explore opportunities for greater cooperation with CSOs in developing strategies for implementing treaty obligations and maintaining accountability.** CSOs can provide valuable insights into implementation gaps and priority areas to be addressed by highlighting these in their Alternative Reports to the CEDAW Committee as well as to other treaty bodies, and by monitoring State implementation of concluding observations and recommendations.
4. **Strengthen enforcement of treaties.** Disseminate the Optional Protocol to CEDAW and other human rights treaties widely, provide guidance to CSOs on navigating the human rights system and advocate for the implementation of decisions arising out of such complaints. In this context, practitioners could also map out stakeholders and identify allies in support of sustaining political will for treaty ratification and enforcement.
5. **Promote national dialogue on human rights.** Under the leadership of NHRIs, foster national dialogue on human rights and identify positive linkages between international human rights norms and local cultures and religions to mitigate





Above: Côte d'Ivoire. High school students in the town of Odienné in the northwest of the country. © UNICEF/ Frank Dejongh.

perceptions that such norms are externally driven. This could include building partnerships and communities of practice among traditional and religious leaders, young people and men and boys.<sup>44</sup>

## 3.2 Domestic law

The absence of effective laws and regulations in a country, as well as the presence of laws that are discriminatory towards women, significantly hinder development. Domestic laws consist of a system of rules that a State establishes to regulate the actions and inactions of private and public individuals and organizations. Domestic laws are complex and cover a wide range of legal domains that impact a country's overall development. While women's lives are influenced by all domestic laws that their States may have in place, the following discussion is limited to the domains that CEDAW GR 33 identifies as having a comparatively greater and more direct impact on women's access to justice.<sup>45</sup> These consist of constitutional law, various forms of formal laws (civil law, family law, criminal law and administrative, social and labour law) and informal laws (customary and religious law). Although treated separately in this Toolkit for illustrative purposes, in practice, all legal domains and the laws which flow from them are interdependent and often intersect (e.g., in claims related to family law, domestic violence or citizenship).

### 3.2.1 Constitutions

Constitutions are the most authoritative expressions of a State's system of governance and accountability, posing both opportunities and threats to the advancement of gender equality. UNDP defines a constitution as the framing legal instrument, which captures the basis of the social contract between the State and the people that it serves. It constitutes a body of rules that outlines the authority and powers of the State, including as it relates to the rights that citizens and others enjoy in relation to the State.<sup>46</sup>

Domestic law is the entry point for implementation and enforcement of international and regional human rights treaties

Constitutions are political instruments which shape and define the national normative agenda on women's rights

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States parties that have adopted constitutional guarantees relating to substantive equality between men and women and incorporated international human rights law, including the Convention, into their national legal orders are better equipped to secure gender equality in access to justice.

Source: CEDAW GR 33, para. 41.

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Over the past 50 years, constitutions in around half of countries have been redrafted or amended in varying degrees.<sup>47</sup> The UN Women [Global Gender Equality Constitutional Database](#) estimates that 192 constitutions contain provisions on equality and non-discrimination, such as equality before the law, equal rights on the basis of sex and the duty of the State to protect all individuals from discrimination. Constitutions are also important because they often reflect how States will domesticate international law such as human rights treaties, dictating if they take a dualist or monist approach.

### 3.2.1.1 Typical programming challenges/opportunities

- **Constitutional gains are sometimes watered down by discriminatory clauses.** Despite constitutional reforms that promote gender equality, discriminatory provisions persist in some constitutions and many women are impacted by contradictory regimes of clauses which negate legal advancements in other areas. These include “claw back” clauses, which impose exceptions to equality and non-discrimination provisions in matters of personal law (11 constitutions) and provisions that discriminate against women in matters of citizenship (14 constitutions).<sup>48</sup> Of the 44 constitutional monarchies that exist globally, only 17 (39 per cent) recognize succession by both females and males.<sup>49</sup> Furthermore, several concluding observations and recommendations of the CEDAW Committee point to a growing demand for States to adopt the CEDAW definition of discrimination in both constitutions and laws.<sup>50</sup> Reforms in these areas have been piecemeal.
- **Weak enforcement.** Where programming succeeds in incorporating gender equality and related provisions into a constitution, implementation remains a significant challenge. Constitutional provisions possess limited enforcement power on their own, relying on implementing legislation or adjudication in the courts (often a constitutional court) for enforcement. The rights provided for in a constitution may therefore mean little in practice without mechanisms for implementation, especially if the constitution is seen only as aspirational. Impactful programming requires enough political will to make these enforcement mechanisms a reality.
- **Ill-timing of programmatic interventions.** Gender advocates may initiate advocacy and mobilization much too late for meaningful impact. Programmes in support of gender equality and women’s access to justice are often not timed strategically with political shifts and other indicators of constitutional reform, leading to missed vital opportunities and entry points.
- **Insufficient political will.** As a political process, constitutional reforms may be subject to many competing interests. Political actors often perceive women’s rights as secondary to other political issues that they deem as “more pressing”.
- **Gender advocates focus on major normative provisions at the expense of other important substantive rights and protections.** Women’s rights-related advocacy tends to focus more on civil and political rights (e.g., quotas) and less on social and economic

Some constitutional provisions are drivers of women’s rights, while others serve as barriers





Above: Morocco. View of Salé, photographed from the Corniche of Rabat. © World Bank/Arne Hoel.

rights. This may stem in part from the limited capacity of women’s rights organizations to address a varied range of issues within constitutional reform time frames.

- **Lack of gender-sensitivity in standard constitutional language.** While an increasing number of constitutions are incorporating stand-alone women’s rights clauses (24 constitutions to date), the tendency to employ gender-neutral language remains a common feature of reforms.<sup>51</sup> In such instances, the language may not consider the myriad of obstacles that women face in their interaction with the law as well as unequal power relations in society.

### 3.2.1.2 Programming considerations and options

1. **Six guiding principles for constitution-making.** While an enabling environment focuses primarily on the substantive content of a constitution, there are also important considerations around the constitution-making process itself. The frame of reference for the United Nations system’s support to constitution-making processes is provided by the United Nations [Guidance Note of the Secretary-General, United Nations Assistance to Constitution-making Processes](#) (Guidance Note), which stipulates that constitution-making for the United Nations “is a broad concept that covers the process of drafting and substance of a new constitution, or reforms of an existing constitution.”<sup>52</sup> The six guiding principles of the Guidance Note support (1) seizing opportunities for state-building and peacebuilding; (2) promoting the integration of and compliance with human rights standards; (3) ensuring local ownership; (4) inclusivity, participation and transparency; (5) mobilizing and coordinating a wide range of expertise; and (6) follow-up and outreach.<sup>53</sup>
2. **Constitutional support should be timely.** Constitutional reform processes are time-bound. Therefore, anticipate the reform timetable, engage systematically with State and non-State actors and bring all actors together for consensus-building.
3. **Amplify the voices of gender advocates.** Promote the full and inclusive participation of relevant stakeholders in constitutional reform processes to ensure that the primary concerns within each subject area are accurately identified and addressed.

Spaces must be created to ensure that women from all walks of life are enabled to participate in constitutional reform processes, regardless of their political leanings or social and economic backgrounds

Constitution-making is an incremental process. Women's groups and advocates must therefore be aware of strategic entry points, opportunities as well as potential threats

Based on the principles outlined in the Guidance Note, constitutional reforms must serve as platforms for women's effective participation in all settings (e.g., hard to reach areas such as rural communities) and take place with the active engagement of CSOs, community-based organizations (CBOs), national women's machineries, women of all political party affiliations and relevant parliamentary committees and caucuses. This could involve supporting the inclusion of these actors in the constitutional process, connecting them to the media and decision makers and promoting coalition-building among like-minded individuals and organizations to take women's demands forward.

4. **Review the existing constitution from a gender perspective.** Examine the constitution for gender discriminatory language and provisions. Determine whether it complies with the recommendations of the CEDAW Committee, other treaty bodies and the UPR on reforming the constitution to address discriminatory content and propose reforms based on these findings and good practices from other countries. In this context, work with State and non-State actors to agree on a package of demands for women. Priority attention should be given to expunging existing discriminatory provisions and adopting new provisions which enhance the achievement of substantive equality.<sup>54</sup>
5. **While general equality clauses are essential, it is also important to advocate for stand-alone women's rights clauses.** These clauses often include explicit language that call on the State to uphold and enforce women's rights in specific areas, such as in politics, the economy and protection from violence.<sup>55</sup> Such stand-alone clauses present opportunities to hold States accountable for their obligations under CEDAW and other international legal instruments. They therefore provide an important entry point for the domestication of global and regional legal standards in areas such as equal access to education, health, citizenship and participation in elected and appointed bodies.
6. **Support the creation and sustained resourcing of constitutional review bodies.** Constitutions must provide for the creation of structures that guarantee judicial review and monitoring mechanisms "to oversee the implementation of all fundamental rights, including the right to substantive gender equality."<sup>56</sup>
7. **Conduct detailed background research and negotiate respectfully.** The United Nations must win the credibility and trust of all stakeholders involved in the constitutional reform process through a better understanding of the positions and concerns of all stakeholders. At the same time, the United Nations can impress upon legislators/drafters, that as representatives to the people, they must prioritize women's rights as a State obligation by referring to good practice provisions from other constitutions, as well as by demonstrating the strategic value of constitutional guarantees on women's rights for both women and society as a whole.
8. **Pay close attention to language.** Carefully evaluate the implications of gender-neutral provisions on women's rights. Such provisions include those relating to access to education, the right to work, the right to inherit, the right to pass on citizenship, the right to run for office, quotas on participation in legislatures and institutions and the status of customary or religious law in domestic law and practice. In the context of avoiding gender-neutral language, constitutional reform processes in Ethiopia, Morocco and Tunisia succeeded in integrating appropriate pronouns (e.g., male/female, he/she) into constitutions, by explicitly guaranteeing women's access

to specific offices on an equal basis with men.<sup>57</sup> Article 74 of the [Constitution of Tunisia 2014](#) ensures that “every male and female voter” can stand for President and Article 66(4) of the [Constitution of the Republic of Ecuador 2008 with amendments through 2015](#) recognizes formal equality as part of its non-discrimination clause. Furthermore, provisions can be included to promote legislative arrangements on specific areas of women’s rights. For example, Article 22 of the [Constitution of the Republic of Ghana 1992 with amendments through 1996](#) places an obligation on Parliament to enact legislation to protect the property rights of women.

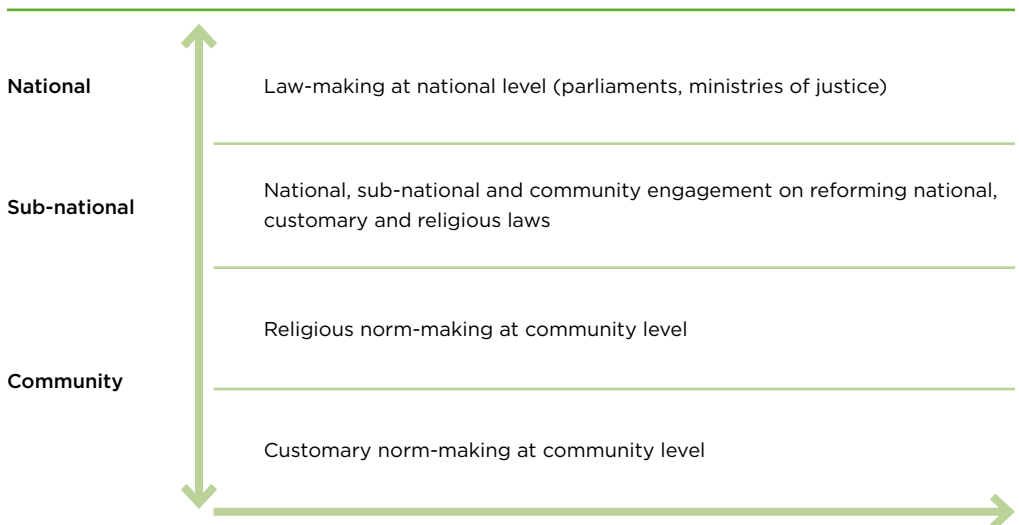
### 3.2.2 Making and reforming laws

Constitutional provisions must be translated into law for their meaningful impact on women. Legal systems are defined by sources of law and the types of institutions which have been established to interpret and enforce them. In some countries, laws may be derived from one or more sources (plural or mixed legal systems) and such systems are often characterized by the coexistence of State laws and regulations on the one hand (formal), and religious, customary and indigenous laws and practices on the other (informal). The existence of multiple sources of law presents potential threats and opportunities for women’s ability to access justice.

In some countries, a thin line exists between formal and informal laws, particularly when constitutions recognize customary and/or religious laws as part of the formal laws of the State (e.g., Ghana, The Gambia and Nigeria).<sup>58</sup> Arab States such as Egypt, Kuwait, Maldives, Oman, United Arab Emirates and Qatar recognize Islam as the main source of formal law in their respective constitutions. In these countries, the code of law derived from the Qur’an and Hadith (sayings and exhortations of the Prophet Muhammad), collectively known as Sharia law, is the primary source of law, although interpretations may vary between schools and scholars.<sup>59</sup>

For effectiveness, law-making processes must draw on linkages within and between horizontal and vertical events. This approach assumes that community, sub-national and national level actors are all critical for sustained law reform and therefore must be comprehensively engaged as Figure 1.4 illustrates.

**FIGURE 1.4** Horizontal and vertical relationships in law-making processes



Formal and informal laws are the trajectories for the implementation of human rights treaties and provide meaning to constitutions

Law-making is multifaceted and underpinned by political and legal systems as well as cultural traditions

Formal and informal laws can be mutually reinforcing

The following Sections focus on the programming options for addressing the challenges and opportunities presented by both formal and informal laws.

### 3.2.2.1 Formal laws

Formal laws generally consist of procedural and substantive legislation and executive decrees and orders, with some jurisdictions viewing court decisions as an integral part of formal laws as well. Gender-sensitive legislation assumes “the integration of a gender perspective into all components of the legislative process—design, implementation, monitoring and evaluation—in order to achieve the ultimate objective of equality between women and men.”<sup>60</sup> To be effective, programming that seeks to promote women’s access to justice must consider how laws interact and relate to each other. Federal systems of government, for instance, do not guarantee the automatic acceptance of federal laws at state level.

UN Women’s [Progress of the World’s Women 2011-2012: In Pursuit of Justice](#), notes that gender equality is dependent on a range of laws. Over 150 countries have in place at least one law that is discriminatory towards women.<sup>61</sup> In 100 countries around the world, women are barred from doing certain work solely because they are women.<sup>62</sup> In 32 countries, women cannot apply for passports in the same way as men and in 18 countries they cannot get a job if their husbands feel it is not in the family’s interest.<sup>63</sup> Therefore, the achievement of certain substantive rights may require supporting legislation across a variety of fields. In the area of economic rights for example, laws must address power dynamics within the household, child-rearing tasks and other unpaid labour which affects the ability of women to access the labour market on equal terms to men.<sup>64</sup> Where federal systems of government can impact negatively on women’s rights, the constitutions of such countries must always signal that the laws of sub-national governments are subject to the national constitution, including with respect to gender equality.

There are many areas of law that influence and shape women’s access to justice. Guided by CEDAW GR 33, these fall under four broad categories which may sometimes overlap:

#### Civil law

This area of law extends to rights, procedures and remedies in the fields of personal/legal capacity, contracts, private employment, personal injury, consumer protection, inheritance and property rights. Article 15 of CEDAW guarantees women equality before the law, identical legal capacity to that of men and the same opportunities to exercise that capacity in civil matters. SDG Target 5.1 encourages States to undertake reforms in the sphere of civil law that would give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws. According to CEDAW GR 33, States are required to:

- Eliminate all gender-based barriers to access in civil law procedures, such as requiring that women obtain permission from judicial or administrative authorities, spouses and other family members prior to initiating legal action, or requiring that they furnish documents relating to identity or title to property.
- Deem null and void all contracts and other private instruments that restrict the legal capacity of women, as set out in the provisions of Article 15(3) of CEDAW.

CEDAW GR 33 recognizes a range of legal domains which define claims and remedies that women can receive. These domains cover but are not limited to civil law, family law, criminal law, administrative, social and labour law and procedural and evidentiary rules

- Adopt and enforce positive measures to ensure women are free to enter into contracts and other private law agreements.<sup>65</sup>

### Family law

Technically, family law (otherwise known as “personal law”), is a part of civil law. It is, however, treated as a separate legal domain under CEDAW GR 33 because of its specific impact on women. This area of the law addresses matters related to marriage, divorce, parental rights and obligations and property rights in the context of marriage or inheritance. Module 2 elaborates on this further, exploring women’s experiences of discrimination based on ideology, tradition and culture in this private sphere and highlighting measures to address these challenges.

### Criminal law

Criminal law encompasses frameworks which define what constitutes a crime and the corresponding remedies and punishments. All legal systems recognize two important dimensions of criminal law in the context of women’s access to justice: when women are (1) victims or survivors of crime, and (2) persons in conflict with the law (see Module 3 and Module 4). Gender-sensitive reforms in criminal law could include:

- Creating gender-sensitive resources and procedures for dealing with crimes that are often committed against women, such as providing and training female police officers and medical examiners to support female survivors of sexual assault.
- Reviewing the legal status of behaviours that are not criminalized or punished as harshly if they are committed by men, such as pre-marital sex, adultery<sup>66</sup> or prostitution.<sup>67</sup>



Above: Tunisia. Fondation El Kef pour le Developpement training and empowering woman in El Kef. © World Bank/Arne Hoel.

- Revising laws that seek to regulate women’s behaviour, but which are not crimes by any international legal standard, such as running away from home without permission,<sup>68</sup> or failure to respect modesty and dress codes.

### Administrative, social and labour law

Issues of special importance to women in this area include health services, social security entitlements, labour relations (such as equal remuneration, including for civil servants, and equal opportunities to be hired and promoted), housing and land zoning, compensation funds, governance of internet resources and immigration and asylum, including detention in such cases. Measures to promote gender-responsiveness in this area of the law include:

- Carrying out independent reviews in accordance with international standards and ensuring that they are available for all decisions by administrative bodies.
- Requiring decisions rejecting an application to be reasoned and ensuring that the claimant can appeal to a competent body against the decision. The implementation of any prior administrative decisions should additionally be suspended pending further judicial review.
- Using administrative detention only exceptionally, as a last resort, and for a limited time when necessary and reasonable in the individual case. Administrative detention must be proportionate to a legitimate purpose and in accordance with national law and international standards.
- Ensuring that all appropriate measures, including effective legal aid and procedures, to challenge the legality of their detention are available, as well as regular reviews of such detention in the presence of the detainee.

This area of the law significantly impacts upon marginalized and excluded women because they often cannot access institutions for protection. Examples include domestic workers, migrants and women who work in the informal economy without protection from economic and sexual exploitation.<sup>69</sup>

### Procedural and evidentiary rules

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Many of the Committee’s concluding observations and views under the Optional Protocol, however, demonstrate that discriminatory procedural and evidentiary rules and a lack of due diligence in the prevention, investigation, prosecution, punishment and provision of remedies for violations of women’s rights result in contempt of obligations to ensure that women have equal access to justice.

Source: CEDAW GR 33, para. 23.

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Procedural rules govern the steps that a complainant and respondent must fulfil to be fully heard and conclude a dispute, particularly in a formal or informal judicial forum. In the formal context, such steps could include the filing of documents within specified time periods and serving such documents on affected persons. Evidentiary rules on the other hand, determine who, when and how evidence on a particular set of facts is presented.

Procedural and evidentiary rules cut across each of the above four areas of law because they are critical to the determination of a case, for example, in cases where women are



not permitted to file claims without the permission of a male guardian, where different standards of proof exist for men and women for certain crimes or in civil and family cases. Discriminatory evidentiary rules include those that discriminate against women as witnesses, complainants and defendants by requiring them to discharge a higher burden of proof than men to establish an offence or seek a remedy, as well as rules that exclude or accord inferior status to the testimony of women.

Even where procedural and evidentiary rules are gender-neutral, discriminatory approaches to their interpretation and enforcement can translate into the exclusion, discrediting or devaluation of women's testimony by law enforcement officials. Stigmatization of women, systematic failures in evidentiary collection procedures for crimes committed against women and onerous probative requirements can destroy the evidentiary foundations of cases even before women are heard.

### 3.2.2.1.1 Typical programming challenges/opportunities

- **Legislative reform is often a slow and long-term process.** The legislative process requires an incredible amount of time, effort and social capital and may involve political bargaining over minutiae that can span several years, particularly in States which apply dualist approaches to the adoption of international treaties. Such long-term processes may be less interesting to both donors and practitioners, despite their critical importance for actualizing women's rights.
- **Reforms in one area of law may not have the desired impact if other areas of law continue to discriminate against women.** The interconnected nature of the law illustrates the challenges in creating an enabling environment for women's access to justice and highlights the need for comprehensive reform across sectors. For example, legislation criminalizing violence against women may be ineffective if family law discriminates against women, particularly in the areas of marital property, divorce, custody and the maintenance of children. This is because discriminatory family laws place women in situations of dependency and may discourage them from reporting cases of violence committed against them.
- **Reforms that challenge customary and religious norms may face opposition from various groups in society.** Advocates of such reforms may be suspected of asserting an external agenda or values that are otherwise antithetical to domestic culture. Cultivating broad-based support across government and non-government actors may be necessary to drive these reforms forward.
- **There may be insufficient political will among policymakers to prioritize the operationalization of women's rights.** Legislative reforms will have limited impact without adequate implementation. Policymakers may have supported women's rights during a constitutional process or the ratification of a human rights treaty but may be unwilling to commit resources to the implementation of those commitments.

### 3.2.2.1.2 Programming considerations and options

1. **Use evidence-based approaches to inform the women's rights legislative agenda.** Every item of the legislative agenda must be supported by evidence of the legislative gap that it is seeking to fill. This could serve as a basis for key messaging among gatekeepers such as parliamentarians, policymakers and community leaders. Legislative analysis can help assess the range of gender discriminatory issues to be

Law reform is a long-term process, not a one-time event

addressed by the law and help drafters avoid discriminatory language in the design of laws themselves. It also extends to analysis of the likely impact of the law on women and the actual and opportunity cost of implementation.<sup>70</sup>

2. **Adopt strategic messages.** Care must be taken to avoid the impression that the law or laws under consideration will benefit only women. Even where the basic policy considerations address gender inequality, messaging on the reform process must stress the intended impacts on all of society, including men and boys.
3. **Prioritize “low hanging fruits” and reforms which have potential for wider impact.** Comprehensive legal reforms take time. Prioritization is therefore essential and requires careful analysis to understand how the laws are interconnected, as well as the key entry points. This can be assessed through a mapping process, but also requires engaging with women to understand which laws most affect their daily lives.
4. **Integrate implementing provisions.** All laws must integrate specific implementation arrangements that are supported by adequate funding sources. This could include the creation of specific budgetary measures, placing obligations on ministries and departments to issue directives to their agencies and staff and the creation of new policies and services.
5. **Ensure national ownership of processes and outcomes.** Similar to constitutional reform processes, law-making requires the collective effort of a range of stakeholders for effective ownership and support. “Champions” can be sought from members of cabinet, parliament (and the Inter-Parliamentary Union), policymakers, policy influencers as well as the intended female beneficiaries of such reforms. Working with and incorporating the views of women themselves is an effective method for identifying problematic laws and obstacles to implementation. Feedback on implementation challenges and other institutional shortcomings outside the control of public servants can also be useful. Legislative advocacy could involve the drafting of model laws, maintaining and building alliances and creating a compilation of good practice legislation drawn from similar legal systems.

