

The
Elders

ACCESS TO JUSTICE FOR WOMEN AND THE RULE OF LAW

POLICY PAPER



THE ELDERS

The Elders are independent leaders using their collective experience and influence for peace, justice, and human rights worldwide. The group was founded by Nelson Mandela in 2007.



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- 4** Foreword
- 5** Introduction
- 7** The impact of COVID-19 on access to justice for women
- 8** Strengthening the rule of law to protect women's rights and access to justice
- 9** Discriminatory laws
- 10** Discrimination in the application of laws
- 11** Inaccessible justice systems
- 12** The way forward
- 14** Conclusion
- 15** Annex 1: International law - an explainer



FOREWORD

“ The great Irish poet Seamus Heaney once wrote of the promise that ‘a longed-for tidal wave of justice can rise up’ and deliver freedom and equality for all. The experience of the last two years however has shown that COVID-19 has compounded injustice, particularly for women who were already in vulnerable situations. The rule of law remains an essential bulwark against abuse and discrimination but much more needs to be done to make it more robust, respected, and accessible. The Elders are deeply concerned that women will continue to be denied their rights as we move into the next stage of the pandemic unless leaders, legislators and lawyers take proactive steps to strengthen justice systems and make them more responsive to women’s specific needs. We hope this paper will catalyse conversations and help set a clear agenda for reform and progress in 2022.

Mary Robinson

INTRODUCTION

COVID-19 has highlighted and exacerbated alarming gaps in justice systems globally, compounded by a worrying disregard in some quarters for the rule of law, particularly at the state level. This is a widespread crisis but has a particular impact on the lives and rights of women, who remain subject to persistent and systemic discrimination.

The imperative to close this justice gap for women and strengthen the rule of law was given further momentum by activism undertaken to mark the 25th anniversary of the Beijing Declaration and Platform for Action in 2020.

The Beijing Declaration envisioned a world that placed women and girls at the centre of policymaking and development. The hope behind these commitments was to create positive changes for women and girls' inclusion, safety, and emancipation.

The Elders participated in several events marking this anniversary at the Generation Equality Forum

organised by UN Women in Mexico and Paris in 2021, celebrating progress made but highlighting the need for stronger political leadership and commitment to realise the goals of the Beijing Declaration.

As we move into 2022, COVID-19 is still an ever-present threat to public health, security and development. It is time for the good work done so far on women's rights to be developed and amplified by decision-makers at the national and international level, including clear commitments and targets in line with SDG 16 on peace, justice and strong institutions, as part of the UN's 2030 Agenda for Development.

This policy paper sets out the international legal frameworks and instruments that all states are obliged to respect, and makes recommendations to governments, civil society, and the legal community to ensure that access to justice and the rule of law form the bedrock of the post-pandemic recovery.

I ~~am an~~
♀ OBJECT.

KEEP
ABORTION
SAFE

I Do What I Want!
Women Empower Women
WOMEN RUN THE WORLD

RA
MARCH

THE IMPACT OF COVID-19 ON ACCESS TO JUSTICE FOR WOMEN

Justice is the foundation for building a better, fairer world. It is also a framework that protects societal progress and individual rights. The inability to access justice diminishes access to economic opportunity, reinforces structures that keep people poor, undermines human potential and inhibits inclusive growth.

COVID-19 has had a damaging effect on the progress made over the past 25 years towards realising the goals of the Beijing Declaration. In 2021, 47 million more women and girls were pushed into extreme poverty, bringing the total number of women living on USD 1.90 or less to 435 million¹. Extreme poverty is a form of injustice, which compounds other forms and practices of discrimination.

Even under "normal" conditions, access to justice for many women is limited, if not unavailable. The pandemic has brought with it new challenges to legal institutions, highlighting concerns for women's ability to access justice safely, promptly and efficiently.

The impact of lockdowns and isolation has meant that women vulnerable to domestic violence

have been further at risk of reprisals while living with their abusive partners. The situation has worsened because support services for women experiencing violence and with psychosocial needs have experienced protracted disruptions and delays due to COVID-related restrictions. This has also resulted in delays in providing justice for survivors of gender-based violence, due to stalled investigations and court processes. Women in prison, already marginalised and very often themselves victims of domestic violence and other forms of abuse, have also faced further hardships due to COVID-19, as a result of changes to prison regimes that do not take account of their specific needs.²

In terms of the economy, industries in which women serve on the frontlines, including healthcare, hospitality, and retail, have either suffered layoffs or become overwhelmed. The informal economy, on which many women rely, has faced severe obstructions with successive lockdowns impairing women's livelihoods and financial security. UN Women reported the income of women working in the informal economy fell by around 60 percent during the first months of the pandemic.³

¹ UNDP, 2020. Impact of COVID-19 on the Sustainable Development Goals. [online] SDG Integration. Available at: <<https://sdgintegration.undp.org/accelerating-development-progressduring-covid-19>> [Accessed 20 September 2021].

² Prais, V., 2020. The Impact of COVID-19 on Women Prisoners – Human Rights Pulse. [online] Human Rights Pulse. Available at: <<https://www.humanrightspulse.com/mastercontentblog/the-impact-of-covid-19-on-women-prisoners>> [Accessed 9 December 2021].

Rope, O., 2020. Coronavirus and women in detention: A gender-specific approach missing - Penal Reform International. [online] Penal Reform International. Available at: <<https://www.penalreform.org/blog/coronavirus-and-women-in-detention-a-gender-specific/>> [Accessed 9 December 2021].

³ UN Women, 2020, cited in UNCTAD, 2020. Impact of COVID-19 Pandemic on Trade and Development. [online] UNCTAD, p.32. Available at: <https://unctad.org/system/files/official-document/osg2020d1_en.pdf> [Accessed 20 September 2021].



STRENGTHENING THE RULE OF LAW TO PROTECT WOMEN'S RIGHTS AND ACCESS TO JUSTICE

The rule of law should be an emancipatory, empowering principle that helps women in their fight for equality and justice. Yet in practice, often the reverse is true, as patriarchal structures, institutions and psychologies within the justice system conspire to keep women and their justice needs ignored or demeaned.

There are three fundamental ways in which women face barriers to accessing justice:

- discriminatory laws;
- discrimination in the application of laws;
- deliberately complex, obtuse and inaccessible justice systems.

DISCRIMINATORY LAWS

The Beijing Declaration called for the integration of “gender perspectives in legislation, public policies, programmes and projects.” Nevertheless, women continue to face significant gendered discrimination across numerous legal spheres, including property rights, access to credit and labour markets.

In many economies, there are discriminatory laws that create barriers to women. Examples include restrictions on business registration, access to leadership roles, travel, owning land and other productive assets, opening a bank account, inheriting family property or taking a job without a husband’s permission. The recent ‘Women, Business and the Law’ report from the World Bank⁴ revealed that women still have only three-quarters of the legal rights of men on average around the world. Only in 10 of the 190 countries included in the study are women deemed to be of equal legal standing with men across all areas measured – Belgium, Canada, Denmark, France, Iceland, Ireland, Latvia, Luxembourg, Portugal, and Sweden.

Worldwide, women only earn 77 cents for every dollar earned by men.⁵ Inequality in the average wages between men and women persists in all countries and across all sectors. The gap widens further for mothers, immigrants, and women whose race or ethnicity makes them a minority in the country in which they live.

Eligibility for social protection frequently depends upon formal employment and women are more likely to lose their jobs than men because their participation in the labour market is often in the form of temporary, part-time, or informal employment. Women also tend