### 3.2.2.2 Informal laws

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States Parties shall take all appropriate measures: To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes

Source: CEDAW, Art. 5(a).

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Protect women and girls from interpretations of religious texts and traditional norms that create barriers to their access to justice and result in discrimination against them.

Source: CEDAW GR 33, para. 25(d).

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Ensure that religious, customary, indigenous and community justice systems harmonize their norms, procedures and practices with the human rights standards enshrined in the Convention and other international human rights instruments

Source: CEDAW GR 33, para. 64(a).

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Informal sources of law encompass customary and religious laws and practices which have evolved over time and include their substantive content, procedures and evidentiary dimensions. It has been mentioned above that these could also form part of the formal laws of a State.

*Customary laws* pertain to customs that have acquired the force of law. They are laws that are embodied in customs, rules or traditions and accepted by members of the community as binding, but nevertheless remain adaptable, dynamic and flexible.<sup>71</sup> CEDAW GR 33 also recognizes *indigenous laws*.<sup>72</sup> These are similar to customary laws but are often given a distinct identity in recognition of the specific international standards related to the rights and protections of indigenous peoples and their justice systems. Informal *religious laws* refer to norms that are derived from interpretations of codified religious texts.<sup>73</sup> *Informal laws* may vary from one community or school of thought to another and are generally uncodified. This means that their interpretation can be unpredictable and predisposed to deepening discriminatory social norms and inequalities.<sup>74</sup>

### 3.2.2.2.1 Typical programming challenges/opportunities

- **There is no single process or entry point for reforming informal laws.** For instance, a distinct customary law review body may not exist at community level to initiate reforms. Customary law is furthermore inherently challenged by diversity and its diverse application within and across different communities. Any reform process is therefore going to be iterative, slow and anything but linear. Some countries have tried to overcome this through statutes which regulate the application of customary and religious laws as well as customary and religious institutions.<sup>75</sup>
- **Changes in customary law often require shifts in deep-rooted sociocultural norms.** Customary law is rooted in a community's historical experiences, values and practices. Challenges to existing sociocultural norms may therefore be resisted, particularly by gatekeepers such as traditional and religious leaders who may perceive change as a challenge to their own authority and power.
- **Where customary law is derived from religious texts, seeking to reform these laws can appear to be a secular contestation of religious principles.** Programming on customary law that does not adequately root reforms in the local context is particularly vulnerable to this challenge. This highlights the importance of developing relationships with religious and traditional leaders and working with them to create reforms that have broad buy-in.
- **Inadequate consultation and research can result in misguided programming.** Assumptions about customary law and informal justice systems must be identified and tested before designing and implementing access to justice programmes. Inaccurate assumptions about underlying norms, without balanced information on the elements which are both supportive and harmful to achieving gender equality, could lead to backlash.
- **Legal pluralism can create barriers and prevent the full exercise of women's rights.** While women should be allowed and encouraged to choose whichever laws and forums are more accessible and fair for their purposes, care must be taken to recognize and address loopholes that exist across both formal and informal justice institutions.

Informal laws mean non-State rather than unimportant, irregular, unofficial or casual

Lack of codification and variation of informal laws can disrupt certainty and predictability in their application

Preconceived ideas about informal laws can becloud judgement and programming decisions

Acknowledge, disseminate and utilize the positive dimensions of informal laws

Reforming informal laws is possible if strategically timed entry points are used and the right stakeholders are involved

### 3.2.2.2.2 Programming considerations and options

1. **Begin programme design on the premise that customary and religious norms can change.** Customary and religious norms are not isolated systems and most norms and practices have been impacted by social, economic, cultural and political change.<sup>76</sup> Without change, both formal and informal laws lose their relevance and suffer stagnation.
2. **Identify existing or eroded positive traditional and religious norms.** Cultural legitimacy for women's rights may be asserted from positive traditional and religious norms which are still in existence or have been eroded over time through colonial influences or the impact of conflict. These include the political spaces that women occupy in some traditional societies, the right of a woman to access and control land and her right to be protected from physical and sexual harm.<sup>77</sup>
3. **Prioritize the reform of harmful norms and explore mechanisms to guide related disputes into the formal justice system.** Programming interventions may simultaneously acknowledge that customary laws exist and remain an important source of law, while recognizing that the formal justice system is better equipped to address specific areas of women's rights (e.g., SGBV), as determined by national stakeholders. To be successful, negotiations, trade-offs and agreements on incremental as well as immediate changes may be necessary and will require buy-in from those administering customary law, local communities and women themselves.
4. **Ensure that interventions are community-driven and community-defined.** Sustainability of interventions can only be assured if they are locally-driven. Therefore, encourage traditional and religious rulers to be self-starters in initiating community-based reforms (see Box A.1.10 and Box A.1.11 in the Appendices) and ensure that community action and results are fed into overall law reform efforts at the sub-national and national levels. In this context, identify and work with allies who can point to drivers of change within customary or religious sources of law.<sup>78</sup> Coalition-building and mobilization could also generate energy around a larger movement to strengthen women's access to justice, with clusters of different thematic groups or communities of practice among informal justice actors offering a useful platform for drilling deeper into a range of norms which impact on women.
5. **Create dedicated, safe spaces for women of all generations, backgrounds and literacy levels to voice their opinions and priorities.** Listen to the views of various groups of women and be sensitive to their fears and expectations about changes in social norms. Do not expect all women to agree on one approach to change or even to change at all. Contrary views must be treated with respect and taken into account for purposes of country context-specific programming.
6. **Do no harm, be open-minded and explore multiple options for protecting women and girls.** "Do no harm" in this context means that interventions must not escalate the situation or problem that is under review, and must not pose a danger to the families and communities concerned. These efforts need to operate hand in hand with changing attitudes and building the capacities of relevant institutions and decision makers. For example, it may take time to convince a community that a perpetrator who is a breadwinner should be reported to the police. In such situations, agreement on basic issues (i.e., that violence against women is a crime) can be considered an initial step forward, while issues related to apprehension of perpetrators and

remedies may have to be worked out over time. In reforming relevant areas of Sharia law, experts recommend that an interpretative approach rather than a secular, non-compatibility or reconciliatory approach be used.<sup>79</sup> The differences between the four approaches are highlighted below:

- *Secular approach:* An application of international human rights law in Muslim States on a presumption that there are no obstacles to the coexistence of Sharia law and human rights law.
- *Non-compatibility approach:* The belief that Sharia law is valid at all times and that human rights are a form of Western imperialism.
- *Reconciliatory approach:* Based on the argument that Islamic human rights norms are compatible with international standards in many respects and areas of conflict can be reformulated and reconciled with international standards. While not denying the divine origins of Sharia, it is grounded in the belief that there are similarities and differences in the conferment of rights and responsibilities that must be reconciled.
- *Interpretative approach:* This is the preferred approach adopted by the reformist group who take the position that Sharia law can be reformed by reanalysing the divine text on the basis that the Qur'an is a living text and can be reinterpreted to meet the contemporary needs of a given society.<sup>80</sup>

### 3.3 Justice sector policies and budgets

(a) Provide adequate budgetary and technical assistance and allocate highly qualified human resources to all parts of justice systems, including specialized judicial, quasi-judicial and administrative bodies, alternative dispute resolution mechanisms, national human rights institutions and ombudsperson offices; (b) Seek support from external sources, such as the specialized agencies of the United Nations system, the international community and civil society, when national resources are limited, while ensuring that, in the medium and long term, adequate State resources are allocated to justice systems to ensure their sustainability.

Source: CEDAW GR 33, paras. 39(a)-(b).

Women's access to justice may be shaped by several national level policy strategies, including national development plans, national justice and security sector policies, national gender equality action plans and national action plans (NAPs) related to the implementation of UNSCR 1325. Justice and security sector policy design provides a platform for harmonizing and integrating these frameworks. It can also serve as a docking station for planning, prioritization, budgeting and monitoring of justice services. According to a UN Women review of the justice and security sector policy environment, at least 22 countries have national justice sector policies or justice and security sector strategies. Sub-sector policies may also exist for institutions such as the police, prosecutorial services, the judiciary, prisons, immigration and social services. Broad (sector) and specific (sub-sector) policies allows for the identification and strengthening of horizontal and vertical linkages between and across sectors during planning, implementation and monitoring of justice delivery within the country (see Box A.1.13 in the Appendices). This represents an opportunity to plan for coordinated interventions that support and strengthen women's access to justice.

The constraints that women face in accessing justice should be taken into account in the formulation of justice and security sector policies, UNSCR 1325 NAPs and budgets

**FIGURE 1.5** Placing women's access to justice at the centre of relevant national planning processes



Gender mainstreaming is yet to be fully adopted in policy and practice within the justice and security sector

Although justice and security sector strategies have become more gender-sensitive over time, there is limited evidence of their effectiveness as tools for advancing women's access to justice. This is probably due to the fact that justice sector planning is a relatively recent practice and limited knowledge exists on how to undertake sector-specific planning from a gender perspective. In the WPS context, UNSCR 1325 NAPs provide an opportunity for national stakeholders to identify priorities, determine responsibilities, allocate resources and initiate strategic actions within a defined time frame. Although a total of 73 countries have developed such plans to date,<sup>81</sup> the UN Women publication, [Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council resolution 1325](#), finds that a lack of intersectoral coordination has tended to hamper their implementation.<sup>82</sup>

### 3.3.1 Typical programming challenges/opportunities

- **Limited resources exacerbate the already low priority status of women's access to justice.** Women's access to justice programming remains a low priority within the justice sector overall. Based on the limited data available, UN Women estimates that only 5 per cent (around USD \$206 million) of the \$4.2 billion that was allocated to justice in 2009 was spent on projects in which gender equality was a primary aim.<sup>83</sup>
- **The importance of women's access to justice is often undervalued and oversimplified.** There is limited understanding of the scope of the challenges that women face, which are multidimensional in nature and extend beyond women's experiences as survivors of violence.
- **In light of the above, women's access to justice may not be viewed as an integral part of justice sector planning.** There is a common misconception that only national women's machineries or gender desks located in sector ministries are responsible for promoting gender mainstreaming and that such efforts therefore fall outside the purview of the justice and security sector as a whole.



Above: Turkmenistan. Students participate in a meeting on standards and codes. © World Bank.

### 3.3.2 Programming considerations and options

1. **Utilize country assessments (see Section 2.0) to identify target populations currently underserved by the justice sector and barriers to access.** Sources should include poverty analysis, justice needs surveys and demographic and health surveys, among others. Data gathered during this process should be used to define baselines and targets for achieving milestones and for monitoring progress (see Module 5).
2. **Justice and security sector planning must be participatory.** Justice and security sector planning must not be “board room processes” among and between formal justice actors alone but must also extend to the informal sector and CSOs working in the field of justice reform and delivery.
3. **Build relationships with policy and financial gatekeepers.** Build alliances with those who hold sway over the macroeconomic environment and encourage gender advocates to strengthen their relationships with these actors as well, so that national consensus can be built on justice and security sector reforms and financing.
4. **Build bridges with national development planning.** Justice and security sector policy design provides a platform for planning, prioritization, budgeting and monitoring of justice services. They must therefore inform and be informed by the broader national development planning process, national gender strategies and action plans on the [Beijing Declaration and Platform for Action \(BDPfA\)](#). For example, mainstreaming access to justice activities into poverty reduction and social protection programmes could institutionalize fee waivers and legal aid for indigent women. Budgeting for the justice sector could also focus on poorer districts and the creation of facilities and programmes which can ensure women’s access to justice (e.g., family courts, domestic violence courts, land courts and integrated victim support units).
5. **Justice and security sector plans must hold duty-bearers accountable to women.** National strategies must include time-bound results and a monitoring and evaluation

Programming must encourage and support the participation of women in identifying areas for reform

Support national actors in designing and defending their sector and sub-sector budgets

Justice and security sector strategy development should be informed by evidence and a credible monitoring and evaluation framework

framework that spells out agency-specific responsibilities and performance indicators. Consequently, each participating institution must have clarity concerning its role and responsibilities and how to execute them. Task forces should be established to ensure coordination, information flow and feedback functions.

6. **Promote gender-responsive budgeting in the context of women's access to justice.**

The costing of justice and security sector strategies should be accompanied by several complementary steps to secure dedicated funding for women's access to justice. For example, budget officers of the administrative units of each sub-sector (e.g., police, prosecutorial services and the judiciary) should receive training in the preparation of their respective budgets and the drafting of strategic talking points to assist the officers and their superiors in defending the specific budget lines on promoting women's access to justice. Briefings should also be arranged for relevant staff of ministries of finance and parliamentary budget approval committees ahead of budget readings.

## 4.0 Creating effective, accountable and gender-responsive justice institutions

While the enabling environment lays the foundation for women's access to justice, the functioning of justice institutions directly impacts women's actual experiences in accessing justice. Without institutions that are adequately resourced, accessible, coordinated, fair, responsive and accountable, the transformative potential and implementation of laws, international agreements and women's rights will remain theoretical. Institutions that perpetuate structural discrimination can stifle progress made both in the enabling environment and in women's empowerment (see Section 5.0). Moreover, institutions are often slow to change, which can allow for the persistence of discrimination and bias even in contexts of comprehensive legal reforms. Creating gender-responsive justice institutions is therefore essential to achieving transformational change for women.

### An overview of justice and security sector institutions

A wide range of formal and informal institutions play a significant role in justice delivery (see Section 2.0 of the Introduction). The following describes how women's ability to access justice can be hindered or supported by these institutions and furthermore illustrates how such institutions interact.

**Formal justice institutions** derive their legitimacy from the State. They may have broad mandates or operate as specialized units, such as domestic violence courts, labour courts and family courts. In conflict and post-conflict settings, the military and associated military courts often play important roles in maintaining law and order as well as peace and security. In addition, *quasi-judicial mechanisms* such as independent national institutions for the protection and promotion of human rights may exist (e.g., ombudsperson institutions and NHRIs) to arbitrate or initiate actions on behalf of individuals or a group of individuals whose rights have or are being violated. Box A.1.16 in the Appendices highlights the complex range of formal institutions in Uganda.

Women often experience discrimination, bias and impunity at the hands of formal justice and security sector personnel. As duty-bearers, institutions may lack awareness and

Effective, accountable and gender-responsive institutions translate laws and policies into reality for women

Pro-poor justice is underpinned by both formal and informal justice delivery





Above: Haiti. A small shop keeper in Delmas. © World Bank/Dominic Chavez.

training on women's rights as well as basic supplies and logistical tools (e.g., stationery for recording statements; vehicles or fuel to attend crime scenes, apprehend suspects, transport prosecutors to courts or bring witnesses and survivors to hearings; facilities in which to detain them; equipment for gathering evidence; private spaces in which to conduct interviews; lockable cabinets in which to safely store statements; or appropriate referral systems such as shelters for women at risk of violence). Limited capacities also exist in terms of infrastructural development, provision of legal aid, filing fee waivers, interpretation, fast-tracking of claims involving specific population groups (e.g., pregnant and lactating mothers, persons with disability, the elderly) and data management capabilities to monitor disposal, conviction and attrition rates. Furthermore, judges, prosecutors and other justice professionals working in rural and remote areas may often operate without basic legal resources or dedicated justice facilities and supporting staff.

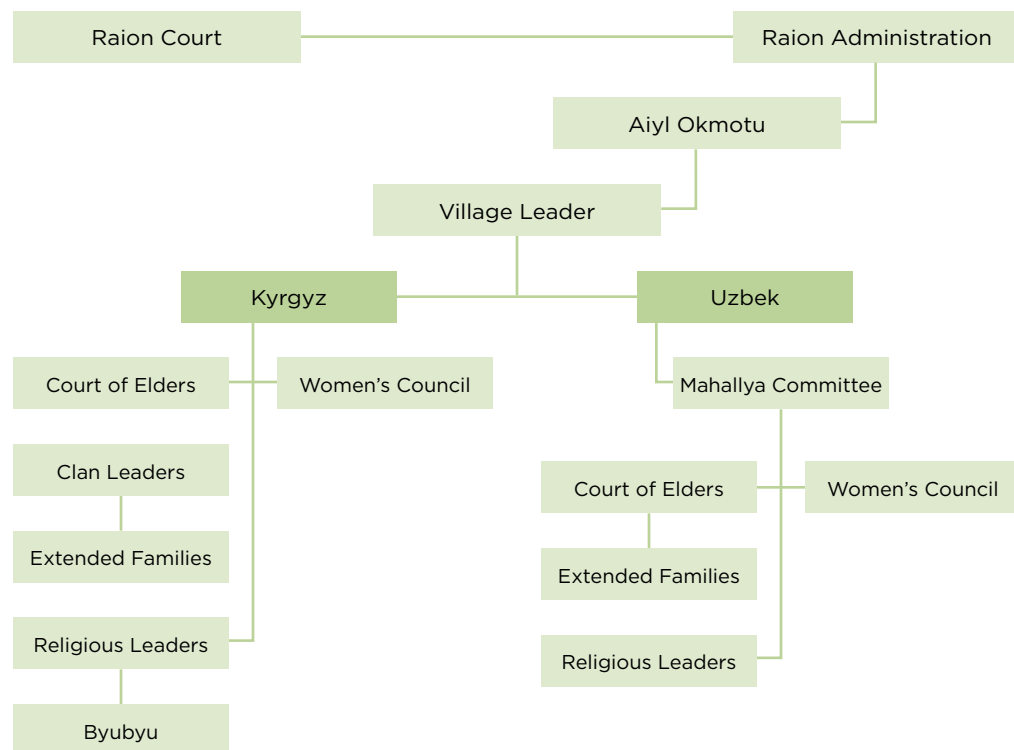
**Informal justice institutions** are broadly defined as customary and religious systems that undertake the resolution of disputes and the regulation of conduct by adjudication or the assistance of a neutral third party that is not part of the State system and/or whose substantive, procedural or structural foundation is not primarily based on statutory law.<sup>84</sup> Although positive elements of customary and religious systems may be found, overall evidence suggests that they tend to afford a lower level of protection to women, denying them rights and entitlements generally recognized under both domestic law and international human rights law. Informal justice forums are, however, "too important to ignore"<sup>85</sup> as an estimated 80 per cent of disputes are resolved through such channels in some countries.<sup>86</sup> Their operations are generally informed by individual and community experiences of justice rather than by the laws of States. Complaints can be entered either orally or in writing. Proceedings also generally take place without legal representation, due to the limited formalities involved. A multi-country study on informal justice systems undertaken by UN Women, UNDP and UNICEF found that the majority of the 3,629 female and male respondents interviewed had a higher preference for informal justice channels of dispute resolution in comparison to the formal channels based on the former's geographical, financial, technical, cultural and linguistic accessibility.<sup>87</sup> Such



institutions may be best suited for male and female disputants because of the high value placed on social cohesion, community harmony and consensus-based decision-making. Nevertheless, as noted, they can also serve as a risk to women’s effective access to justice when there are limited State regulations on their processes and decisions. Similar to formal justice institutions, they are susceptible to bias, discrimination, elite capture and the perpetuation of power asymmetries. Furthermore, due to the lack of codification of informal laws, their decisions and outcomes are generally not predictable or consistent.<sup>88</sup>

**Hybrid or semi-formal institutions** reflect characteristics which are common to both formal and informal justice institutions. A healthy interaction between formal and informal justice is often promoted through formal legislation, which prescribes the scope and power of informal laws and institutions and their role in the administration of justice. Sometimes such laws include provisions on the establishment of village courts, local council courts, religious, local and customary courts. An estimated 18 countries have laws mandating customary or local courts to apply both formal and informal laws for minor offences and personal status matters such as marriage, divorce, inheritance, child custody and maintenance.<sup>89</sup> An illustrative example of this is Kyrgyzstan, which has established approximately 1,000 semi-formal courts, known as courts of elders (or *Aksakal* courts) through presidential decree.<sup>90</sup>

**FIGURE 1.6** Institutions that enforce customary law in Kyrgyzstan



Source: Eurasia Foundation and the Caucasus Research Resource Centers, [Equal Before the Law? A Study of How Citizens Experience Access to Justice in Kazakhstan, Kyrgyzstan and Tajikistan](#), p. 15, (Washington, D.C. and Tbilisi, 2011).



Above: Participants at the forum on the contribution of religious leaders to the implementation of the peace and reconciliation agreement from the Algiers process at the International Conference Center in Bamako.  
© MINUSMA/Harandane Dicko.

The United Nations Human Rights [Committee General Comment No. 32 on Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial](#) recommends that informal institutions must conform to the rule of law, due process and general human rights standards. This is in view of their tendency to provide fewer and less appropriate protections and remedies, particularly to survivors of violence. In deploying a combination of formal and informal procedures and laws, semi-formal courts are therefore legally obliged to ensure that no violation of statutory law occurs in the process. The legal matters that semi-formal courts have jurisdiction over will vary, depending on the extent to which their roles and jurisdictions are recognized within formal laws. For example, under [The Local Council Courts Act, 2006](#) of Uganda, local council courts can deal with matters governed by statutory law such as debts, contracts, assault/battery, damage to property and trespassing, as well as matters governed by customary law such as land, marriage and child custody/maintenance issues.<sup>91</sup>

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Many jurisdictions have adopted mandatory or optional systems for mediation, conciliation, arbitration and collaborative resolutions of disputes, as well as for facilitation and interest-based negotiations. This applies, in particular, in the areas of family law, domestic violence, juvenile justice and labour law. Alternative dispute resolution processes are sometimes referred to as informal justice, which are linked to, but function outside of, formal court litigation processes.

Source: CEDAW GR 33, para. 57.

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Interactions between formal and informal justice systems may also be appreciated from ADR processes. In some countries, formal courts include mediation units which allow for judges to refer cases for settlement by a professional mediator at the request of the parties.<sup>92</sup> When cases reach their conclusion and parties agree on a settlement, the results

are submitted back to the court and judgment is “entered” based on the settlement. In other situations, parties can proceed straight away to an arbitration institution or other process that is recognized by the State. This kind of mediation may be guided by formal legislation as in Malawi, where the rules require (with some exceptions) that parties attempt mediation in all civil actions pending before the High Court and subordinate courts.<sup>93</sup>

In a few countries, formal and informal mechanisms work together to collaborate on enforcement and protection. In this regard, CSOs, including community and faith-based organizations, can also play important mediation roles at the community level. In Malawi, a Village Mediation Programme was piloted between 2008 and 2009 to improve justice by building the capacity of village mediators who were trained to handle misdemeanors, using human rights standards. Women expressed satisfaction with the programme on the basis that there was no cost involved and it guaranteed privacy and confidentiality in cases of domestic violence.<sup>94</sup>

From the above, it is clear that enhancing women’s access to justice requires effective engagement with both formal and informal justice institutions. Box 1.2 presents some tips on how this can be done.

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#### **BOX 1.2 Tips for working with formal and informal justice institutions**

**Promote healthy interaction between formal and informal systems.** Propose spaces of engagement between the two systems and recommend State laws that clearly define the mandate and jurisdiction of informal systems in terms of their enforcement of formal and informal laws, both of which must conform to international standards. Furthermore, establish “supervisory systems” within formal institutions and strengthen the appeals process whereby decisions of informal courts can be heard in the formal.

**Think out of the box and be innovative.** Transforming justice institutions to ensure effectiveness, accountability and gender-responsiveness is a long-term endeavour that is costly. Therefore, justice programming must explore new sites of justice delivery and services, including those which can reduce the steps within a justice chain. Notable areas to consider include integrated one-stop services which offer legal aid, awareness and social support, specialized courts, mobile courts and legal aid clinics, remote or settlement-based help desks and free hotlines (see Section 4.1.1). Furthermore, use technology to strengthen information sharing within and across formal and informal institutions through modes such as Short Message Service (SMS) (see Box A.1.20 in the Appendices).

**Work with and support informal justice institutions.** The contributions of informal justice mechanisms to the administration of justice must be fully recognized and exploited in view of their influence in determining the majority disputes in many countries. While shortcomings exist in terms of their application of human rights standards, they must not be singled out, since women’s access to justice can be influenced by many additional factors.<sup>95</sup> Informal justice institutions could be supported through the codification of customary law and where appropriate, harmonization with statutory laws.

## 4.1 What do effective, accountable and gender-responsive justice institutions look like?

CEDAW GR 33 outlines six dimensions of access to justice—“justiciability, availability, accessibility, good quality, provision of remedies for victims and accountability of justice systems”.<sup>96</sup> These six overlapping dimensions provide a structured framework for comprehensive analysis of women’s access to justice generally and serve to help in assessing justice institutions specifically.

**FIGURE 1.7** Six components of effective, accountable and gender-responsive justice institutions



Source: CEDAW GR 33, para. 14.

Effective programming must take each of these dimensions into account. Justiciability is however not elaborated in this Section because the guidance provided by CEDAW GR 33 suggests that it encapsulates all of the dimensions and aspects covered by this Toolkit: “Justiciability requires the unhindered access by women to justice and their ability and empowerment to claim their rights as legal entitlements under the Convention”.<sup>97</sup> This Section focuses on the remaining five dimensions by highlighting how they serve as cross-cutting considerations in justice delivery.

### 4.1.1 They are available

To ensure the availability of justice and security sector institutions, States are expected to ensure “the creation, maintenance and development of courts, tribunals and other entities, as needed, that guarantee women’s right to access to justice without discrimination throughout the entire territory of the State party, including in remote, rural and isolated areas, giving consideration to the establishment of mobile courts, especially to serve women living in remote, rural and isolated areas, and to the creative use of modern information technology solutions, when feasible”.<sup>98</sup>

Programming requires a coherent approach that addresses justiciability, availability, accessibility, good quality, remedies and accountability

Justice services must exist in as many geographical locations as possible

#### 4.1.1.1 Typical programming challenges/opportunities

- Limited capacity may impact upon a State's ability to establish justice institutions throughout an entire territory. States with financial and human resource constraints may experience poor reach in regions outside of the capital and efforts at expanding services may not be possible without external support. General challenges associated with remote and rural programming can further compound the difficulty of implementing programmes in these areas. These include poor infrastructure and a shortage of skilled professionals.

#### 4.1.1.2 Programming considerations and options

The Committee has observed that the concentration of courts and quasi-judicial bodies in the main cities, their non-availability in rural and remote regions, the time and money needed to gain access to them, the complexity of proceedings, the physical barriers for women with disabilities, the lack of access to high-quality, gender-competent legal advice, including legal aid, as well as the often-noted deficiencies in the quality of justice systems (e.g., gender-insensitive judgements or decisions owing to a lack of training, delays and excessive length of proceedings, corruption) all prevent women from gaining access to justice.

Availability requires the establishment of courts, quasi-judicial bodies or other bodies throughout the State party in urban, rural and remote areas, as well as their maintenance and funding.

Ensure that the physical environment and location of judicial and quasi-judicial institutions and other services are welcoming, secure and accessible to all women, with consideration given to the creation of gender units as components of justice institutions and special attention given to covering the costs of transportation to judicial and quasi-judicial institutions and other services for women without sufficient means.

Source: CEDAW GR 33, paras. 13, 14(b), 17(e).

1. Advocate for the holistic development of rural and hard to reach areas among government partners. Governments must prioritize infrastructure (e.g., roads, railways, bridges, court buildings, police stations and other related institutions) and safe transportation systems and networks as part of the overall development of rural and other hard to reach areas. These will benefit all sectors (e.g., justice, local government, education, health, agriculture) and ensure the holistic development of these areas.
2. Consider innovative approaches to justice delivery. To ensure greater outreach to larger groups of women, support the creation of mobile courts and legal aid clinics, remote or settlement-based help desks and free or subsidized hotlines. The use of information and communication technology (ICT) can help improve access for such settings through methods such as electronic transmission of information and the use of teleconferencing for the provision of witness testimony. Mobile justice delivery services must take cultural and linguistic contexts and seasonal cycles into account (e.g., agricultural and fishing seasons and market days when women are engaged in income generating activities).
3. Promote community-based paralegal programmes. These can increase the availability of justice actors in remote regions and contribute to legal literacy of communities.

4. **Support duty-bearers in hard to reach areas.** Ensure that there is adequate transportation, accommodation and other logistical arrangements in place for justice actors who are out-posted to remote locations. Special provisions should be made for female personnel who are compelled by their personal circumstances to travel with their family members, particularly young children.
5. **Advocate for reasonable accommodation for different groups.** Women should be secure and safe in their immediate environments, and when approaching and leaving the premises of formal and informal institutions. Therefore, programming should explore how to make institutions available for people with limited mobility and accommodations more comfortable and secure for women with young children, lactating mothers, persons with disabilities and the elderly.

## 4.1.2 They are accessible

Accessibility requires that all justice systems, both formal and quasi-judicial, be secure, affordable and physically accessible to women, and be adapted and appropriate to the needs of women, including those who face intersecting or compounded forms of discrimination

Source: CEDAW GR 33, para. 14(c).

Accessibility considers the needs of women in diverse capacities as claimants, respondents, accused persons and witnesses and the specific barriers they may face. It requires that formal and informal justice systems are secure, affordable and physically accessible to all groups of women.<sup>99</sup>

Programming must address the following six aspects of accessibility identified by CEDAW GR 33:<sup>100</sup>

- **Non-discrimination:** Justice facilities and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, including women from minority groups and illiterate women.
- **Physical accessibility:** Justice facilities and services must be physically accessible for those with disabilities or mobility challenges. Additionally, they should be secure for all women, including those with young children and the elderly.
- **Economic accessibility:** Justice must be affordable for all women. Payment for justice services should be based on the principle of equity, which demands that poorer women should not be disproportionately burdened with justice expenses.
- **Information accessibility:** Accessibility includes the use of ICT by and for women, the right to seek, receive and impart information and ideas about justice and security sector institutions in a way that women with varying needs and education levels can understand.
- **Linguistic accessibility:** Justice services must be available in the language of the user.
- **Cultural accessibility:** Justice services must respect diversity and incorporate an intercultural dimension to delivery, including respect for expressions of culture through various means.

Accessibility is not just about being present in a justice institution, but also about utilization by target groups, regardless of personal or situational circumstances

Programming must address six key dimensions of accessibility



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For the purposes of the present Convention:

“Communication” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

“Language” includes spoken and signed languages and other forms of non spoken languages

Source: United Nations, General Assembly, Resolution 61/106, Convention on the Rights of Persons with Disabilities (CRPD), Annex, Art. 2, 13 December 2006, A/RES/61/106.

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Above: India. Adolescent sits in a wheelchair while younger members of her family play nearby, in the north-eastern Punjab Province. © UNICEF/Asad Zaidi

If justice and security sector institutions are not responsive to the needs of women of all backgrounds, the latter will not be motivated to utilize them. Inaccessibility can therefore contribute to underreporting of crimes, attrition of cases at various stages along the justice chain and impunity. Women must be equipped with relevant information about the justice institution that they are seeking to access and the procedures involved, in languages and through methods that they understand. They must also be assured of fair treatment and protection from discrimination.

#### 4.1.2.1 Typical programming challenges/opportunities

- **Seeking legal redress is often costly for women.** Women are often the poorest of the poor and cannot afford the litany of costs associated with pursuing justice. The indirect costs of accessing justice (e.g., time burdens and opportunity costs associated with delays) are as prohibitive as the direct costs (e.g., filing fees, expenses for witnesses, translation, execution /enforcement and transportation).



- **Justice planning tends to ignore the multifaceted needs of justice users.** Within a single jurisdiction, the prevalence of different ethnic groups may give rise to different languages and justice and security sector institutions may not have the capacity to accommodate this diversity. The rights of persons with disabilities and other women who face intersecting and multiple forms of discrimination are also largely ignored and not factored into infrastructural development, facilities and justice delivery.
- **Justice and security sector institutions generally do not publicize information.** Lack of information (e.g., simple notice boards) on the official cost of services, availability of complaint mechanisms, location of services and scheduling of cases can impact upon the ability of women to access services in a timely and effective manner.

#### 4.1.2.2 Programming considerations and options

1. **Determine who may be left out of policy and infrastructural investments.** Interventions must be inclusive of all women. For example, interpretation services must be available in languages which reflect all ethnic groups in the locality concerned. In line with CRPD, accessibility further requires that live assistance and intermediaries, including guides, readers and professional sign language interpreters, public signage in braille and in easy to read and understandable forms, be made available in buildings and other facilities to persons with disabilities.<sup>101</sup>
2. **Explore measures to combat monetary barriers to access.** These may include the provision of pro bono legal representation, fee waiver programmes, fee scales based on need and support for ancillary costs, such as those related to the transportation of women complainants and their witnesses.
3. **Support the provision of free legal services.** Legal services are broader than legal aid. The [Essential Services Package for Women and Girls Subject to Violence, Core Elements and Quality Guidelines](#) defines it to “include legal aid as well as legal services provided by prosecutors to victims, particularly as in some jurisdictions the victim does not have separate standing in criminal proceedings.”<sup>102</sup> This is especially important for poor and marginalized women, who would not otherwise have access to these services. It also includes the use of appropriate legal aid eligibility criteria<sup>103</sup> and the availability of information on such services and how they can be accessed. Legal aid, advice and court support services should be provided in all legal proceedings to female survivors of violence to ensure access to justice and avoid “secondary victimization”.<sup>104</sup> Legal aid and public defence providers must be competent, respectful of client confidentiality and devote adequate time to defend their clients. Furthermore, legal assistance and services must be available in local languages, including where the provision of professional translation and interpretation services becomes necessary. For further information on legal aid see United Nations General Assembly Resolution 67/187, [United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](#) and the UNDP and UNODC [Global Study on Legal Aid, Global Report](#).<sup>105</sup>
4. **Determine the benefits and drawbacks of hierarchies within formal and informal court structures.** Lower courts tend to be embedded within local governance structures and therefore, are often women’s first point of contact in minor civil, criminal and family disputes. Technical and financial support to the justice and security sector for purposes of enhancing the effectiveness of such courts would minimize

Women are confronted with direct and indirect costs when accessing justice and may not be able to access institutions because of disability issues or lack of interpretation services

Programming should address structural barriers which exclude specific groups of women

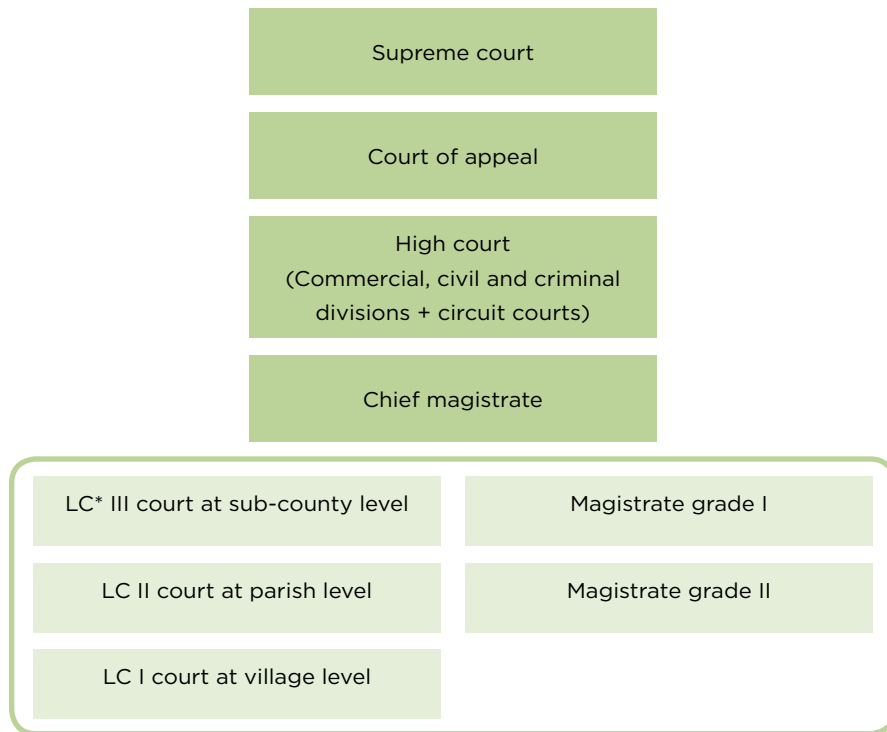
Fee waivers and free legal services are effective pro-poor measures

Invest in institutions which are likely to reach more women and promote effective supervision and support to ensure adherence to human rights principles

the financial burden of appealing to the more expensive higher courts when lower courts are not familiar with relevant procedural, evidential and substantive rules. Although based on social structure and geographical influence, informal institutions are also subject to hierarchy. In traditional settings, adjudicative authority originates in the community and runs through the village, lineage and family. Heads of these stratified institutions play important roles in dispute resolution, including facilitating appeals to higher levels, such as by Paramount Chiefs, whose areas of influence may extend to several communities. By way of example, the lower area in Figure 1.8 highlights the courts that poorer women in Uganda are more likely to go to in the first instance.<sup>106</sup>

5. Specialized justice institutions can positively impact women’s experiences of justice. Broad mandates have the benefit of providing justice institutions with opportunities to address a diversity of women’s justice needs. Specialized institutions are also useful because they are readily identifiable by name and location and therefore more likely to be known by women (e.g., family courts, domestic violence courts, sexual offences courts and small claims courts), including in local languages. If well-resourced, specialized institutions can address specific needs and in some situations, a combination of specialized functions or services (e.g., family and domestic violence courts) for cost-effectiveness.

**FIGURE 1.8** The court structure of Uganda



\*LC = Local council.

Sources: Adapted from Uganda, The Justice Law and Order Sector (JLOS), [The Third JLOS Strategic Investment Plan \(SIP III\) 2012/13-2016/17](#), p. 4, (Kampala, 2013) and UN Women, [Enhancing Women’s Access to Justice: Addressing Barriers in the Justice Delivery System in Uganda](#), p. 80, (forthcoming).

### 4.1.3 They are of good quality

According to CEDAW GR 33, “good quality of justice systems requires that all components of the system adhere to international standards of competence, efficiency, independence and impartiality and provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution for all women. It also requires that justice systems be contextualized, dynamic, participatory, open to innovative practical measures, gender-sensitive and take account of the increasing demands by women for justice”.<sup>107</sup> Good quality also embraces sector-wide reforms, innovation in justice delivery and protecting the privacy and security of women as claimants and witnesses.<sup>108</sup>

#### 4.1.3.1 Typical programming challenges/opportunities

- **Limited capacities, cultural biases and discriminatory attitudes.** The application of procedures and evidentiary rules can be influenced by limited knowledge of women’s rights, negative stereotypes and prejudices, which can have an impact on the ease with which cases progress along the justice chain, including whether or not crimes are effectively investigated and prosecuted.
- **Lack of guarantees of privacy and security.** Procedures may not be developed or enforced along the justice chain to protect the privacy of women petitioners, witnesses or defendants.
- **Delays in the administration of justice.** Delays can stem from inadequate human resource capacity, challenges in transmitting information across distances or along the justice chain, difficulties in collecting evidence and overlaps or gaps in institutional mandates.

#### 4.1.3.2 Programming considerations and options

1. **Provide capacity development to formal and informal justice actors.**<sup>109</sup> Capacity-building should be geared towards changing standards and the behaviour of justice sector administrative and operational personnel, with the goal of eliminating discriminatory attitudes. Justice actors must be introduced to international and domestic gender equality standards in order to combat behaviours which deprive women of quality justice. These include bias, myths, stigma and stereotyping in their dealings with women claimants and colleagues. Capacity-building should be linked to gender-responsive work performance standards and the adoption of workplace incentives to foster adherence to human rights. For capacity-building to be impactful, it needs to be culturally relevant and tailored to suit the communities being served.
2. **Focus on long-term systemic change.** Reforming institutional culture involves behavioural change, which takes time. Attention should be paid to developing partnerships with professional training institutes to integrate women’s rights into curricula, as well as engaging with professional associations to do the same for continuing legal education. Training on women’s rights should be mandatory for entry level staff and tailored programmes should be designed to address specific needs. A self-evaluation of European Commission programming in the justice sector found that “very limited evidence” was available to determine whether justice

The quality of institutions determines whether women will choose to access justice

Weak capacity, lack of impartiality, lack of privacy and delays can discourage women from accessing justice

Capacity development, including women’s rights in curricula and the provision of psychosocial support to justice actors, can improve the quality of justice

personnel became more sensitive to gender issues after training.<sup>110</sup> Bearing such uncertainties in mind, capacity development should be planned as a long-term investment, with the goal of reforming institutional culture through changes in human resource policies and end of year performance evaluations of personnel.

3. **Determine the best entry points for combatting corruption.** Institutionalizing complaint procedures and mechanisms, listening to women, recording and investigating their complaints in safe and confidential justice spaces and taking disciplinary action against culprits will assist in reducing corrupt practices.
4. **Duty-bearers need help too.** Promote the availability and use of psychosocial support by justice actors to assist in recovery from burnout and the trauma that results from dealing with a diversity of justice issues. This is a relatively new consideration for justice programming, but must be embraced as an important aspect of justice delivery which can improve quality.<sup>111</sup>
5. **Assess the causes of backlogs and delays and identify sustainable solutions.** Attention should be paid to delays in processes that include protection orders, applications for access to marital property, custodial orders for children and applications connected to the needs of women with disabilities, pregnant women, lactating mothers, women with young children and elderly women. Solutions could include clear referral pathways between formal and informal justice institutions at all levels (community, sub-national and national), clarity on institutional roles and mandates, creating case management tracking systems and extending justice working hours into evenings and weekends.
6. **Encourage institutions to protect the privacy of women in their capacities as petitioners, victims of crime, survivors of violence, witnesses, defendants and prisoners.** This can be achieved through the adoption of pseudonyms, in camera testimonies, confidentiality of statements and evidence, excluding proceedings from media coverage and security arrangements for witnesses under special witness protection programmes.

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Take steps to guarantee that women are not subjected to undue delays in applications for protection orders and that all cases of gender-based discrimination subject to criminal law, including cases involving violence, are heard in a timely and impartial manner

Source: CEDAW GR 33, para. 51(j).

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#### 4.1.4 They provide appropriate remedies

The provision of remedies requires that justice systems provide women with viable protection and meaningful redress for any harm that they may suffer.<sup>112</sup> Access to remedies is a basic right guaranteed by United Nations General Assembly Resolution 217A(III), [Universal Declaration of Human Rights](#).<sup>113</sup> Remedies must be effective (i.e., address the wrong committed) and must be enforced by a competent authority as provided for by United Nations General Assembly Resolution 2200A(XXI), [International Covenant on Civil and Political Rights](#).<sup>114</sup> United Nations General Assembly Resolution 39/46, [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#).<sup>115</sup> United Nations General Assembly Resolution 44/25, [Convention on the Rights of the Child](#).<sup>116</sup> United Nations General Assembly Resolution 2106(XX), [International Convention on the Elimination of All Forms of Racial Discrimination](#).<sup>117</sup> and

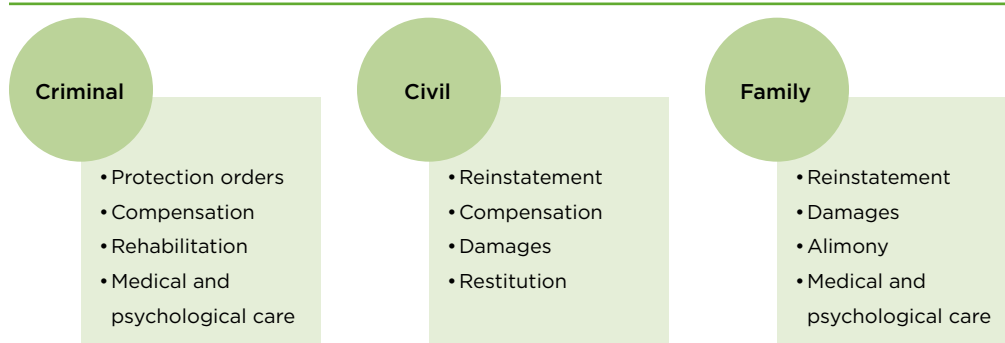
Meaningful remedies are guaranteed by international law and strongly determine whether justice will be transformational for women

CEDAW.<sup>118</sup> Other sources include United Nations General Assembly Resolution 40/34, [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#) and United Nations General Assembly Resolution 60/147, [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#).

The ability of justice and security sector institutions to guarantee effective remedies is an important determinant of both quality and accountability. Given that the substance and enforcement of remedies can achieve transformative results for women, programming in this area must consider strengthening and reforming regimes which govern remedies and approaches to their enforcement.

Remedies are best described in terms of the domains of law as illustrated in Figure 1.9. Remedies under each domain are not mutually exclusive. For example, it would be possible for a woman to claim compensation in a civil case for damages which she may have suffered in a criminal context.<sup>119</sup>

**FIGURE 1.9 Remedies for different types of law**



Source: CEDAW GR 33, para. 19(b).

#### 4.1.4.1 Typical programming challenges/opportunities

- **Legislative regimes on remedies may not be in alignment with international standards.** Societal perceptions of wrongdoing may impact how and whether certain actions are criminalized. For example, domestic violence may not be viewed as a human rights violation and remedies for rape may be understood only in terms of damage to the survivor's reputation and potential marriage prospects.<sup>120</sup> The implication is that women will not be effectively protected by the law and perpetrators may not be held accountable for wrongs they have committed.
- **A State's ability to enforce remedies may be quite low.** Even when remedies are clearly set out by law and/or pursuant to judicial decisions, effective enforcement systems may not be in place.

#### 4.1.4.2 Programming considerations and options

1. **Advocate for a review of remedies contained in all laws.** The provision of adequate remedies must be integral to law reform processes related to specific areas of law. In criminal law for example, they form part of punishment regimes and must be

**Women cannot claim remedies unless they are expressly provided for in law and can be enforced**

Funds such as alimony funds can ensure that women receive the financial support that is legally due to them even where remedies are delayed, inadequate or unenforced

As a principle, accountability is inseparable from rule of law in the context of the human rights-based approach to programming

adequate, effective, timely and proportional to the claim or to the harm suffered. Remedies may, however, impact upon more than one domain (e.g., protection orders in criminal and family cases) and must also fill gaps in existing laws (e.g., taking unremunerated domestic and caregiving activities of women into account when assessing damages or compensation).<sup>121</sup> Undertaking a review of existing remedial regimes will assist in ascertaining gaps and new measures to be taken.

2. **Invest in monitoring and enforcement.** Relevant administrative departments within justice sector institutions (e.g., registrars, bailiffs and inspectors) are often the least recognized. Such units should be made more visible and receive a reasonable percentage share of budgets that are allocated to the justice and security sector to ensure their effectiveness. In addition, bodies such as NHRIs must keep track of their decisions and subsequent enforcement as part of their overall mandates in relation to human rights monitoring.
3. **Advocate for and assist in the creation of women-specific funds or alimony funds.** These will ensure that the availability of remedies is not dependent on factors beyond the control of the justice sector and provide workarounds so that women are not impacted by delayed financial payments.<sup>122</sup>

#### 4.1.5 They are accountable

The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies (see Figure 1.1) identifies accountability and rule of law as a human rights programming principle: “States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.”<sup>123</sup>



Above: Tunisia. Two girls from the Hammam Mellegue district. © World Bank/Arne Hoel.



Accountability of a justice system involves an “assessment of the adequacy of performance, and the imposition of a *corrective action* or remedy in cases of performance failure. Accountability from a gender perspective requires that the decisions and actions of public actors can be assessed by women and men equally.”<sup>124</sup>

Within the context of women’s access to justice, accountability of justice systems is ensured through monitoring to guarantee that they are in accordance with the principles of justiciability, availability, accessibility, good quality and the provision of remedies. Accountability of justice systems also refers to the monitoring of the actions of justice and security sector personnel and their legal culpability when they violate the law.<sup>125</sup> Justice actors such as the judiciary, police and prosecutorial services at all levels (national, sub-national and community) and in all settings (formal, informal and semi-formal) must be held accountable to all women who access justice services.<sup>126</sup>

#### 4.1.5.1 Typical programming challenges/opportunities

- **Accountable justice systems require a monitoring framework.** Justice and security sector institutions are not accustomed to assessing performance and case management through robust indicators and data collection. Such processes may need both political and administrative acceptance and approval.
- **Geographical remoteness can pose significant challenges to monitoring.** Seasonal cycles and remoteness may affect the ability of justice inspectors to undertake monitoring visits.
- **Impunity and corruption among justice actors can significantly reduce the accountability of a system.** Justice actors occupy positions of influence and power in contrast to users. This can lead to resistance towards interventions that are aimed at improving transparency and the effective functioning of the system for women’s access to justice.

#### 4.1.5.2 Programming considerations and options

1. **Support institutional change.** Undertake a participatory analysis of accountability gaps, the benefits of removing barriers to accountability for the justice system itself and potential incentives (e.g., public sector awards for justice institutions which are successfully implementing reforms aimed at making their processes transparent and effective application of sanctions for corruption).
2. **Provide support for administrative data collection and information management systems.** Programming could support record-keeping and information flow between different institutions. However, where programming aims to take responsibility for some data collection and analysis functions, practitioners must consider the sustainability of such endeavours and be sure to communicate all findings so that justice institutions can respond to changing circumstances and challenges.<sup>127</sup>
3. **Support monitoring by external actors.** NHRIs and other independent State actors are best placed to play this role. UN Women Palestine supported the Palestinian National Human Rights Institution through a Women’s Access to Justice Observatory that monitors judicial processes and outcomes in cases involving violence against

Many justice institutions have yet to fully embrace accountability as an integral part of work culture

Utilize incentives and disincentives: reward accountable behaviour and apply sanctions after complaints are fully investigated and are determined as warranted



women and documents violations of women's rights that are the result of discriminatory laws and procedures.<sup>128</sup> In Uganda, the Government established inspectorate divisions in the courts to allow for continuous internal monitoring and quality assurance of processes and decisions.<sup>129</sup>

4. **Promote the establishment of internal complaints mechanisms.** Complaints mechanisms should be located within justice institutions staffed by independent and trained personnel to address allegations of corruption, abuse of power and sexual harassment. Awareness and information on the existence of such structures must be provided to users and their capacity to use complaints mechanisms and other spaces to hold providers accountable must be integrated into community awareness programmes. Users should also be assured of privacy and confidentiality and appropriate disciplinary actions should be taken against inappropriate behaviour.

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Data should include but need not be limited to:

- The number and geographical distribution of judicial and quasi-judicial bodies
- The number of men and women working in law enforcement bodies and judicial and quasi-judicial institutions at all levels
- The number and geographical distribution of men and women lawyers, including legal-aid lawyers
- The nature and number of cases and complaints lodged with judicial, quasi-judicial and administrative bodies, disaggregated by the sex of the complainant
- The nature and number of cases dealt with by the formal and informal justice systems, disaggregated by the sex of the complainant
- The nature and number of cases in which legal aid and/or public defence were required, accepted and provided, disaggregated by the sex of the complainant
- The length of the procedures and their outcomes, disaggregated by the sex of the complainant

Source: CEDAW GR 33, para. 20(d).

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## 4.1.6 Women participate in justice institutions

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Confront and remove barriers to women's participation as professionals within all bodies and levels of judicial and quasi-judicial systems and providers of justice-related services, and take steps, including temporary special measures, to ensure that women are equally represented in the judiciary and other law implementation mechanisms as magistrates, judges, prosecutors, public defenders, lawyers, administrators, mediators, law enforcement officials, judicial and penal officials and expert practitioners, as well as in other professional capacities

Source: CEDAW GR 33, para. 15(f).

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### BOX 1.3 International standards for the appointment of judges

Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national

Women are often the best advocates for women's access to justice. Yet their presence in justice institutions and reform processes remains low in some countries

or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Source: United Nations, [Basic Principles on the Independence of the Judiciary](#), adopted at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 26 August - 6 September 1985, A/Conf.121/22/Rev.1.

#### **BOX 1.4 The challenge of inclusion: Underrepresentation of women in the judiciary**

Women are still largely underrepresented in judicial office and in the legal profession throughout the world, in particular in the highest-level positions; this undoubtedly reflects institutionalized gender discrimination within the justice system ... Women appointed to office also have to face bias and discrimination from their colleagues and society at large on the basis of assumptions about their gender. Their behaviour is scrutinized and harshly criticized, their qualifications are more frequently questioned than those of their male colleagues and their objectivity is more likely to be challenged. Women are often restricted or pushed to working on “low-profile” cases, in areas of the law that are traditionally associated with women, like family law, or confined to working in the lower courts.

Source: United Nations, General Assembly, Note by the Secretary-General, [Independence of Judges and Lawyers](#), paras. 23-24, 10 August 2011, A/66/289.

Including women in justice and security sector institutions can produce tangible results for women and create an amplifying effect in justice institutions as well.<sup>130</sup> For example, evidence suggests that increasing the number of female judges and other front-line justice sector officials can create more conducive environments for women in courts and make a difference to outcomes in sexual violence cases.<sup>131</sup> In a study of 39 countries, the presence of women police officers was shown to result in greater reporting of sexual assault.<sup>132</sup> In Liberia, after an all-women police unit was deployed, rates of reporting of gender-based violence increased as well as the recruitment of other women into the police force. Despite this evidence, women’s participation in formal and informal justice delivery varies widely across countries and regions, partly reflecting the patriarchal nature of formal and informal decision-making structures.<sup>133</sup>

Women remain underrepresented in the formal justice sector. Globally, only 27 per cent of judges are women.<sup>134</sup> Furthermore, on average, women constitute only 9 per cent of the police force, with rates as low as 2 per cent in some countries.<sup>135</sup> In Afghanistan, women number 186 of the 1,800 judges and 300 of the 1,700 defence lawyers.<sup>136</sup>

However, women’s representation in the judiciary approaches 50 per cent in Central and Eastern Europe and Central Asia, with the highest proportion in Serbia, Slovenia and the former Yugoslav Republic of Macedonia.<sup>137</sup> The [Constitution of Rwanda 2003 with amendments through 2015](#) reserves 30 per cent of decision-making posts for women and about half the justices of its Supreme Court are women.<sup>138</sup> A few Arab States have made notable progress in closing the gender gap in the judiciary: women represent 28 per cent of the judiciary in Tunisia, 23.5 per cent in Algeria and 20 per cent in Morocco.<sup>139</sup>

The degree of female participation in informal dispute resolution can also vary by community. In the Afghan provincial capital of Sar-e Pol, female community leaders are permitted to intercede on behalf of women in the community and act as their advocates in both government and community forums.<sup>140</sup> In matrilineal communities of Ghana,

“queen mothers” are known to appoint chiefs and take part in dispute resolution.<sup>141</sup> The law establishing the local council court of Uganda states that “at least two members of the town, division or sub-country local council court shall be women”<sup>142</sup> and the position of either Chair or Vice-Chair must be assigned to a woman.<sup>143</sup> In Ecuador, indigenous justice institutions are required by the Constitution to ensure (1) the participation of women; (2) respect for international human rights standards; and (3) respect for the provisions of the Constitution. Constitutional supervision is undertaken by an appeal tribunal composed of both indigenous and State judges.<sup>144</sup>

#### 4.1.6.1 Typical programming challenges/opportunities

- **Cultural barriers and stereotyped roles of women and men.** The maintenance of rule of law, security and access to justice is often perceived as a male preserve. This is rooted in the belief that men are the protectors of law and order. Women in uniform must often assume machismo tendencies to be accepted by the justice and security community. Stereotypes and untenable notions about women in the justice and security sector include beliefs such as: (1) there is a lack of qualified women to fill existing positions; (2) women cannot be involved in specific areas of law enforcement because they are too dangerous or require long hours; and (3) women cannot effectively operate or focus on their work during their menstrual cycle or when pregnant.
- **Institutional relegation and segregation.** Following from the above, women are often relegated to institutions and functions which match their perceived maternal instincts, roles and experiences. Many of such functions and institutions relate to welfare, family and children's issues. While this may be a positive development if undertaken with the strategic vision of improving women's engagement with the justice system, it could also result in gender segregation, if women are not provided with opportunities to work in other areas.
- **Justice and security sector institutions may be averse to affirmative action.** Historical experiences of gender discrimination in legal education and justice and security sector employment demand that special measures be taken to level the playing field between men and women. Decision makers may exhibit a lack of political will to correct such imbalances.

#### 4.1.6.2 Programming considerations and options

1. **Work with government and related actors to design, shape and implement affirmative action commitments.** The UN Women [Global Gender Equality Constitutional Database](#) reveals that 85 countries currently include provisions on gender-related affirmative action in their constitutions.<sup>145</sup> These present opportunities for engagement at the national policy level and across justice and security sector institutions, as well as advocacy among national appointment bodies to implement such provisions. Affirmative action targets for the sector could also be integrated into the broader affirmative action policy of the State to ensure effective linkages with national policy commitments to women. UN agencies must be fully supportive of national associations of women professionals (e.g., private legal practitioners, judges, police, prosecutors, military, immigration) and collaborate in identifying women to assume positions within these sectors. Female participation in the legal profession can also be enhanced through scholarship schemes and mentoring.



Above: Tunisia. Two friends meet near La Goulette. © World Bank/Arne Hoel.

2. **Promote women's leadership in decision-making.** While women's inclusion is a priority, moving beyond numbers is necessary for sustainable impact. Women are needed in leadership positions to help set decision-making priorities that facilitate the continued inclusion of women and the conditions for them to thrive in such institutions. To this extent, the focus should be on women as decision makers rather than in secretarial and clerical positions. Peer support mechanisms and associations among female professionals can also be instituted for valuable exchange and learning and mutual support. Professional associations or other support mechanisms could also represent women's interests in negotiations with decision makers such as appointment committees. Furthermore, social protection arrangements such as maternity and family leave, pension mechanisms that do not penalize women and safeguards against discrimination and sexual harassment will support in attracting and retaining women in the sector.

## 5.0 Legally empowering women

### BOX 1.5 The what and why of legal empowerment of the poor

For states to guarantee their citizens' right to protection, systems can, and have to be changed, and changed systemically. Legal empowerment is a central force in such a reform process. It involves states delivering on their duty to respect, protect, and fulfil human rights, and the poor realising more and more of their rights, and reaping the opportunities that flow from them, through their own efforts as well as through those of their supporters, wider networks, and governments. The elements of legal empowerment are grounded in the spirit and letter of international human rights law, and particularly in Article 1 of the Universal Declaration of Human Rights, which declares, 'All human beings are born free and equal in dignity and rights.'

Source: Commission on Legal Empowerment of the Poor, [Making the Law Work for Everyone](#), Report of the Commission on Legal Empowerment of the Poor, vol. I, p. 4, (New York, Commission on Legal Empowerment of the Poor and UNDP, 2008).

Investments in the legal environment and in justice institution-building are sustained when women participate in reforms and demand justice

The legal empowerment of women places them at the front line of access to justice and strengthens their capacity to advocate for their rights in society. Programmes that empower women reinforce their agency and ability to identify their legal needs. They support women's capacity to address issues within their own communities in a manner that respects personal dignity and human rights and upholds women's capacity to obtain meaningful remedies. Empowering women requires the most creative, culturally appropriate and nuanced programme design. Guidance in this area explores how to: make women visible in legal reform processes; strengthen legal literacy and awareness of women's rights; and support local organizations.

**FIGURE 1.10** Three elements of the legal empowerment of women



Empowering women reinforces their capacities as agents of change in legal reform and judicial processes. It requires holistic programming to (1) mitigate discriminatory social and cultural norms (e.g., norms that prevent women from speaking to the police) and (2) amplify opportunities for women to exercise agency with respect to their legal rights (e.g., women driving reform processes to make the laws more gender-responsive).

## 5.1 Women participate in legal reform processes

While creating an enabling environment for women's access to justice (see Section 3.0) primarily considers the substantive reform of laws and policies, empowering women involves the legal reform process itself, focusing on who participates in and drives those reforms. Women's agency, voice and participation are central to advancing substantive equality. Women's inclusion in legal reform is therefore a critical component of improving women's access to justice.

The inclusion of women in legal reform can take many different paths (e.g., women serving as elected or appointed members of constitutional review bodies, parliament, appointed policymakers in various ministries or departments, elected or appointed officials in local government). There may also be entry points for women's participation

Women's voices and views must be reflected in reforms which aim to improve justice delivery for them

as individual citizens or members of civil society in contexts where public participation is embedded in the policy or law-making process.

Women's representation and participation in legal reform in the above capacities is important because they bring different perspectives to the reform process, including an understanding of how laws affect them differently than men. This also underscores the importance of not just women's participation, but also the inclusion of diverse interests. For example, factors such as the absence of childcare may prevent women from accessing justice. The same could be said about the different experiences of marginalized and excluded women in contrast to elite women in accessing justice. The inclusion of women can also have an amplifying effect. Experience indicates that when women are included in constitutional reform processes, they advocate for the continued representation of women in subsequent legislatures and other policymaking bodies. For example, in Tunisia, an electoral quota led to women holding 27 per cent of seats in the National Constituent Assembly, which was responsible for drafting the 2014 Constitution. Women representatives, in turn, advocated for continuing the electoral quota for future legislative elections, in addition to gender parity in elected assemblies and other gender equality provisions in the Constitution. As a result, women won almost one-third of the seats in the subsequent legislative elections and in 2016, female parliamentarians successfully spearheaded a gender quota in the local electoral law.<sup>146</sup>

### 5.1.1 Typical programming challenges/opportunities

- **Exceptions to the general notion of women leaders supporting women's issues.** While there is evidence that increases in women's representation in parliaments have generally been accompanied by legal reforms in favour of women,<sup>147</sup> programming must recognize the local context and consider that women parliamentarians may not necessarily prioritize or have consensus on these issues. For example, during the constitution-drafting process in Colombia, some female Constituent Assembly members disassociated themselves from the demands of the feminist movement.<sup>148</sup> In addition, legal reform is inherently political and decision makers more broadly may be reluctant to open the process to additional competing interests.
- **Women leaders may not possess political agency.** While gaining seats in the legislature or other institutions, women may not be politically empowered with voice and agency if their political parties are tokenistic towards their female members and/or only support women who base decisions on party lines.
- **Cultural and security barriers.** This could include norms that discourage women from speaking up in public or stigma against women who participate in politics. Women who enter the political arena also encounter multiple challenges such as politically-related violence and humiliating media exposure.<sup>149</sup>

### 5.1.2 Programming considerations and options

1. **Women can be effective advocates of their rights.** International actors may have leverage to advocate for the inclusion of more women among decision makers. This can be even more effective when combined with advocacy from women themselves, provided that this is accompanied by capacity-building on how to engage with decision makers. This can include support for coalition and consensus-building

Programming must take the diverse views and interests of different women into account, as well as entrenched patriarchal views on their status in society



Timely mobilization and coalition-building can support the harnessing and integration of women's voices from various sectors and constituencies

among women's groups, coaching and training in negotiation, mediation, public speaking, stakeholder mapping, strategy development, strategic communication, lobbying and outreach.

2. **Programming should be designed and implemented well in advance of any reform process.** Whether seeking to increase the number of women in a constituent assembly or a legislature, early mobilization is key, since the selection of decision makers for reform processes often occurs well before they start.

## 5.2 Support and partner with civil society organizations

Cooperate with civil society and community-based organizations to develop sustainable mechanisms to support women's access to justice and encourage non-governmental organizations and civil society entities to take part in litigation relating to women's rights

CEDAW GR 33, para. 15(h).

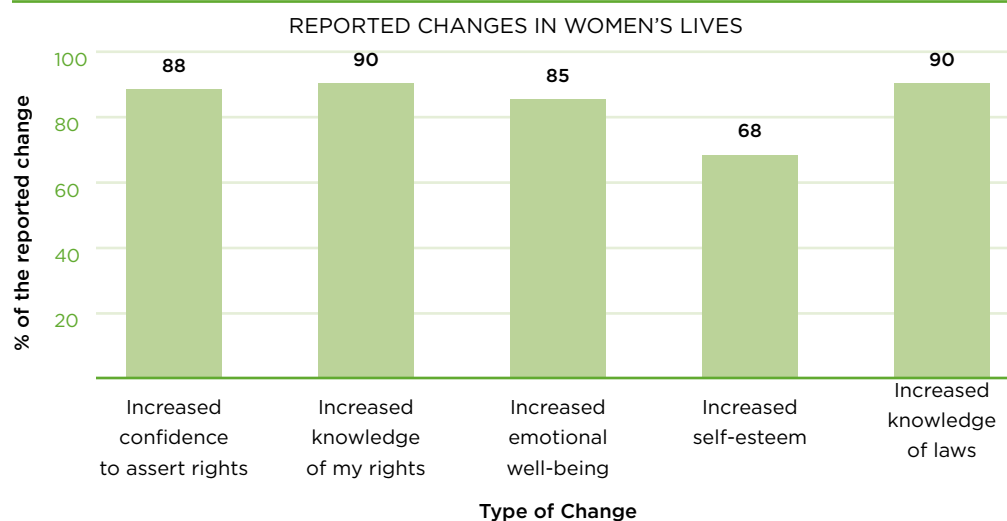
CSOs are critical agents of change and can be the voices of women across country contexts

Women's organizations are uniquely placed to play a transformational role in advancing women's access to justice and therefore occupy a critical space in the justice chain in most contexts.<sup>150</sup> CSOs such as bar associations, women lawyers associations and faith-based organizations often provide justice services either separately, jointly or in partnership with the State. They also undertake advocacy, capacity development, rights awareness, strategic litigation and monitoring of women's rights.

Women lawyers associations deliver effective legal services for women in many countries

Services, advocacy and training provided by these types of organizations have been shown to have an important impact on women's empowerment and rights awareness. Legal service provision and court representation by the Zimbabwe Women Lawyers Association (ZWLA), for instance, have improved women's knowledge and confidence in claiming their rights as noted in client surveys involving 110 beneficiaries.<sup>151</sup> Figure 1.11 disaggregates responses from clients.

**FIGURE 1.11** Survey of findings of ZWLA services



Source: ZWLA, "Client Services Report", (2015). Report prepared for UN Women. (Unpublished).

One beneficiary stated:

*“The biggest impact I got from the ZWLA was empowerment, helping me get to know and affirm my rights. It made me become stronger and assertive. Even now, when I come across someone going through what I also went through, I’m in a better position to give advice based on the service and the assistance I got from ZWLA.”<sup>152</sup>*

## 5.2.1 Typical programming challenges/opportunities

- **CSOs and CBOs have limited finances and human resource management capacity.** CSOs may face challenges recruiting and retaining staff with the necessary skills due to an inability to compete with the salaries offered by formal justice and security sector institutions, or international non-governmental organizations (INGOs). Furthermore, in some national contexts, the non-governmental sector is confronted by governmental restrictions on fundraising and areas of focus.
- **Funding priorities rather than local needs drive programming choices.** Donor funding priorities are often set in advance and lack the flexibility required to address local needs, including vital justice services that CSOs provide.

## 5.2.2 Programming considerations and options

1. **Provide financial and technical support to CSOs.** OECD recommends that donors must support women’s groups as primary vehicles in a multi-layered approach to improving women’s access to justice, particularly during times of transition during which they play important monitoring, advocacy and service provisioning roles.<sup>153</sup> Taking into consideration these potential contributions and the capacity challenges that CSOs face, the United Nations should support the work of different CSOs through the provision of financial and technical support.
2. **Invest strategically.** Support to CSOs can be aimed at strengthening and expanding their work in areas such as legal aid, ADR, trainings for other stakeholders, awareness and advocacy for women’s access to justice. Elements of such interventions could include strategies for influencing laws and policies and identifying the most appropriate entry points and approaches for enhancing gender-responsiveness among justice and security sector institutions.
3. **Support coalition-building.** Coalition-building can reduce operational costs of individual CSOs and serve as platforms for maximizing impact through collective action, sharing resources and exchanging lessons learned.
4. **Encourage and facilitate sustainable communication channels.** Justice institutions should involve CSOs in national justice reform processes and solicit feedback and ideas from them on effective women’s access to justice programme design, implementation and monitoring, using platforms such as justice and security sector and sub-sector task forces.
5. **Human rights reporting.** CSOs can identify and integrate concerns related to women’s access to justice in their Alternative Reports to the CEDAW Committee, other treaty bodies and the UPR, and such opportunities can be used to articulate the impact of State restrictions, if any, on their operations in this field.

The effectiveness of CSOs working for women’s rights is being tested by dwindling donor support and shrinking spaces in the arena of decision-making and influence

The United Nations must step in to support CSOs which are reputed to be delivering on women’s access to justice

### 5.3 Education on women's rights

Women who are unaware of their human rights are unable to make claims for the fulfilment of those rights. The Committee has observed, especially during its consideration of periodic reports submitted by States parties, that they often fail to guarantee that women have equal access to education, information and legal literacy programmes. Furthermore, awareness on the part of men of women's human rights is also indispensable to guaranteeing non-discrimination and equality, and to guaranteeing women's access to justice in particular.

Source: CEDAW GR 33, para. 32.

The CEDAW Committee has observed, especially in States parties' periodic reports, that States often fail to ensure that women's rights are widely known among both women and men alike.<sup>154</sup> For gender-sensitive laws and institutions to be effective and transformational, women must know and understand their rights as well as how and where those rights can be exercised and enforced. While limited rights awareness and legal illiteracy are common among both women and men in many contexts, evidence suggests that these factors tend to impact upon women disproportionately. A study of legal literacy in Kazakhstan, Kyrgyzstan and Tajikistan found that while there was limited knowledge among both men and women about the legal requirements of a valid marriage, the impact was especially marked in terms of women's inability to protect their rights when divorce ensued.<sup>155</sup>

Therefore, the core objective of legal awareness is to equip women with the legal skills and knowledge that they need to engage with the formal and informal justice sectors. These programmes can also seek to build women's individual and collective confidence to demand those rights and protections that are otherwise absent or poorly implemented. In this way, programming can be closely aligned to activities focused on changing attitudes and norms.



Above: Morocco. First grade classroom at the elementary school in the village Ait Sidi Hsain, near Meknes.  
© World Bank/Arne Hoel.

### 5.3.1 Typical programming challenges/opportunities

- **Diverse needs and capacities may require programme design to be flexible.** The target audiences of education programmes potentially include a wide range of actors who have varying levels of literacy, mobility and linguistic needs. Interventions are more effective when tailored to different audiences, but at the same time involve higher costs.
- **Concepts of women's rights may vary between communities.** This is particularly relevant in contexts and cultures where the concepts of women's rights and justice differ from the standard Western definitions, creating the need for linguistic and cultural adjustments to be made in community based educational programmes. Programming in these circumstances will require a deep understanding of the specific cultural and social context of rights and norms.
- **Stigma or other cultural barriers may prevent women from participating.** In some contexts, legal literacy is considered as a primarily male preserve because women are not allowed to claim their rights unless supported by a man. In other contexts, women are not permitted to leave their homes or may be barred from being heard in community outreach interventions.

### 5.3.2 Programming considerations and options

1. **Determine previous, current and future stakeholder involvement.** Because education and awareness-raising is context-specific, learning from ongoing or past experiences will help to streamline the planning process and prevent the repetition of approaches that result in poor impact. This could involve knowledge of gaps being filled by other implementing partners, lessons learned and impact.
2. **Work with local partners to identify educational content.** This is particularly important in complex legal systems, where the environment and needs may be hyperlocalized. This approach may also be helpful in contexts where most disputes are settled in the informal justice system and require in-depth knowledge of oral-based traditions.
3. **Focus on deepening awareness of women's rights.** The target audiences for programmes should include women, girls, men and boys, including religious and traditional leaders. Information should be disseminated in local languages and through a wide range of channels (e.g., community radio, drama, SMS) to ensure extensive reach to a diverse range of population groups. All such programmes must be led by national women's machineries in close cooperation with the media, civic education agencies, NHRIs, CSOs and CBOs.
4. **Magnify women's potential as their own agents of change.** When women are enabled to discuss and interpret cultural or legal rules, the system may be open to change, particularly when both women and men advocate for it. Also, when women are informed of their rights and encouraged to discuss or challenge informal laws and practices, they can put pressure on customary justice systems to better protect basic rights.<sup>156</sup>
5. **Measure the impact of awareness-raising and generate lessons learned.** This can be undertaken through perception surveys before and after awareness-raising campaigns for which significant financial investments have been made.

Awareness-raising programmes need to adapt to different audiences and utilize multiple channels, thereby making them costly

Be familiar with local context, awareness gaps and work with women and community leaders to identify the most cost-effective channels of communication



Above: Nepal. Mother and child sit in front of earthquake ruins in the town of Charikot in Dolakha District.  
© UNICEF/Brian Sokol.

## 6.0 Considerations for crisis-affected contexts

### 6.1 Why is women's access to justice programming in crisis contexts important?

Women in conflict-affected contexts are more likely to have their rights violated and less likely to access justice due to the breakdown of the rule of law and the physical and human resource deterioration of institutions. During conflict, women are more vulnerable to various forms of SGBV, which often manifest in sexual slavery in camps of warring factions, rape, forced sterilization, forced marriage, child marriage and domestic violence. Conflict exacerbates violence against women because protections afforded by formal and informal justice systems as well as family structures often break down during such periods, leaving women with limited options for recourse when their rights have been violated.

In conflict and post-conflict settings, interventions for women and their families must be based on the assessments discussed in Section 2.0. These must capture women's needs and vulnerabilities, including redress and inclusion in post-conflict peace processes as defined by women themselves. Included in such contexts are the creation of safe spaces in both conflict zones and refugee camps as well as material and psychological support.

Effective justice mechanisms are needed to prosecute crimes against women both during and after crisis setbacks. Data from a survey in Lebanon indicates that more than a third of Syrian refugee women between the ages of 20 and 24 were married before the age of 18.<sup>157</sup> Child marriage rates are estimated to be four times higher among Syrian refugees compared to before the crisis.<sup>158</sup> Although child marriage has long been prevalent in Yemen, rates have increased from 32 to 52 per cent in recent years, as

International law and the "law of war" protect women and girls as rights-holders and impose obligations on States and warring factions as duty-bearers



dowries have plummeted and families use early marriage as a coping mechanism.<sup>159</sup> Furthermore, crisis contexts are often enduring, with an average of 39 per cent of States emerging from conflict returning to conflict in the first five years and another 32 per cent doing so in the following five years.<sup>160</sup> A recent report by the OECD illustrates that the lines between conflict, post-conflict and development are increasingly blurred.<sup>161</sup> This is because present day forms of fragility are predominantly caused by domestic political instability and social violence rather than civil and transnational wars.<sup>162</sup>

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For most women in post-conflict environments, the violence does not stop with the official ceasefire or the signing of the peace agreement and often increases in the post-conflict setting. The Committee acknowledges the many reports confirming that, while the forms and sites of violence change, which means that there may no longer be State-sponsored violence, all forms of gender-based violence, in particular sexual violence, escalate in the post-conflict setting. The failure to prevent, investigate and punish all forms of gender-based violence, in addition to other factors such as ineffective disarmament, demobilization and reintegration processes, can also lead to further violence against women in post-conflict periods.

Source: CEDAW GR 30, para. 35.

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During and after conflict, specific groups of women and girls are at particular risk of violence, especially sexual violence, such as internally displaced and refugee women; women's human rights defenders; women of diverse caste, ethnic, national or religious identities, or other minorities, who are often attacked as symbolic representatives of their community; widows; and women with disabilities. Female combatants and women in the military are also vulnerable to sexual assault and harassment by State and non-State armed groups and resistance movements.

Source: CEDAW GR 30, para. 36.

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### **BOX 1.6 SGBV in post-conflict settings**

Risk factors for the escalation of SGBV in post-conflict settings:

- Small arms and other weapons can still be in circulation and pose an ongoing threat
- The failure to prevent, investigate and punish all forms of gender-based violence, in addition to other factors such as ineffective disarmament, demobilization and reintegration processes, can lead to further violence against women in post-conflict periods
- Former combatants tend to experience difficulty in adjusting to family life and often turn to substance abuse and domestic and family violence
- Depletion of land due to conflict requires adjustments to community land rights, and women's property rights need to be protected

How women and girls are affected:

- Those at risk include girls, the internally displaced and refugee women, women's human rights defenders, widows and women with disabilities. Women belonging to diverse castes, ethnic, national, religious or other minority groups are often attacked as symbolic representatives of their community. Female combatants and women in the military are also vulnerable to sexual assault and to harassment by State and non-State armed groups and resistance movements
- Women continue to be threatened and victimized in their daily lives. There is therefore a need for approaches that redress past injustices and that reform structures, systems and societies to prevent future victimization



- Survivors run the risk of stigmatization, rejection and discrimination by their families and communities, diminishing their ability to access essential services. This can particularly be a problem for those who are disabled or otherwise impaired due to violence

Source: CEDAW GR 30, paras. 26, 29, 32, 34-37, 63, 65(b), 67-68, 74, 77.

## 6.2 Creating an enabling environment for women's access to justice

### 6.2.1 International human rights law and international humanitarian law

The post-conflict electoral reform and constitution-building process represents a crucial opportunity to lay the foundations for gender equality in the transition period and beyond. Both the process and substance of these reforms can set a precedent for women's participation in social, economic and political life in the post-conflict period, in addition to providing a legal base from which women's rights advocates can demand other types of gender-responsive reform that unfold in transitional periods.

Source: CEDAW GR 30, para. 70.

Critics of international human rights law doubt its effectiveness as a programming tool in crisis situations due to its limited enforceability and the difficulty of its application to crisis contexts.<sup>163</sup> This often stems from a misunderstanding of the use of derogation provisions (see Section 1.1) which, as noted, permit States to suspend selected human rights only for a limited period. It is also important to note that CEDAW, United Nations General Assembly Resolution 44/25, [Convention on the Rights of the Child](#) and United Nations General Assembly Resolution 2200A(XXI), [International Covenant on Economic, Social and Cultural Rights](#), do not contain derogation clauses and therefore cannot be derogated to any extent.<sup>164</sup>

As such, general international human rights law on gender equality and women's empowerment is applicable across all phases of a country's social, economic and political experience. In situations of conflict, States and other combatant entities are also bound by international law on war crimes and crimes against humanity, including genocide and international humanitarian law. "Common Article 3" of the four [Geneva Conventions](#) provides that in times of armed conflict, protected persons should "in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria."<sup>165</sup>



Above: Myanmar. Rohingya refugee whose family fled escalating violence, stands outside a shelter.

© UNICEF/ Thomas Nybo.

CEDAW is a non-derogable treaty and remains applicable during times of crisis

Using the programming principles of this Toolkit, women and girls are regarded as rights-holders during periods of conflict and warring parties as duty-bearers. Warring factions are therefore under an obligation to protect civilians and civilian property and to allow for humanitarian interventions.<sup>166</sup>

Jonsson proposes the following principles of humanitarian action to guide human rights-based approaches to programming in times of conflict:

- *The humanitarian imperative*: Protect rights, life, health and alleviate suffering
- *Neutrality*: Highlight and address abuses committed by all parties to a conflict, but do not take sides
- *Impartiality*: Treat all parties to a conflict in the same way
- *Accountability*: All stakeholders (parties to a conflict, the United Nations system and CSOs) are accountable to the civilian population
- *Do no harm*: Aid must not be used as an instrument to fuel conflict
- *Respect culture, custom and community*: Understanding local customs and traditions helps to contextualize all interventions
- *Develop local community capacity*: Focus on capacity-building to provide sustainable assistance and avoid creating a reliance on external support
- *Coordination*: The United Nations must rally behind a common standpoint to achieve maximum benefit
- *Gender*: Recognize how conflict and the responses to conflict affect men and women differently as a core element of programming<sup>167</sup>

As noted in the Introduction, relevant WPS resolutions establish linkages between access to justice, international peace and security and State accountability through the four dimensions of the [WPS agenda](#) (prevention, participation, protection and peacebuilding and recovery). The Secretary-General's 7-PAP also seeks to accelerate the implementation of UNSCR 1325 as well as other resolutions by committing the United Nations system to specific targets. It highlights the need for increased access to justice for women and girls whose rights are violated, including the promotion of women's participation in post-conflict justice mechanisms and law enforcement.<sup>168</sup>

## 6.2.2 Domestic law

Conflict-affected contexts present a unique set of challenges in terms of establishing an enabling environment for women's access to justice. In situations where violence is widespread or reaches the threshold of civil or international war, the conditions may not be ripe for legal reform efforts. Programming in such environments requires ongoing conflict/context assessments to identify opportunities and entry points for legal reform (see Section 2.0).

The termination of a conflict can offer an important and at times transformational entry point for legal reform, particularly through *peace processes* and *peace agreements* (see Box 1.7). The estimated 1,168 peace agreements in connection with 102 conflicts between 1990 and 2015 have been highly influential in shaping domestic political

Post-conflict contexts provide unique opportunities for making demands for substantive constitutional and legislative reforms

and legal landscapes.<sup>169</sup> Post-conflict phases often involve constitution-drafting and electoral reform processes, both of which are critical opportunities for promoting gender equality and women's rights (see Box 1.8). Significant constitutional reforms—sometimes involving the wholesale rewriting of a constitution—have often taken place in climates of substantial political change and/or armed conflict. For example, since 1995, in sub-Saharan Africa, 44 constitutions have been rewritten and of those, “19 have been in post-conflict countries and 17 in countries where conflicts were high intensity ... or long in duration.”<sup>170</sup> These drafting processes represent important entry points for constitutional reforms that support women's access to justice and more specifically the incorporation of provisions that support CEDAW and other regional and international human rights instruments. Women are constitutional actors in their own right and must continue to feature in constitutional review processes as advocates, members of constitutional review bodies and drafters.

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**BOX 1.7 Post-conflict resolution periods can offer important entry points for legal reform**

Calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia: (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction; (b) Measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements; (c) Measures that ensure the protection of and respect for human rights of women and girls, *particularly as they relate to the constitution, the electoral system, the police and the judiciary*

Source: United Nations, Security Council, [Resolution 1325](#), para. 8, 31 October 2000, S/RES/1325(2000). [Emphasis added].

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**BOX 1.8 Constitution-making is a key part of the transition process, and in pushing for women's rights**

Constitution-making processes are a central aspect of democratic transitions, peacebuilding and state-building. For the United Nations, constitution-making is a broad concept that covers the process of drafting and substance of a new constitution, or reforms of an existing constitution. Both process and substance are critical for the success of constitution-making. The design of a constitution and its process of development can play an important role in peaceful political transitions and post-conflict peace consolidation. It can also play a critical prevention role. Constitution-making presents moments of great opportunity to create a common vision of the future of a state, the results of which can have profound and lasting impacts on peace and stability.

Source: United Nations, Guidance Note of the Secretary-General, [United Nations Assistance to... Constitution-making Processes](#), p. 3, (New York, 2009).

### 6.2.3 Justice sector policies and budgets

Justice and security sector planning and budgeting are critical to the implementation of the Secretary-General's 7-PAP, which requires the United Nations system to allocate at least 15 per cent of United Nations-managed funds in support of peacebuilding to projects whose principal objective is to address women's specific needs, advance gender

equality or empower women.<sup>171</sup> Furthermore, the [Guidance Note of the Secretary-General, Reparations for Conflict-Related Sexual Violence](#) requests that the United Nations promote the design of a comprehensive public policy and framework on reparations to address conflict-related sexual violence, including the establishment of judicial remedies and administrative reparation programmes (see Section 6.3.2).

**TABLE 1.4** United Nations commitment to justice planning from a gender perspective

Commitment	Measures
<p><b>Post-conflict planning</b> The UN system will more systematically institutionalize women’s participation in (and apply gender analysis to) all post-conflict planning processes so that women and girls’ specific needs and gender discrimination is addressed at every stage.</p>	<p>Relevant UN entities will undertake a comprehensive review of existing institutional arrangements for incorporating gender issues into post-conflict planning. Principles will apply to all post-conflict strategy &amp; planning processes. [para. 32]</p>
<p><b>Post-conflict financing</b> The UN commits to increasing financing for gender equality and women’s and girls’ empowerment in post-conflict situations.</p>	<p>Each UN entity will initiate a process, in line with its specific institutional mandate and governance arrangements, for laying ground work and investing in systems to track gender post-conflict financing, and to work toward a goal of ensuring that at least 15 per cent of UN-managed funds in support of peacebuilding is dedicated to projects whose principal objective (consistent with existing mandates) is to address women’s specific needs, advance gender equality or empower women. [para. 36]</p>

Source: United Nations, [Report of the Secretary-General on Women’s Participation in Peacebuilding](#), (A/65/354-S/2010/466). [Tracking Progress: 7-Point Action Plan](#).

## 6.3 Creating effective, accountable and gender-responsive justice institutions

### 6.3.1 Formal and informal justice institutions and actors

Levels of violence against women are often higher in crisis-affected situations. These place a higher demand on justice systems and therefore pose significant challenges to the ability of all women to seek and obtain justice and the ability of justice and security sector institutions to deliver on their mandates. During conflict, the institutions that are tasked with both protecting and responding to the rights and needs of women are barely functioning and there is frequently a shortage of adequately trained justice actors. As a result, some functions of the State may be performed by other governments, intergovernmental organizations or CSOs. In such situations, States remain responsible for acts or omissions which may be attributed to them under international law,

The United Nations system is expected to allocate at least 15 per cent of its managed funds in support of peacebuilding to projects where the principal objective is to address women’s specific needs, advance gender equality and empower women

including when other entities act on their behalf. States are therefore expected to adopt measures to ensure that the policies and decisions of organizations working within their geographical boundaries conform to that State's obligations under CEDAW.

#### **BOX 1.9 State responsibility to protect during times of conflict**

States must exercise due diligence to prevent, investigate, punish and ensure redress for the acts of private individuals or entities that impair the rights enshrined in the Convention ... In addition to requiring States parties to regulate non-State actors, international humanitarian law contains relevant obligations that bind non-State actors, as parties to an armed conflict (for example, insurgents and rebel groups) such as in common article 3 of the Geneva Conventions of 1949 and the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts. Under international human rights law, although non-State actors cannot become parties to the Convention, the Committee notes that, under certain circumstances, in particular where an armed group with an identifiable political structure exercises significant control over territory and population, non-State actors are obliged to respect international human rights. The Committee emphasizes that gross violations of human rights and serious violations of humanitarian law could entail individual criminal responsibility, including for members and leaders of non-State armed groups and private military contractors.

Source: CEDAW GR 30, paras. 15-16.

\*Note: All references to "the Convention" refer to CEDAW.

[Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council resolution 1325](#) finds that informal justice institutions and the customary laws that they mediate often represent the only sites of justice and conflict resolution to which people, particularly women, have access during times of conflict. For this reason, informal justice institutions can play a crucial role in addressing women's rights violations in conflict and post-conflict situations.<sup>172</sup> Responding to the challenges posed by conflict and post-conflict settings is necessary for access to justice programming to be effective. Programming should consider placing a focus on protective measures and exploring the creation of interim structures to protect women. More specifically, the CEDAW Committee recommends that States parties ensure:

- Redress for the acts of private individuals or entities, as part of their due diligence obligation.
- Rejection of all forms of rollbacks in women's rights protections aimed at appeasing non-State actors such as terrorists, private individuals or armed groups.
- Engagement with non-State actors to prevent human rights abuses relating to their activities in conflict-affected areas, particularly all forms of gender-based violence; adequate assistance to national corporations in assessing and addressing the heightened risks of abuses of women's rights; and the establishment of an effective accountability mechanism.
- Use of gender-sensitive practices (i.e., use of female police officers) in the investigation of violations during and after conflict to ensure that violations by State and non-State actors are identified and addressed.<sup>173</sup>

### 6.3.2 Remedies

Conflict-affected contexts demonstrate major “disruptions” in gender relations (and other social relations and roles) as women take over roles that are traditionally dominated by men.<sup>174</sup> Most often, women find themselves occupying the role of head of the family in what are often deeply patriarchal societies, resulting in households and communities being transformed by conflict-related displacement, conscription and casualties.<sup>175</sup> Although these shifts often increase care burdens for women and girls, they also present new and important opportunities for women’s engagement in spheres and activities typically dominated by men. In partnership with women’s organizations and national women’s machineries, programming must support efforts to consolidate and build upon gains for gender equality and women’s empowerment as men return home, to prevent a reversion to pre-conflict norms that relegate women to the domestic sphere and reinforce traditional gender stereotypes. Women’s empowerment programming and women’s inclusion and participation in post-conflict reform processes are two avenues that should be considered to bolster women’s empowerment in post-conflict settings.

It is critical for post-conflict programming to consider the roles that women assumed during conflict and address their specific vulnerabilities and needs. It is especially important that peacebuilding consider the needs of women, as peacebuilding and recovery efforts have historically tended to focus on building the economic space for men, rather than considering the needs of both men and women.<sup>176</sup> Such programming could include land reform efforts that provide for women’s rights to inherit property, and land and rights awareness programming that provides survivors with information about avenues for redress.

The scope of States’ obligations in the provision of remedies is established in United Nations General Assembly Resolution 60/147, [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#). According to the Principles, to ensure respect for and the implementation of international human rights law and international humanitarian law, States have a duty to: take appropriate legislative, administrative and other actions to prevent violations of human rights; investigate violations effectively, promptly, thoroughly and impartially and hold responsible parties to account; provide equal and effective access to justice; and provide effective remedies, including reparation.<sup>177</sup>

Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to:

- Equal and effective access to justice
- Adequate, effective and prompt reparation for harm suffered
- Access to relevant information concerning violations and reparation mechanisms<sup>178</sup>

Victims of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to effective judicial remedies as provided for under international law. In fulfilling its responsibilities, the State is also expected to:

Practitioners must be aware of the likely shifts in gender relations and gender roles, which means that women could be taking on more responsibilities compared to periods before or during crisis. Such circumstances will require diverse forms of support, including social protection for women



- Disseminate, through public and private channels, information as it relates to all available remedies for gross violations of international human rights law and serious violations of international humanitarian law.
- Minimize the inconvenience to victims and their families and witnesses, through protection against unlawful interference with their privacy and safety from intimidation and retaliation, before, during and after judicial, administrative or other proceedings that affect the interests of victims.
- Provide proper assistance to victims seeking access to justice for gross violations of international human rights law or serious violations of international humanitarian law.
- Ensure that victims can exercise their rights to a remedy for gross violations of international human rights law or serious violations of international humanitarian law through means such as legal, diplomatic and consular support.
- In addition to access to justice for individuals, endeavor to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate.
- Include all available and appropriate international processes in which a person may have legal standing as part of the provision of remedies, without prejudice to any other domestic remedies.<sup>179</sup>

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#### **BOX 1.10 Categories of remedies**

**Restitution** should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

**Compensation** should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

**Rehabilitation** should include medical and psychological care as well as legal and social services.

**Satisfaction** should include, where applicable, any or all of the following:

- (a) Effective measures aimed at the cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
- (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification

and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;

(d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;

(e) Public apology, including acknowledgement of the facts and acceptance of responsibility;

(f) Judicial and administrative sanctions against persons liable for the violations;

(g) Commemorations and tributes to the victims;

(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

**Guarantees of non-repetition** should include, where applicable, any or all of the following measures, which will also contribute to prevention:

- (a) Ensuring effective civilian control of military and security forces;
- (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;
- (c) Strengthening the independence of the judiciary;
- (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
- (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;
- (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;
- (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;
- (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

Source: United Nations, General Assembly, Resolution 60/147, [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), Annex, paras. 19-23, 16 December 2005, A/RES/60/147.

## 6.4 Legally empowering women

### 6.4.1 Women in post-conflict reforms

Analysis from [Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council resolution 1325](#) revealed that “women were routinely excluded from the post-conflict processes that determine power distribution, wealth-sharing patterns, social development priorities, and approaches to justice.”<sup>180</sup> The UNSC has recognized the importance and value of women’s inclusion in relation to conflict resolution and peacekeeping, most notably in UNSCR 1325 and subsequent resolutions. UNSCR 1325 was the first resolution to acknowledge the role of women in conflict resolution as critical for peace and security and specifically calls on “Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms

**Women’s voices must be heard in all phases of disarmament, recovery, reintegration, rehabilitation and transition to development**

for the prevention, management, and resolution of conflict”.<sup>181</sup> Post-conflict reform processes can present opportunities for early mobilization around women’s inclusion to promote access to justice issues and represent important entry points for establishing women’s participation in decision-making as a norm. This is important because these conflict-related processes often serve as the foundation for women’s participation in constitution-making and in justice-related institutions in the post-conflict phase.

Entry points for women’s inclusion in post-conflict processes include constitution-making and security sector reforms (see Section 6.2.2 and Section 6.2.3). The latter represents an opening for shaping security and justice institutions to ensure that they are responsive and representative of the population at large. Restructuring of such institutions are opportunities for enhancing the inclusion of women, while the transition to stable governance and rule of law could provide opportunities for prioritizing women’s access to justice.

**TABLE 1.5 United Nations commitment to promoting women’s participation in conflict resolution**

Commitment	Measures
<p><b>Women’s representation in post-conflict governance</b></p> <p>The UN will ensure that technical assistance to conflict-resolution processes and countries emerging from conflict promotes women’s participation as decision-makers in public institutions, appointed and elected, including through the use of temporary special measures such as positive action, preferential treatment and quota-based systems, as enshrined in international human rights law.</p>	<p>To build structures of inclusive governance, the UN will ensure that technical assistance to conflict-resolution processes and countries emerging from conflict includes rigorous assessment of the potential value of temporary special measures, including quotas for women. [para. 42]</p> <p>As part of its assistance, the UN will ensure that gender discrimination is addressed at every stage in the political process. [para. 43]</p> <p>UN technical assistance to public administrative reform will ensure full consideration of measures, including quotas and fast-tracking promotion schemes, to increase [the] proportion of women in state institutions at all level[s], and capacity-building to improve their effectiveness. [para. 44]</p>

Source: United Nations, [Report of the Secretary-General on Women’s Participation in Peacebuilding. \(A/65/354-S/2010/466\). Tracking Progress: 7-Point Action Plan.](#)

### 6.4.2 Support and partner with civil society organizations

Women’s organizations are critical watchdogs of WPS commitments and often the leaders in service delivery and sustaining dialogue during post-conflict recovery. Timely engagement with CSOs can create opportunities for the growth of women’s movements and their effective participation in political and constitutional processes based on “the power of social movements from the ground up”.<sup>182</sup> CSOs are also critical sources of information for entities such as peacekeeping missions and the UNSC as they are familiar with the local context, the impact of the conflict and appropriate responses.

# APPENDICES

## Appendix I

**TABLE A.1.1** Means of implementation of women's access to justice programming across all country contexts

Key elements	Means of implementation contained in SDGs 1, 5, 10 and 16*	CEDAW	CEDAW GR 30 and CEDAW GR 33	WPS Goals/ Indicators**	PSG Fragility Assessment Indicators***
<b>THE ENABLING ENVIRONMENT FOR WOMEN'S ACCESS TO JUSTICE (UPSTREAM PROGRAMMING)</b>					
<p>Implementation of relevant international and regional human rights instruments. Constitutional and legislative reforms. Design justice sector strategies from a gender perspective. Cost justice sector strategies and create budget lines.</p>	<p>1.a Ensure significant mobilization of resources from a variety of sources ... to implement programmes and policies to end poverty in all its dimensions 1.b Create sound policy frameworks at the national, regional and international levels, based on pro-poor and gender-sensitive</p>	<p>(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) To adopt appropriate legislative and other</p>	<p>56(e) Ensure the national implementation of international instruments and decisions of international and regional justice systems relating to women's rights, and establish monitoring mechanisms for the implementation of international law. (CEDAW GR 33, para. 56(e)). 19 Women's rights are</p>	<p>Goal 1 - Prevention of all forms of violence against women, particularly SGBV Goal 2 - Safety, physical and mental health of women and girls and their economic security are assured and their human rights respected Goal 3 - Political, economic, social and cultural rights of women and girls are protected</p>	<p>Existence of laws such as: a. Law on sexual violence, law on child protection b. Existence of a structure responsible for the accessibility of specific laws (target)/Number of laws made accessible. c. The inclusion of traditional justice norms into legal code (target)</p>

	<p>development strategies, to support accelerated investment in poverty eradication actions</p> <p>5.c Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels</p> <p>10.3 Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard</p> <p>16.b Promote and enforce non-discriminatory laws and policies for sustainable development</p>	<p>measures, including sanctions where appropriate, prohibiting all discrimination against women;</p> <p>(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;</p> <p>(g) To repeal all national penal provisions which constitute discrimination against women. (CEDAW, Arts. 2(a), (b), (f), (g)).</p>	<p>guaranteed by an international law regime that consists of complementary protections under the Convention and international humanitarian, refugee and criminal law. (CEDAW GR 30, para. 19).</p> <p>18(g) Provide the budgets, resources, guidelines and monitoring and legislative frameworks necessary to ensure that protective measures function effectively. (CEDAW GR 33, para. 18(g)).</p> <p>83 States parties should report on the legal framework, policies and programmes that they have implemented to ensure the human rights of women in conflict prevention, conflict and post-conflict situations. (CEDAW GR 30, para. 83).</p>	<p>and enforced by national laws in line with international standards.</p> <p>Goal 4 - Increased access to justice for women whose rights are violated.</p>	<p>d. No. of customary legal issues/cases that complement or are consistent with the statutory system and the percentage of cases resolved by traditional/customary justice systems</p> <p>e. Existence of a plan and a programme for reform. Budget of the reform</p> <p>f. Availability of an annual report of the Supreme Council of the Judiciary</p> <p>g. Existence of planning and programming of recruitment and retirement</p> <p>h. Improvements in status and salary scales of judges (target)</p>
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CREATING EFFECTIVE, ACCOUNTABLE AND GENDER-RESPONSIVE JUSTICE INSTITUTIONS (MESO LEVEL)

<p>Gender-responsive capacity building of justice sector actors. Improve infrastructure for service delivery. Promote women's participation in justice delivery.</p>	<p>16.a Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime</p>	<p>(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; (CEDAW, Arts. 2(c), (d)).</p>	<p>14 Six interrelated and essential components – justiciability, availability, accessibility, good quality, provision of remedies for victims and accountability of justice systems—are therefore necessary to ensure access to justice. (CEDAW GR 33, para. 14). 69(b) Undertake gender-sensitive and gender-responsive security sector reform that results in representative security sector institutions that address women's different security experiences and priorities; and liaise with women and women's organizations; (CEDAW GR 30, para. 69(b)).</p>	<p>Goal 1 – Extent to which violations of women's and girls' human rights are reported, referred and investigated by human rights bodies QN/r – Percentage of referred cases of SGBV against women and girls that are reported, investigated and sentenced QN/r – Hours of training per capita of decision-making personnel in security and justice sector institutions to address cases of SGBV</p>	<ul style="list-style-type: none"> <li>i. Distribution of magistrate/high court at the district and regions</li> <li>j. Proportion of Public Defenders to the total population by district</li> <li>k. Ratio of lawyers to 100,000 prisoners</li> <li>l. Number of judges per 100,000 population</li> <li>m. Ratio of prisoners to prison wards by region</li> <li>n. Ratio of prisoners to cell space.</li> <li>o. Availability of separate detention facility for women and children</li> </ul>
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## LEGALLY EMPOWERING WOMEN (DOWNSTREAM PROGRAMMING)

<p>Support legal awareness and education on women's rights. Provision of legal services. Engage with informal justice systems to change negative attitudes and norms towards women and girls. Support and partner with CSOs and CBOs.</p>	<p>5.a Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws</p> <p>5.b Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women</p>	<p>(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (CEDAW Art. 2(f)).</p> <p>(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; (CEDAW Art. 5(a)).</p> <p>Ensure to women, on equal terms with men, the right: ... (b) To participate in the</p>	<p>14(a) Justiciability requires the unhindered access by women to justice and their ability and empowerment to claim their rights as legal entitlements under the Convention; (CEDAW GR 33, para. 14(a)).</p> <p>30 The provision of education from a gender perspective and raising public awareness through civil society, the media and the use of ICT are essential to overcoming the multiple forms of discrimination and stereotyping that have an impact on access to justice and to ensuring the effectiveness and efficiency of justice for all women. (CEDAW GR 33, para. 30).</p> <p>69(d) Ensure women's equal participation in all stages of disarmament,</p>	<p>Goal 1 – Level of women's participation in the justice, security... sectors</p>	<p>a. No. of women recruited in the judiciary</p> <p>b. No. of legal claims from individuals or organizations against the state on violations of international norms to the court</p> <p>c. % Population with awareness of legal and human rights.</p>
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		<p>formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (CEDAW, Art. 7(b)).</p>	<p>demobilization and reintegration, from negotiation of peace agreements and establishment of national institutions to the design and implementation of programmes; (CEDAW GR 30, para. 69(d)).</p> <p>56(c) Put in place programmes, policies and strategies to facilitate and guarantee the equal participation of women at all levels in those specialized judicial and quasi-judicial mechanisms; (CEDAW GR 33, para. 56(c)).</p>		
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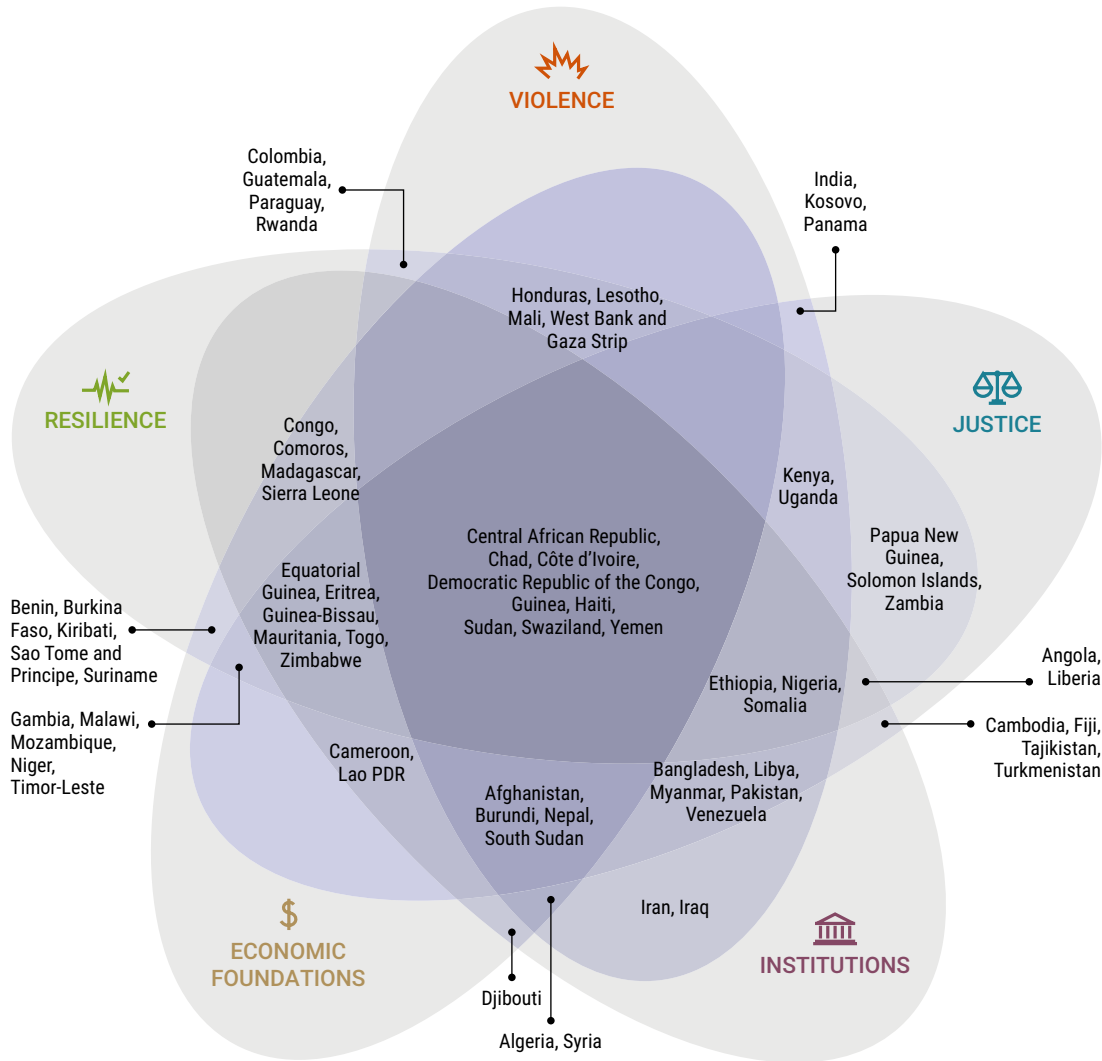
\*The focus here is on the means of implementation for Targets under each Goal. Although none is readily identified for SDG 10, the Targets identified remain relevant for implementing women's access to justice programmes.

\*\*United Nations, Security Council, [Report of the Secretary-General on Women, Peace and Security](#), 28 September 2010, S/2010/498.

\*\*\* These are the only set of indicators reflected in the Table. The indicators are a compilation identified by the fragility assessment five pilot countries (DRC, Liberia, Sierra Leone, South Sudan and Timor-Leste). The indicators are meant to provide a reference point, rather than be prescriptive. For the full list, see g7+, [Note on the Fragility Spectrum](#), (Kinshasa, 2013). Indicator development for monitoring the PSGs themselves is ongoing. For more details, see International Dialogue on Peacebuilding and Statebuilding, [Peacebuilding and Statebuilding Indicators - Progress, Interim List and next steps](#), Document 03 - For discussion, Third International Dialogue Global Meeting, "The New Deal: Achieving Better Results and Shaping the Global Agenda", (Washington, D.C., 2013).

# Appendix II

FIGURE A.1.1 Venn diagram representing fragility clusters across states and economies



- 
**VIOLENCE**  
 Reduce all forms of violence and violent deaths everywhere
- 
**ECONOMIC FOUNDATIONS**  
 Reduce youth unemployment; promote economic, social and political inclusion
- 
**JUSTICE**  
 Promote the rule of law at the national and international levels, and ensure equal access to justice for all
- 
**RESILIENCE**  
 Reduce exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters; build adaptive capacity
- 
**INSTITUTIONS**  
 Develop effective, accountable and transparent institutions at all levels; reduce illicit financial flows and combat organised crime

Note: The 9 countries at the centre of this Venn diagram rank among the 50 most vulnerable countries in all five fragility clusters simultaneously. Moving out from the centre, those listed in the overlapping areas are among the 50 most affected in four, three and two clusters. The five proposed dimensions were taken from the SDG framework.

Source: OECD, *States of Fragility 2015: Meeting Post-2015 Ambitions. Highlights*, p. 8, (Paris, 2015). For a full publication of the methodology, see OECD, *States of Fragility: Meeting Post-2015 Ambitions*, Annex A, pp. 101-110, (Paris, 2015).

## Appendix III: Country case studies

### Creating an enabling environment for women’s access to justice

#### Constitutions

##### **BOX A.1.1 Strategies and stakeholder involvement in constitutional reforms in Zimbabwe**

With technical and financial support from UN Women and UNDP, a unique lobbying group known as the Group of 20 (G-20), successfully lobbied for gender equality-related provisions in **Zimbabwe** during the country’s three-year constitution-making process (2009-2013). The G-20 included women activists, senior politicians from all parties, women parliamentarians and academics. This group became a key information source on gender equality, women’s rights and the Constitution, which was signed into law by the President of the Republic of Zimbabwe on 22 May 2013. Strategies employed by the G-20 included:

- Providing experts to conduct training sessions on international standards and comparative constitutions
- Developing 14 common principles to advocate for across the spectrum of women’s rights—including reproductive rights, protection from domestic violence, marriage equality and equality in political representation
- Production of substantive advocacy materials—pamphlets and other education materials
- Conducting public awareness campaigns throughout Zimbabwe
- Transforming the women’s position paper into proposed constitutional language by a G-20 sub-committee
- Distribution of the constitutional language to the Constitutional Select Committee (COPAC) members
- Lobbying government officials, political party leaders, members of the COPAC committee, the COPAC drafters and the general public

Sources: UN Women, [“Zimbabweans say yes to new Constitution strong on gender equality and women’s rights”](#), (19 April 2013); UN Women, [“Women make up more than one-third of Zimbabwe’s new Parliament”](#), (4 September 2013); and Claudia Flores and Patricia A. Made, [The Politics of Engagement: Women’s Participation and Influence in Constitution-making Processes](#), pp. 2, 19, (UN Women, n.d.)

##### **BOX A.1.2 The role of the courts in fighting discrimination in Botswana**

In 1992, the High Court of **Botswana** in *Unity Dow v. Attorney-General (Botswana)* relied on CEDAW and the African Charter on Human and Peoples’ Rights to overturn a discriminatory citizenship law. The Court of Appeal affirmed the holding. The case triggered constitutional reforms in the definition of discrimination, leading to a powerful wave of legislative changes to citizenship and marriage laws. Women were given the right to pass their citizenship on to their children and to their foreign spouse. *Unity Dow* herself became a judge in Botswana. In 2012, the Botswana High Court relied on *Unity Dow* in *Mmusi and others v. Ramantele and Another* to strike down a customary law of patrilineal inheritance known as *Ngwaketse*, despite a constitutional “claw back” clause regarding women’s right to inherit property. *Mmusi* made it clear that women had equal rights to men to inherit property.

Sources: [Unity Dow v. Attorney-General](#), Botswana, (1991, BLR 233 HC) and [Mmusi and others v. Ramantele and Another](#), Botswana, (2012, 2 BLR 590 HC).

### **BOX A.1.3 Consultative constitutional reforms in Uganda**

When democracy was restored in **Uganda** in 1986, due to the populist nature of the National Revolutionary Movement (NRM) government, the country's turbulent experiences of the prior two decades of conflict, and the grave human rights abuses and lack of democratic governance by previous governments, the NRM sought to create an inclusive, democratic and safeguarded constitution. A constitutional commission was formed that included a wide variety of experts. The Commission carried out extensive consultations and educational activities throughout the country and with special interest groups including women, youth, people with disabilities, the elderly, religious groups and the kingdoms of Uganda, in order to draft a constitution based on the views of the people.

One of the first tasks of the reconstruction process was for the government to regain international legitimacy. In doing so, it looked to international law, recognizing international human rights standards and integrating these standards into the country's legal framework. Consultations with the people also indicated their agreement with international treaties that advanced their rights and national interests, and the need to incorporate them in the constitution. As a result, the Constitution is a virtual replica of the Universal Declaration of Human Rights and the subsequent human rights treaties to which Uganda is a party.

The inclusion of two strong, knowledgeable women lawyers on the Constitutional Commission and the additional advice of expert lawyers who were familiar with the international conventions were key to the outcome of the constitutional process, as these individuals were able to successfully articulate Uganda's international obligations and advocate for a constitution that included human rights and women's rights.

Women's organizations facilitated the involvement of women in the constitution building process by holding "gender dialogues" and participating in workshops held by the Constitutional Commission. Women expressed concern about their right to own and inherit property and to have custody of their children, about violence against women and children and their lack of access to education, credit, land and employment. Women working on proposals for the new Constitution referred specifically to CEDAW's concepts of equality to advocate for inclusion of these principles, and this is reflected in a number of key provisions in the Constitution.

The recommendations of the Constitutional Commission were reviewed and voted on by the Constituent Assembly, of which fifty-two (18%) of the delegates were women who, supported by the women's movement, were instrumental in ensuring that key gender provisions were included in the constitution. Although they faced resistance at times, they used several strategies including having men introduce their proposals, and boycotting the Assembly when they did not get their way.

A constitutional review was completed in 2003 to deal with some of the unresolved issues of the 1995 Constitution. Women's groups were consulted during the process and, having seen the workings of CEDAW and further armed with UNSCR 1325, were further able to advocate for women's rights. Thus a key amendment was included that established 18 as the minimum age for marriage and provided that women and men have equal rights at marriage, during marriage and at the dissolution of marriage.

Source: Julie L. Arostegui and Veronica Eragu Bichetero, [Women, Peace and Security: Practical Guidance on Using Law to Empower Women in Post-Conflict Systems – Best Practices and Recommendations from the Great Lakes Region of Africa](#), p. 34, (Washington, D.C., Women in International Security, 2014).

#### BOX A.1.4 The participatory approach of the Constitutional Commission in Rwanda

**Rwanda** followed the model of Uganda in its constitution making process. In 2003 a Constitutional Commission was established to write a permanent constitution. Out of the 12 members of the Commission, three were women. The process was comprehensive and included widespread consultations, mobilization and civic education. Given the deep ethnic divides that had caused the conflict and genocide, the main priorities in establishing the Constitution were: equitable power sharing; establishing a pluralistic democratic regime; fighting against genocidal ideology and all its manifestations; eradication of ethnic and regional divisions and promotion of national unity; equality among Rwandans and between men and women; establishment of a government committed to citizen welfare and social justice; and the resolution of conflict through dialogue and consensus.

The participatory approach adopted by the Constitutional Commission allowed significant input by women and women's organizations. The women's movement actively mobilized to ensure that equality was a cornerstone of the document. The umbrella organization, Collectifs Pro Femmes/Twese Hamwe and its member NGOs worked with women parliamentarians and the Ministry of Gender and Women in Development to advocate for women's issues. These organizations not only carried on a lobbying campaign but also worked to disseminate information about the draft constitution to women's organizations throughout the country, holding consultations, meetings and trainings on the proposed provisions. They advocated strongly for the inclusion of principles of equality and women's rights for a gender sensitive constitution, integrating gender policy and the inclusion of women in decision-making processes into the constitution. In their lobbying efforts women leveraged international instruments such as the International Bill of Rights and CEDAW, stressing the government's obligations as states parties and their duties to report under these instruments. The result is a constitution that incorporates the principles of gender equality and the elimination of all forms of discrimination against women and provides a strong legal framework for mainstreaming gender, with specific reference to CEDAW.

Source: Arostegui and Bichetero, [Women, Peace and Security: Practical Guidance on Using Law to Empower Women in Post-Conflict Systems](#), p. 35.

## Making and reforming laws

#### BOX A.1.5 An example of the formalization of informal law in Ghana

The laws of **Ghana** shall comprise—(a) this Constitution; (b) enactments made by or under the authority of the Parliament established by this Constitution; (c) any Orders, Rules and Regulations made by any person or authority under a power conferred by this Constitution; (d) the existing law; and (e) the common law. (2) The common law of Ghana shall comprise the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature. (3) For the purposes of this article, “customary law” means the rules of law which by custom are applicable to particular communities in Ghana.

Source: [Constitution of the Republic of Ghana 1992 with amendments through 1996](#), Arts. 11(1)-(3).



## Formal laws

### BOX A.1.6 Domestic implementation of CEDAW in the Philippines

In 2009, the Government of the **Philippines** enacted a gender equality law, the Magna Carta of Women (Republic Act No. 9710), which specifically incorporates CEDAW into domestic law to eliminate discrimination against women. The purpose of the law is to uphold women's human rights as recognized under international instruments and specifically to localize the provisions of CEDAW. The law guarantees a wide range of women's rights, including the right to protection from all forms of violence; political participation and representation; equal treatment before the law; equal access to education; comprehensive health services; and equal rights in marriage and family relations. It also includes specific commitments, such as increasing the number of women in civil service to achieve a 50-50 gender balance by 2014. In addition to guaranteeing substantive rights, the law also mandates that the State take steps to review, amend or repeal existing laws that are discriminatory toward women.

Source: Philippines, An Act Providing for the Magna Carta of Women, Republic Act No. 9710, (14 August 2009), in Philippine Commission on Women, [Magna Carta of Women: Implementing Rules and Regulations](#), pp. 1-30, (Manila, 2010).

### BOX A.1.7 Brazil and Morocco introduce gender equality laws including specific implementation arrangements

The Maria da Penha Law of **Brazil** introduced new penalties and classifications of acts of violence against women into national legislation, setting out a holistic approach to the problem by means of specialist institutions. Before the approval of this law, domestic or family violence was considered to be a minor matter punishable under the Law of Civil and Criminal Courts, which deals with crimes that are defined as being of lesser offensive potential (Law 9,090/1995), the sanctions for which were light and largely financial. With the entry into force of the Maria da Penha Law, more severe prison sentences were established for bodily or physical injuries. This also included other kinds of violence and stipulated specific processes through the intervention of specialist institutions (defence units, advocacy centres, public defenders and courts). After a decade's application of this law, the most notable impact has not been the punishments for those committing acts of gender-based violence but rather the large number of complaints and the imposition of protective measures for women.

The adoption a new Family Code (*Moudawana*) in **Morocco** in 2004 led to the creation of a new family court system. UNDP, together with UNICEF and UN Women, developed a joint programme to assist the Moroccan Ministry of Justice to ensure its effective implementation. A professional unit was created within the Ministry to provide continuous on-the-job training for family court personnel as well as a new information management system within the family section courts. The programme established a mediation and reconciliation system within five pilot family section courts and recruited social workers to link women seeking justice with the court system.

Sources: Alina Ramirez, [Brazil Case Study: Innovative Strategies in a Complex Context](#), Regional Evaluation of Access to Justice as a Prevention Mechanism to End Violence against Women 2011-2015, prepared for UN Women, p. 9, (Leitmotiv, 2016); Presidency of the Republic of Brazil, Special Secretariat for Women's Policies, [Maria de Penha Law: Law n. 11.340 of August 7, 2006 – Retrains domestic and family violence against women](#), pp. 10-21, (Brasília, 2006); [The Moroccan Family Code \(Moudawana\) of February 5, 2004](#), (Human Rights Education Associates, n.d.); and UN Women Multi Country Office, "Summary of women's access to justice programmes", (2015). (Unpublished). See Leitmotiv, [Regional Evaluation of Access to Justice as a prevention mechanism to end violence against women 2011-2015](#), prepared for UN Women, p. 16, (Seville, 2016).

#### **BOX A.1.8 Women's CSOs in Turkey work to strengthen and reform the civil code**

When the Government of **Turkey** ratified CEDAW in 1985, the women's movement seized the opportunity to lobby for reform of the civil code. Throughout the 1990s, feminist advocates built the movement, highlighting how the civil code violated Turkey's own constitutional guarantee of gender equality, as well as its commitments under CEDAW. By April 2000, a coalition government had prepared a draft civil code, integrating women's demands for full gender equality, but it was blocked by an alliance of conservative parliamentarians. The most controversial aspect of the women's demands was related to matrimonial property. Opponents claimed that the proposal that property acquired during the marriage should be divided equally was against Turkish traditions, would destroy the family, increase divorce rates and ultimately destroy Turkish society. The women's movement responded by bringing together a broad coalition of more than 120 NGOs from all over the country. Women's rights organizations, representing different sectors of society and from different ideological viewpoints, came together to campaign on a common platform. One of the coalition's most successful tactics was to gain the support of the media, sparking public debate about the role of women in society and raising awareness of women's rights. The new civil code, passed in 2001, is based on the principle of equal rights and responsibilities within the household.

Source: UN Women, [Progress of the World's Women 2011-2012: In Pursuit of Justice](#), p. 31, (New York, 2011).

### **Informal laws**

#### **BOX A.1.9 Recognizing the diversity of women's justice preferences in Afghanistan**

The perspectives of women in **Afghanistan** on how their human rights should be articulated and implemented highlights the importance of cultural legitimacy for any attempts at legal reform. In her interviews with Afghan women between 2001 and 2003, Dr Huma Ahmed-ghosh found that while women were keen to have their rights, they wanted those rights within the "framework of Islam" and not as a cultural imposition from the West. For example, one interviewee, Orzala Ashraf, who works at an NGO called Humanitarian Assistance for Women and Children in Afghanistan, believed that the Quran offered women enough rights for them to negotiate their rights, but it was fundamentalist interpretations that prevented women from claiming those rights and from educating themselves. Dr Habiba Sorabi, former Afghanistan Minister for Women's Affairs, shared a similar view, claiming that Islam is here to stay in Afghanistan and women want rights within the Islamic framework, including rights to education and employment.

Source: Huma-Ahmed-ghosh, "[Voices of Afghan women: Human rights and economic development](#)", International Feminist Journal of Politics, vol. 8, No. 1, pp. 122-124, (2006).

#### **BOX A.1.10 The role of traditional and religious leaders in reforming religious laws in Afghanistan**

As the majority of people seek justice through informal justice systems, especially in conflict and post-conflict settings, religious and traditional leaders can play an important role in protecting and promoting women's rights. Legal orders which apply religious, customary or indigenous laws tend to be dominated by men and perpetuate patriarchal interpretations of culture, provide differential protections to men and women and rarely punish gender-based violence in particular. However, customary law is adaptable and can change in ways that reflect evolving values in society. For example, in **Afghanistan**, religious leaders are among the traditional "gatekeepers" for making local decisions, especially with respect to women's rights. While at the national level women rights have encountered resistance, at the local level religious leaders have shown interest in protecting

women's rights within an Islamic framework. Civil society organizations have been working with Islamic scholars regionally to develop a curriculum on Women's Rights in Islam. Imams who have participated in the project have referenced in their sermons women's religious and legal rights to familial inheritance, employment, education, participation in political life, and decision-making over their own bodies. While it is difficult to gauge the effect of these sermons, impact studies of various projects show that rates for resolving cases in favor of women disputants improved three-fold.

Sources: UN Women, [Preventing Conflict Transforming Justice Securing the Peace: A Global Study on the Implementation of United Nations Security Council resolution 1325](#), p. 120, (New York, 2015). See United Nations, Human Rights Council, [Report of the Working Group on the issue of discrimination against women in law and in practice](#), para. 54, 2 April 2015, A/HRC/29/40.

#### **BOX A.1.11 Customary law reform led by traditional leaders in Kenya, Namibia and Somaliland**

In **Kenya**, traditional leaders have increased responsibility for protecting and enforcing constitutional rights, including women's rights to land and other productive resources. In one community, elders in Ol Posimoru drafted a new local constitution (known as a *katiba*) that protects women's property rights. In **Namibia**, traditional authorities in some areas have supported widows in asserting their rights to remain on their deceased husbands' communal land and resisting efforts by relatives to remove them. Traditional elders in **Somaliland** have revised elements of Somali customary law (*xeer*) with the aim of bringing it into greater alignment with both Islamic law (*shari'a*) and international human rights standards. Supported by the Danish Refugee Council, the elders initiated a process of dialogue culminating in Regional and National Declarations in the two de facto autonomous regions, which contain revisions to *xeer* in a number of key areas. Research indicates that six years after the first dialogues commenced, the Declarations could already be linked to certain positive changes in customary justice, including the abolition of harmful practices such as "widow inheritance", advancements in women's inheritance rights, and a shift towards individual and away from collective responsibility for serious crimes.

Sources: OHCHR and UN Women, [Realizing Women's Rights to Land and Other Productive Resources](#), pp. 31-32, (Geneva and New York, United Nations, 2013) and Maria Vargas Simojoki, "Unlikely Allies: Working with Traditional Leaders to Reform Customary Law in Somalia", in *Enhancing Legal Empowerment: Working with Customary Justice Systems: Post-Conflict and Fragile States*, Working Paper Series, No. 2, p. 1, (Rome, International Development Law Organization (IDLO), 2011).

#### **BOX A.1.12 Lobbying for legal frameworks to address equality in family law in South Sudan**

In **South Sudan** there is a critical need to establish legal frameworks to protect women and girls. However, there is a great deal of resistance because of customary law. Early marriage and dowry have been identified by stakeholders interviewed as two of the greatest obstacles facing women in the country. According to the Human Rights Commission, much of GBV in the country is based on dowry and it needs to be outlawed. The HRC and women's groups are advocating for the permanent constitution to address equality in family law for women. They are also lobbying the parliament and the public to ensure the enactment of family law, especially establishing rights in divorce, which until now has been handled in traditional and cultural ways, outlawing dowry or at least creating uniform dowry law, establishing a minimum marriage age and guaranteeing women the right to be involved and consulted in marriage processes including negotiations and marriage agreements.

Source: Arostegui and Bichetero, [Women, Peace and Security: Practical Guidance on Using Law to Empower Women in Post-Conflict Systems](#), p. 45.

## Justice sector policies and budgets

### BOX A.1.13 The outcomes of a desk review of the justice sector policy environment globally

UN Women's desk review of the justice sector policy environment revealed the existence of national justice and security sector strategies in at least 22 countries. These are: Afghanistan, Algeria, Andorra, Aruba, Bosnia and Herzegovina, Cameroon, Ethiopia, Guyana, Indonesia, Jamaica, Moldova, Papua New Guinea, Philippines, Rwanda, Samoa, Sierra Leone, State of Palestine, Tanzania, Timor-Leste, Tunisia, Uganda and Vanuatu. The judiciary of four countries (Guatemala, Papua New Guinea, Philippines and Uganda) have sector-specific gender strategies in place, while nine countries (Afghanistan, Bosnia, Cambodia, Madagascar, Myanmar, Pakistan, Papua New Guinea, Trinidad and Tobago and Uganda) also have National Gender Strategies or Policies which include components on justice delivery for women.

Source: UN Women, "Desk Review of Justice Sector Strategies from a Gender Perspective", (2015). (Unpublished).

### BOX A.1.14 Gender-sensitivity in the Justice Sector Strategic Plan for Timor-Leste

The Justice Sector Strategic Plan for **Timor-Leste** 2011-2030 includes a detailed assessment of the challenges facing women in their efforts to access justice, including limited awareness. Under its Thematic Area 5, the Plan seeks to bring justice closer to the people, offering them access to justice, particularly in the districts, including raising the awareness of the population regarding laws, rights and available justice services, and guaranteeing the interaction between the formal and informal justice systems. This means that the principle of non-discrimination, the sensitivity to issues of gender and the protection of vulnerable groups and human rights will be guaranteed in the justice sector within 5 years. To achieve this, the plan seeks to ensure that awareness of gender is incorporated into all programmes and activities of the justice sector. For example, gender focal points will be established in justice sector institutions and judicial actors will receive training on women's rights and gender equality. Human resource policies will also be developed with particular consideration to women, in order to attract and retain more qualified professionals and to minimize the impact of early dropouts from training courses. The importance that Timor-Leste attaches to access to justice is demonstrated by its decision to align the Justice Sector Strategic Plan with the country's Strategic Development Plan 2011-2030, as is the case with other sector plans such as education and health.

Sources: Timor-Leste, Ministry of Justice, [Justice Sector Strategic Plan for Timor-Leste 2011-2030](#), pp. 30, 31-33, 39, 91-92, (Dili, Timor-Leste, 2010); Timor-Leste, [Strategic Development Plan 2011-2030](#), pp. 14-32, 33-43, 176-180, (Dili, 2011); Timor-Leste, Ministry of Education, [National Education Strategic Plan 2011-2030](#), pp. 51-52, (Dili, 2011); Timor-Leste, Ministry of Health, [National Health Sector Strategic Plan 2011-2030: Towards a Healthy East Timorese People in a Healthy Timor-Leste](#), p. x, (Dili, Taliti, 2011).

### BOX A.1.15 Budgetary measures to support implementation of laws in Nepal

Specific measures at the budget level can also be designed to drive the implementation of laws to support gender equality and women's access to justice. For instance, **Nepal** aimed to increase women's access to the ownership of land by granting a 10 per cent tax exemption in 2008 to drive the implementation of laws on property and inheritance. The exemption created incentives for families to share property with women in the family and was later increased by 25 per cent and 30 per cent in cities and rural areas respectively. The result was significant: in the 2001 census, 11 per

cent of households reported land owned by women, whereas by 2009, the figure had increased to 35 per cent of households.

Source: UN Women, [Progress of the World's Women 2011-2012: In Pursuit of Justice](#), p. 22.

## Creating effective, accountable and gender-responsive justice institutions

### BOX A.1.16 Depicting the multidimensional nature of the justice and security sector in Uganda

JLOS is a sector wide approach adopted by the Government of **Uganda** to bring together institutions with closely linked mandates of administering justice and maintaining law and order and human rights, into developing a common vision [and] policy framework, unified on objectives and plan over the medium term. The sector comprises of: the Ministry of Justice and Constitutional Affairs, which also hosts the JLOS Secretariat; the Ministry of Internal Affairs; the Judiciary; the Uganda Police Force; the Uganda Prison Service; the Directorate of Public Prosecutions; the Judicial Service Commission; the Ministry of Local Government, which oversees the Local Council Courts; the Ministry of Gender, Labor and Social Development, which spearheads gender-responsive legal and policy reform initiatives and is in charge of juvenile justice, labor and probation services; the Uganda Law Reform Commission; the Uganda Human Rights Commission; the Law Development Centre; the Tax Appeals Tribunal; the Uganda Law Society; the Centre for Arbitration and Alternative Dispute Resolution; the Uganda Registration Services Bureau; and the Directorate of Citizenship and Immigration Control.

Source: Uganda, The Judiciary, "[Justice Law and Order Sector](#)," (last updated June 2013) and Uganda, JLOS, [The Third JLOS Strategic Investment Plan \(SIPIII\) 2012/13-2016/17](#), p. 73.

## They are available

### BOX A.1.17 The use and impact of mobile courts and justice services in Nicaragua and Honduras

Approaches to increase access to justice that have shown positive results in areas underserved by the formal system are mobile courts and the use of paralegals. In **Nicaragua** in the early 2000s, mobile courts and community-based paralegals were credited with a 10 percent reduction in crime where the scheme operated. Another successful example of the use of Peace Justices and mobile courts to provide better access to justice, especially for the most disadvantaged groups, was in **Honduras**, as part of a project to modernize the judicial branch. Project results include (1) enhanced access to justice for vulnerable groups (30,000 annual users), first-instance courts in rural zones (1,000 annual users), and mobile courts in urban-marginal areas (7,000 annual users); (2) specialized service to 10,000 women in family courts; (3) improved protection to 15,000 women and children against domestic violence; (4) specialized service to 1,500 persons from vulnerable groups; (5) establishment of an integrated financial management system that promotes transparency and efficiency of the courts; (6) development of the judicial career with all the manuals for the selection, classification, and evaluation of personnel that will allow the transparent and competitive selection of 3,200 personnel; (7) adoption of a new management model for case management that will allow monitoring and evaluation of 1,200 judges; and (8) improved services to internal and external users of the courts through an IT (information technology) system and judiciary information kiosks.

Source: The World Bank, [World Development Report 2011: Conflict, Security and Development](#), pp. 154, 175, (Washington, D.C., 2011).

### **BOX A.1.18 The impact of capacity development of informal justice institutions on women's access to justice in Papua New Guinea**

In 1994 the People and Community Empowerment Foundation Melanesia, an NGO in **Papua New Guinea**, launched a programme of dispute resolution training in line with the principles and processes of Bougainville customary justice. An assessment of the programme in 2010 sought to understand whether the training had been successful in advancing legal empowerment in a way that was perceived as locally legitimate and that preserved the positive aspects of customary law. It was found that the training improved the satisfaction levels of both men and women, yet in those areas where there were differences in men and women's responses, the impact of the training on this gender gap was neutral. This is partly explained by the intervention's focus on better mediation techniques rather than the application of substantive rights. In a context of generalized gender discrimination, negotiated settlements and minimal recognition of legal rights present particular risks for female disputants. Furthermore, the training did not adequately address power asymmetries. As a result, female users of the dispute resolution system were far more likely than male users to find it hard to express their views. Where the training did make significant gains in legal empowerment was by providing women with the skills and opportunities to become mediators. The establishment of women in decision-making roles is a legal empowerment outcome in itself, and it was found that women mediators dealt with issues of gender, particularly gender-based violence, in a different and more empowering way than most male mediators and chiefs. The study concluded that while increased participation in dispute resolution and strengthened procedural rights are crucial for access to justice, these efforts must be complemented by awareness of and capacity to assert substantive legal rights.

Source: Adapted from Naomi Johnstone, "Bush Justice in Bougainville: Mediating Change by Challenging the Custodianship of Custom", in *Working with Customary Justice Systems: Post-Conflict and Fragile States*, Erica Harper, ed., pp. 19-20, 22, 26-28, (Rome, IDLO, 2011).

## **They are accessible**

### **BOX A.1.19 Caveat on the benefits of lower level hierarchies to women**

The distinction between lower and higher courts, and their comparative accessibility to women, should not blur potential violations of women's rights that may occur across all court hierarchies. Lower courts located in rural areas for example, may not be well equipped to provide quality services. They could also be beset by corruption due to limited supervision and furthermore may not attract female justice actors due to the challenges associated with female migration. In some instances, laws can mandate a judge to issue orders which amount to a violation of women's rights. For example, Section 40(3) of the Muslim Personal Law Act of **Sudan** (1991) provides that "the guardian of a minor girl cannot conclude her marriage contract unless there is permission from the judge. The guardian has to prove that the marriage will benefit the minor girl, that the husband is suitable and the husband pays the dowry usually paid to women of her status."

Source: Equality Now, Beijing +20: Ending Sex Discrimination in the Law, *Words & Deeds: Holding Governments Accountable in the Beijing +20 Review Process*, 4th ed., p. 16, (New York, 2015).

### **BOX A.1.20 Fee waiver programmes, accessibility to courts and use of ICT in Indonesia**

State funding for religious court fee waiver programmes and the establishment of circuit courts was increased in **Indonesia** in 2008. It is estimated that, from 2007 to 2010, there was a 14-fold increase in the number of poor people accessing religious courts through the fee waiver program, and a



fourfold increase in the number of people accessing circuit courts in remote areas. As a result, within a period of three years, this intervention led to a significant increase in the number of people living in remote areas, poor people and women accessing the justice system. This intervention was coupled with the development of a web data management system that provides an overview of the total number of cases where fee waivers were applied. This system was established in 2008 with support from the Australian Agency for International Development (AusAID). This inexpensive system works on the basis of data sent by courts via SMS to a central database in Jakarta that generates reports that are then available on the Internet. As a result of good data collection and management, there is now a much better understanding of the impact of fee waiver programmes on court access.

Source: Cate Sumner, Matthew Zurstrassen and Leisha Lister, "[Increasing Access to Justice for Women, the Poor, and Those Living in Remote Areas: An Indonesian Case Study](#)", Justice for the Poor, Promoting Equity and Managing Conflict in Development, Briefing Note, vol. 6, No. 2, pp. 1, 5-6, (Washington, D.C., The World Bank, 2011).

#### **BOX A.1.21 Examples of United Nations system support for legal services and assistance**

Legal assistance and representation services aimed primarily at victims of domestic violence and other forms of SGBV are being supported in a range of field settings and often in partnership with civil society groups. In **Afghanistan** and **Iraq**, UNDP is establishing Legal Help Centres in the provinces; also in Afghanistan, UN Women has developed a paralegal manual and training to establish a base of paralegal/legal assistance for rural men and women focusing on women's rights. The UN Operations in **Côte d'Ivoire** has established six legal aid clinics with the National Women's Jurists Association of Côte d'Ivoire. In **Sudan**, the African Union-United Nations Mission in Darfur (UNAMID) is facilitating legal aid assistance to female inmates being held on remand and in prison, and training community-based paralegals. In the **State of Palestine**, UNDP is supporting civil society groups in providing pro bono legal aid, counselling and awareness-raising activities for women. UNHCR [United Nations High Commissioner for Refugees] trains paralegals and court support workers in a variety of field operations.

In **Viet Nam**, UNODC trained 120 law enforcement officers and legal aid providers to provide assistance for survivors of violence against women in 12 provinces. Through the "One United Nations" framework, UNODC partnered with other United Nations agencies to provide support for the amendment of the law on legal aid.

Sources: UN Women and UNDP, [Improving Women's Access to Justice: During and After Conflict: Mapping UN Rule of Law Engagement](#), p. 37, (New York, 2014) and United Nations, ECOSOC, Report of the Secretary-General, [Use and application of United Nations standards and norms in crime prevention and criminal justice](#), para. 34, 8 March 2017, E/CN.15/2017/9.

#### **BOX A.1.22 Legal aid services for women in Sudan, Togo and Zambia**

In **Sudan**, the Sudanese authorities, with the support of [UNICEF], piloted a Family and Child Protection Unit, which provided legal and other services to female and child victims, witnesses and accused persons. In **Togo**, the Group for Reflection and Action: Women, Democracy and Development employs lawyers and paralegals to assist both suspects and victims, including in police stations. The Law Association of **Zambia** established the National Legal Aid Clinic for Women to provide free legal services to indigent women and children. The clinic is present and has permanent employees and offices in all three provinces. The clinic has employed up to 10 lawyers on a full-time basis.

Sources: UNODC, [Handbook on Improving Access to Legal Aid in Africa](#), Criminal Justice Handbook Series, pp. 80, 84, (New York, United Nations, 2011) and UNODC and UNDP, [Early Access to Legal Aid in Criminal Justice Processes: A Handbook for Policymakers and Practitioners](#), Criminal Justice Handbook Series, pp. 24, 81, (New York, United Nations, 2014).

## **BOX A.1.23 Selected innovative examples from UNDP programming**

### **Capacity-building initiatives for justice institutions in Bangladesh**

UNDP **Bangladesh** supported the Activating Village Courts in Bangladesh Project—Local Government Division, with the aim of setting up, supporting and strengthening village courts in 350 Union Parishads (the smallest government unit in Bangladesh) across the country. The project seeks to improve access to justice for disadvantaged and marginalized groups, especially the rural poor and women, and enhances human rights systems and processes in Bangladesh. It additionally seeks to empower citizens to resolve their disputes at the local level in an expeditious, transparent and affordable manner. Finally, it aims to strengthen local government institutions to be responsive to local needs and offer legal services through well-functioning village courts. UNDP's interventions contributed to improved access to justice and legal services for women. Village courts provided an alternative avenue for women to access justice—almost 7,000 women accessed village court justice in 2014 and women were involved in 14 per cent of village court decision-making processes (an increase from 11 per cent in 2013). In addition, interventions by women development forums, established with UNDP programme support, addressed 183 cases of sexual harassment and 303 cases of violence against women and stopped 417 early marriages in 2014.

Source: UNDP, "Inventory on Violence Against Women, 2014-2016", p. 10, (2016). (Unpublished).

### **Comprehensive access to justice services for SGBV in Goma, Eastern DRC**

Improving access to legal aid and service delivery for survivors of SGBV—including the provision of medical, psychosocial and economic assistance—is an important component of their overall access to comprehensive justice. In Eastern **DRC**, UNDP supports a large network of legal aid clinics to tackle impunity, particularly for SGBV crimes. These clinics include medical, psychosocial and legal aid, and more recently have begun to address the social reintegration problems faced by SGBV victims through psychosocial support, literacy classes, socio-economic support and education of community leaders on attitudes towards survivors. One-stop centers that offer survivors a range of services in one location, such as medical care, psychological counseling, access to police investigators and legal assistance, are proving to be a successful model that integrates legal services with survivors' broader needs, through a coordinated approach between health professionals, who are often the first point of contact, and police.

Source: UN Women, [A Global Study on the Implementation of United Nations Security Council resolution 1325](#), p. 122.

### **Increased access to justice for women and minorities through the application and promotion of ADR mechanisms in Kosovo**

In 2016 alone, UNDP helped 651 women resolve their disputes through mediation, of which 139 beneficiaries were from non-majority communities. UNDP also supported the Ministry of Justice to draft the new Law on Mediation, which was approved in the first reading by the Assembly of **Kosovo** in December 2016. The revised law provides a more efficient, effective, and financially sustainable mediation system, whereby the citizens can resolve their disputes in a much faster and cost-efficient way. The law provides that dispute settlements of the citizens' self-referred cases are legally binding. In addition, the law obliges the parties in the dispute to try mediation first, before entering a formal judicial process. In 2016, the number of cases resolved through mediation increased to 812 cases compared to 747 cases in 2015. Once implemented, the reformed law will enable more cases to be resolved, further improving and sustaining people's access to justice.

### **Improved access to legal aid and justice services in rural areas of the Kyrgyz Republic**

This initiative was undertaken through pilot projects in the Osh and Chui provinces of the **Kyrgyz Republic** in 2016. The pilot projects provided free legal aid to 18,091 people and advised 16,807

people on topics such as land disputes, inheritance, recovery of alimony, payment of taxes, and real estate. Furthermore, the Ministry of Justice reached remote areas with the UNDP-supported mobile legal aid initiative commonly known as the “Solidarity Bus.” The mobile initiative visited 173 village municipalities, where 3,486 free legal consultations were provided to 3,386 people (55 percent female). The state registration service also used a mobile initiative to reach 1,607 people (54 percent female) and helped 1,208 people from the rural communities obtain legal documents to secure their legal identity for their rights to education and other basic services.

#### **Institutionalization of legal aid desks in Pakistan**

The Khyber Pakhtunkhwa Provincial Bar Council in **Pakistan** formally adopted the legal aid desks and recognized the Legal Aid Committees as official committees of the Bar Council. This development was key for enabling poor and marginalized segments of the population to access free legal aid. In 2016, 7,009 community members (3,290 women) accessed free legal aid. UNDP also facilitated a wider dialogue and discussion on the role of community-based paralegals in Pakistan. Key stakeholders have called for the full recognition of paralegals in communities, governments, and the legal system. UNDP supported the development of a new certificate programme at the University of Malakand and trained 170 paralegals (49 percent women), contributing to the realization of the 2030 Agenda for Sustainable Development.

#### **Mobile courts to reach remote areas and bridge informal and formal justice mechanisms through local mediation techniques in Somalia**

In 2016, mobile courts adjudicated 1,233 cases (251 criminal and 79 civil), 330 of which the Benadir Region Mobile Courts processed at the federal level. UNDP also supported radio programmes and awareness sessions to provide information on the availability and use of legal aid services to 667,890 people in Mogadishu, Kismayo, Baidoa, and Puntland, as well as 4,180 (1,421 women and 2,759 men) in **Somaliland**. Additionally, women and girls in Puntland received education about legal rights, women and children’s rights, refugee rights, SGBV, and gender equality, as well as the function and mandate of the formal justice system in relation to customary justice.

Source: UNDP, 2016 Annual Report, [Global Programme for Strengthening the Rule of Law and Human Rights for Sustaining Peace and Fostering Development](#), pp. 40-41, (New York, 2017).

## **They are accountable**

### **BOX A.1.24 An example of a domestic violence data tracking system in Albania**

With support from UNDP, an online tracking system for domestic violence cases was established and installed at central and local level in **Albania** in mid-2014 as an important cornerstone in monitoring and ensuring that pertinent legislation is implemented and that cases receive due inter-disciplinary attention. The investment in setting up the national electronic system for tracking domestic violence cases, as well as the capacity building of civil servants to use the system, has contributed to making institutions more responsible for and aware of fulfilling their legal obligations on information sharing, reporting, and improving the coordination between them. The tracking and reporting mechanism was implemented in four municipalities in 2015. An estimated 44 per cent of municipalities now have coordinated community response mechanisms in place. This has increased the trust of citizens in reporting gender-based and domestic violence to the police: statistics show a 30 per cent increase from 2014 in reported cases and a 35 per cent increase in requests to the police to issue protection orders for domestic violence survivors. There is also a 24 per cent increase in arrests of perpetrators of family crimes.

Source: UNDP, “Inventory on Violence Against Women, 2014-2016”, p. 13.

## Women participate in justice institutions

### BOX A.1.25 Indigenous authorities in Ecuador perform a jurisdictional role

The authorities of the indigenous communities, peoples, and nations shall perform jurisdictional duties, on the basis of their ancestral traditions and their own system of law, within their own territories, with a guarantee for the participation of, and decision-making by, women. The authorities shall apply their own standards and procedures for the settlement of internal disputes, as long as they are not contrary to the Constitution and human rights enshrined in international instruments. The State shall guarantee that the decisions of indigenous jurisdiction are observed by public institutions and authorities. These decisions shall be subject to monitoring of their constitutionality. The law shall establish the mechanisms for coordination and cooperation between indigenous jurisdiction and regular jurisdiction.

Source: [Constitution of the Republic of Ecuador, 2008 with amendments through 2015](#), Art. 171.

### BOX A.1.26 Women as decision makers and their impacts on community-level justice in Burundi and Papua New Guinea

In **Burundi**, a country slowly emerging from decades of conflict, UN Women has supported an initiative to incorporate women into the circle of *bashingantaha*, traditional elders responsible for conflict resolution at the community level, which had previously been a strictly male domain. The *bashingantaha* are instrumental in the maintenance of community cohesion and the restoration of peace in their collines, the smallest administrative units in the country. Through sensitization of leaders on women's rights and the amendment of the *bashingantaha* charter, women became accepted as part of the institution, taking part in decision-making. They now make up 40 percent of the committee members of the *bashingantaha*. As a result, awareness of sexual and gender-based violence and other violations of women's rights has increased. Burundian women's organizations have been campaigning for a new law to guarantee women's inheritance rights. Although resistant at first, *bashingantaha* leaders have been speaking out in public in support of the proposed law, including on local radio, and have become important allies in the campaign.

In **Papua New Guinea**, women have been accepted as village court officials and play an active role in monitoring decisions. This was following rights awareness-raising activities involving women, as well as village courts and village leaders, highlighting the important linkages between women's representation, education programmes and engaging with culture to change attitudes.

Source: UN Women, [Progress of the World's Women 2011-2012: In Pursuit of Justice](#), pp. 74, 77.

### BOX A.1.27 Women police in Liberia advocate for greater leadership roles

With support from UN Women, the Liberian Female Law Enforcement Association held a symposium that brought together all the stakeholders involved in the security sector, including senior managers. The key highlights included a discussion regarding the challenges facing women in security institutions. For example, in the **Liberia** National Police there were no females in executive positions and only 16 females (among 126 males) in supervisory roles, as well as 78 female college graduates in the entire work force. The Association succeeded in lobbying for the appointment of two senior female officers within both the Liberia National Police and the Executive Mansion Protection Services, including one who is currently third rank in the Liberia National Police.

Source: UN Women, "Analysis of Country Annual Reports", (2016). (Unpublished).

#### **BOX A.1.28** Examples of interventions for supporting women to enter the justice sector

There is a range of activity taking place that focuses on women's access to legal education, such as UNDP support in the **State of Palestine** to a female lawyers' network through the Palestinian Bar Association, and UN Women's support to an association of lawyers (NORMA) in **Kosovo**. In **South Sudan**, UNMISS [United Nations Mission in South Sudan] is focusing on women's employment at the highest levels in all sectors of the justice system, and in the north UNAMID is assisting female law students to sit bar examinations in Khartoum. In **Timor-Leste**, UNDP is implementing a gender equality grant for female trainees in the Legal Training Centre, as well as conducting a gender awareness campaign to increase the number of female justice actors.

In 2015, UN Women **Nepal** provided law scholarships to 20 female students for a 5-year B.A/LL.B. course at Nepal Law Campus to increase the representation of women and disadvantaged groups in the legal sector through affirmative action in the long run. The students were provided additional tuition classes and the opportunity to participate in workshops on gender equality and justice to increase their knowledge and leadership skills.

Sources: UN Women and UNDP, [Improving Women's Access to Justice: During and After Conflict](#), p. 41 and UN Women, "Analysis of Country Annual Reports".

## Legally empowering women

### Support and partner with civil society organizations

#### **BOX A.1.29** The services and programmes of FIDA-Ghana, a women lawyers association

The International Federation of Women Lawyers of **Ghana** (FIDA-Ghana) was established in 1974 to provide pro bono services to indigent women and children with property rights, inheritance, violence, child maintenance and child custody representing the cases most frequently addressed. Through its legal aid services, FIDA-Ghana integrates justice and development in ways that benefit marginalized and excluded women and children. The organization undertakes rural outreach and training of community members as paralegals who also support the organization of training and outreach. Its legal centre handles cases on maintenance, marital issues, compensation to partners following separation of common law spouses, property or inheritance (estate) and legal advice. Between 2010 and 2014, the FIDA legal aid centre in Accra handled 5,276 cases of which 4,764 were reported directly to the centre and 512 were handled by paralegals in rural areas.

Source: FIDA-Ghana, "Legal Aid Progress Report", (2015). Report prepared for UN Women. (Unpublished).

#### **BOX A.1.30** Timap for Justice in Sierra Leone

The approach by Timap for Justice, a not-for-profit organization offering free justice services in sites across **Sierra Leone**, has demonstrated important results. Paralegals backstopped by lawyers have assisted communities to address disputes and grievances since 2003. Qualitative research has shown that Timap's interventions have empowered clients (especially women) to claim their rights. Community perceptions of institutional fairness and accountability of the police, traditional leaders, and courts also improved as a result of Timap's work. Building on Timap, donors and the government of Sierra Leone joined with nongovernmental organizations and community-based groups in 2010 to develop a national approach to justice services, including a front line of community paralegals and a smaller core of supporting lawyers.

Source: The World Bank, [World Development Report 2011](#), p. 154.

### **BOX A.1.31 An example of empowering women through legal aid in Liberia**

Action Aid **Liberia** supports the Access to Justice for Women project, which is being implemented in three districts in the southeast of the country with local partners Tyiatien Health and Association of Female Lawyers in Liberia. The programme, which includes legal aid, has a holistic approach to women's access to justice and gender equality outcomes, recognizing that change will not be achieved by the provision of legal aid alone. Over the past year the project has achieved significant positive outcomes for women:

- Increase in the understanding of women in the target communities on inheritance and rape laws, referral mechanisms for accessing justice and UN resolutions 1325 and 1820.
- Increase in the number of women who demonstrated a willingness to access justice through the formal justice system (particularly for cases of rape, inheritance and persistence of non-payment of child support) by 45%.
- Establishment of two mediation groups, which have trained a total of 23 women in conflict mediation skills. The women trained to run these mediation sessions are now able to also provide informal level legal aid through the settling of domestic violence and domestic dispute cases in the community.
- Establishment of two women's forums and training of trainers for 39 women on women's legal rights and national and international protection laws. These 29 women have reached a further 471 women who are now demanding inclusion at the community and domestic level, including in the council of elders, in community decision-making roles and in conflict resolution.

Source: Action Aid Liberia, "[Access to Justice for Women](#)", (accessed 15 March 2018).

### **BOX A.1.32 Supporting and partnering with CSOs and CBOs in Sudan**

The UNDP Access to Justice and Rule of Law programme in **Sudan**, in collaboration with the Ministry of Justice and UN Police, has trained 40 paralegals, including 9 women, on access to justice and human rights at national and state levels. Trainings bring together judges, lawyers, police and prison officers, custodians of customary norms and community activists to strengthen their knowledge on laws and the court system. Between 2004 and 2007, UNDP and its partners established 12 legal aid centers and paralegal groups across the Three Areas, Darfur and Kassala. Each centre has a women's paralegal group that focuses on dealing with GBV issues and there are women only legal advice sessions. In 2007, 550 additional cases were carried out by the legal aid lawyers in Sudan resulting in some major successes (including cases on rape, murder and acquittals of women charged with adultery). While running the programme, UNDP found that community-based paralegals were increasingly perceived as a conduit for increasing citizens' voices and as social change agents.

Sources: UNDP, Bureau for Crisis Prevention and Recovery, Concept Note, [Strengthening Women's Security and Access to Justice: Implementing UNDP's Eight-Point Agenda for Women's Empowerment and Gender Equality in Crisis Prevention and Recovery](#), p. 9, (New York, 2010) and UNDP, "[Paralegals bring justice to women in South Sudan](#)", (accessed 15 March 2018).

## **Education on women's rights**

### **BOX A.1.33 Legal awareness and education on women's rights in Viet Nam: A television series and writing competition**

In **Viet Nam**, within the framework of the project "Strengthening the capacity of law enforcement and justice sector officers to respond to domestic violence", implemented by UNODC in collaboration with the Ministry of Public Security and the Ministry of Justice, a 10-episode television series called



Breaking the Silence was broadcast twice on national television. The series raised awareness about the unacceptability of domestic violence, the different forms of violence and the role of the law enforcement sector in protecting victims and holding abusers accountable. The awareness-raising campaign also included a writing competition called “Say no to domestic violence”; prizes were awarded and the best of over 1,500 awareness-raising stories on domestic violence were published.

Source: United Nations, ECOSOC, Commission on Crime Prevention and Criminal Justice, Report of the Secretary-General, [Strengthening crime prevention and criminal justice responses to violence against Women](#), para. 54, 2 February 2012, E/CN.15/2012/13.

## Considerations for crisis-affected contexts

### Women in post-conflict reforms

#### **BOX A.1.34** Peace hut initiative in Liberia offers women secure spaces to discuss important issues in post-conflict settings

UNDP and UN Women support peace huts across **Liberia**. This is where women gather to discuss matters that affect their day to day lives. This is where the reconciliation and resolution of conflicts takes place, where rural women can openly and safely discuss issues of inequality and together take decisions on peace and security. From resolving cases involving pregnancy and abandonment, to counselling survivors of domestic violence or rape, the peace hut initiative in Liberia has grown since 2011. The Liberian National Police works with the peace huts to improve the prevention of crimes and violence against women by providing mobile phones. Women were instructed to keep their phones charged at all times and use them to alert the police when any type of security problem arose, including domestic violence and other types of violence against women and girls. As the peace huts are evolving as a place to resolve conflict, they are becoming increasingly more inclusive of men and boys. UN Women and partners supported the creation of “anti-rape” football clubs for boys in some of the peace hut communities and held focus group meetings with male leaders and adolescent boys. At first, the peace huts focused on a process of “shedding the weight” and counselling women who had experienced grief and trauma as well as supporting ex-child soldiers after the civil war. Then, in 2006, peace hut women began hearing cases. The methodology is based on the traditional “Palava” hut system: the complainant and accused get to air their respective grievance and defence, then the local leader helps them reach an agreement that both consider fair and peace is restored. The role and participation of women in the peace hut for the maintenance of peace in communities is increasingly being appreciated and women in the communities now see themselves as crucial players in peacebuilding and conflict resolution.

Source: UN Women, “[From Conflict Resolution to Prevention: Connecting Peace Huts to the Police in Liberia](#)”, (19 September 2012).

## Appendix IV: Additional resources

- United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, [Rome Statute of the International Criminal Court](#), (1998)
- United Nations Security Council Resolution 955, [Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and](#)

Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994, (1994)

- United Nations Security Council Resolution 827, Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, (1993)
- International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), (1977)
- ICRC, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), (1977)
- United Nations General Assembly Resolution 3074(XXVIII), Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, (1973)
- United Nations General Assembly Resolution 2391(XXIII), Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, (1968)
- United Nations General Assembly Resolution 260A(III), Convention on the Prevention and Punishment of the Crime of Genocide, (1948)
- ICRC, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, (1949)
- ICRC, Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, (1949)
- ICRC, Geneva Convention relative to the Treatment of Prisoners of War, (1949)
- ICRC, Geneva Convention relative to the Protection of Civilian Persons in Time of War, (1949)

# ENDNOTES

- 1 See OHCHR, “Human Rights Treaty Bodies – Glossary of technical terms related to the treaty bodies”, available from <http://www.ohchr.org/EN/HRBodies/Pages/TBGlossary.aspx> (accessed 15 March 2018).
- 2 Ibid.
- 3 OECD, *States of Fragility 2016: Understanding Violence*, p. 21, (Paris, 2016).
- 4 OHCHR, “Universal Periodic Review”, available from <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx> (accessed 15 March 2018).
- 5 David Booth and Sue Unsworth, *Politically Smart, Locally Led Development*, Discussion Paper, pp. 3-4, (London, Overseas Development Institute, 2014).
- 6 UNDP, *Human Development Report 2016: Human Development for Everyone*, pp. 198-201, (United Nations publication, Sales No. E.16.III.B.1).
- 7 g7+, *Note on the Fragility Spectrum*, p. 4, (Kinshasa, 2013).
- 8 This sub-section is based on UNDG, *United Nations Development Assistance Framework Guidance*, pp. 21-22, (New York, 2017).
- 9 UNODC has developed a Criminal Justice Assessment Toolkit, which is a standardized and cross-referenced set of tools designed to enable UN agencies, government officials engaged in criminal justice reform, as well as other organizations and individuals to conduct comprehensive assessments of criminal justice systems. The purpose of such assessments being to identify areas of technical assistance required and to assist in training on these issues. The Tools have been grouped within criminal justice system sectors: Policing; Access to Justice; Custodial and Non-custodial Measures; and Cross-Cutting Issues (i.e., victims and witnesses, international cooperation, crime prevention and gender in the criminal justice system). See UNODC, *Criminal Justice Assessment Toolkit*, (New York, United Nations, 2006).
- 10 United Nations, *Conflict Analysis Practice Note*, p. 2, (New York, 2016).
- 11 United Nations, *Integrated Assessment and Planning Handbook*, p. 15, (New York, 2013).
- 12 Ibid., pp. 15-16.
- 13 Ibid., pp. 24-25.
- 14 Ibid., p. 15.
- 15 Ibid., p. 25.
- 16 United Nations, *Conflict Analysis Practice Note*, p. 2 and United Nations, *Integrated Assessment and Planning Handbook*, pp. 25-26.
- 17 United Nations, *Conflict Analysis Practice Note*, p. 4 and United Nations, *Integrated Assessment and Planning Handbook*, p. 25. The substantive nature of a Strategic Assessment is usually ensured by dedicating about 2-3 months from inception to conclusion. However, if required it can also be conducted on an accelerated basis, sometimes within a few weeks. See United Nations, *Integrated Assessment and Planning Handbook*, p. 20.
- 18 United Nations, *Conflict Analysis Practice Note*, pp. 4-8 and United Nations, *Integrated Assessment and Planning Handbook*, p. 26.
- 19 United Nations, *Conflict Analysis Practice Note*, p. 2.
- 20 Ibid.

- 21 Ibid., p. 3.
- 22 Research conducted by the IDLO found that empowerment strategies are more likely to be sustainable when they are paired with top-down reforms that ensure the application of international standards. In other words, gender-sensitive laws and policies provide the substantive foundation for education and awareness programmes, which are a core part of empowering women (see Section 5.0). IDLO, *Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment*, pp. 8, 61, (Rome, 2013).
- 23 UN Women, *Why and how constitutions matter for advancing gender equality: Gains, gaps and policy implications*, Policy Brief No. 8, prepared by Beatrice Duncan, p. 1, (New York, 2017) and UN Women, Dashboard, Global Gender Equality Constitutional Database, (2016), available from <http://constitutions.unwomen.org/en/dashboard> (accessed 15 March 2018).
- 24 UN Women, *Progress of the World's Women 2015-2016: Transforming Economies, Realizing Rights*, p. 28, (New York, 2015).
- 25 Global Campaign for Equal Nationality Rights, "The Problem", available from <http://equalnationalityrights.org/the-issue/the-problem> (accessed 15 March 2018).
- 26 Ibid. See Equality Now, *The State We're In: Ending Sexism in Nationality Laws*, p. 14, (New York, 2016).
- 27 For examples of discriminatory barriers to access to justice, see United Nations, CEDAW Committee, *General Recommendation No. 33 on Women's Access to Justice*, para. 25(a), 3 August 2015, CEDAW/C/GC/33.
- 28 International Labour Office, *Domestic workers across the world: Global and regional statistics and the extent of legal protection*, p. 46, (Geneva, ILO, 2013).
- 29 See United Nations, *Charter of the United Nations*, Preamble, 24 October 1945, 1 UNTS XVI.
- 30 See UN Women, Convention on the Elimination of All Forms of Discrimination against Women, "Introduction", available from <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#intro> (accessed 15 March 2018).
- 31 For a full list of ILO conventions that concern women workers see Wikigender, "ILO Instruments on Labour Standards concerning Women Workers", (2015), available from <https://www.wikigender.org/wiki/ilo-instruments-on-labour-standards-concerning-women-workers/> (accessed 15 March 2018).
- 32 Refer to the Annex of United Nations, General Assembly, Resolution 65/228, *Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women*, 21 December 2010, A/RES/65/228.
- 33 For the full list of core international human rights instruments and relevant Optional Protocols which elaborate on their respective communications procedures see OHCHR, "The Core International Human Rights Instruments and their monitoring bodies", available from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx> (accessed 15 March 2018).
- 34 United Nations, General Assembly, Resolution 54/4, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, Annex, Arts. 1-4, 6 October 1999, A/RES/54/4. For more information on the CEDAW Committee's jurisprudence on the Optional Protocol, see OHCHR, Treaty Body Database, CEDAW, "Jurisprudence", available from [http://tbineternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=17](http://tbineternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=17) (accessed 15 March 2018).
- 35 See African Commission on Human and Peoples' Rights, *Information Sheet No. 3: Communication Procedure* – Organisation of African Unity, (Banjul, The Gambia, n.d.).

- 36 See Inter-American Commission on Human Rights, *Petition and Case System: Informational Brochure*, (Washington, D.C., OAS, 2010).
- 37 United Nations, *Vienna Convention on the Law of Treaties*, Art. 2(d), 23 May 1969, A/CONF.39/27.
- 38 OHCHR, “Human Rights Treaty Bodies – Glossary of technical terms related to the treaty bodies”.
- 39 See the status page for CEDAW at United Nations Treaty Collection, “Convention on the Elimination of All Forms of Discrimination against Women”, available from [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en) (accessed 15 March 2018).
- 40 See Linda M. Keller, “The Impact of States Parties’ Reservations to the Convention on the Elimination of All Forms of Discrimination against Women”, *Michigan State Law Review*, vol. 2014, No. 2, pp. 309-326, (2014).
- 41 See United Nations, CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women*, Uganda, para. 13, 22 October 2010, CEDAW/C/UGA/CO/7; United Nations, CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women*, Kenya, para. 13, 5 April 2011, CEDAW/C/KEN/CO/7; UNMISS, “South Sudan Ratifies CEDAW Convention”, (5 September 2014), available from <https://unmiss.unmissions.org/south-sudan-ratifies-cedaw-convention>; United Nations, CEDAW Committee, *Concluding Observations on the Fourth Periodic Report of Kyrgyzstan*, para. 7, 11 March 2015, CEDAW/C/KGZ/CO/4; and Gender Equality Network and Global Justice Center, *Shadow Report on Myanmar for the 64th Session of the Committee on the Elimination of Discrimination against Women*, p. 22, (n.p., 2016).
- 42 OHCHR, “Human Rights Bodies – Complaints Procedures”, available from <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx> (accessed 15 March 2018).
- 43 See Angela M. Banks, “CEDAW, Compliance, and Custom: Human Rights Enforcement in Sub-Saharan Africa”, *Fordham International Law Journal*, vol. 32, No. 3, pp. 784-794, (2008).
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- 105 See Guideline 9 in A/RES/67/187, Annex, para. 52. To improve access to legal aid for women, Guideline 9 recommends incorporating a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid; taking steps to ensure that, insofar as possible, female defendants, the accused and victims, are assisted by female lawyers; and the provision of legal aid, advice and court services in all legal proceedings to female victims of violence so as to ensure access to justice and avoid secondary victimization. Before the adoption of Resolution 67/187, the Conference on Legal Aid in Criminal Justice: the Role of Lawyers, Non-Lawyers and other Service Providers in Africa had issued the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa of 2004. These Principles and Guidelines envisage that legal aid is provided at no cost, not only for those without sufficient means but also when the interests of justice so require. Legal aid is relevant across all legal domains, formal and informal systems and in conflict, post-conflict and development settings. For instance, the Special Rapporteur on the independence of judges and lawyers has clarified that the notion of beneficiaries of legal aid should not only include defendants in criminal proceedings but should also include (a) any person whose rights or freedoms have been violated as a result of an act, or a failure to act, perpetrated by a State actor; and (b) any person who participates in judicial or extrajudicial procedures aimed at determining rights and obligations “in a suit at law”. See United Nations, Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela Knaul, para. 88, 15 March 2013, A/HRC/23/43.
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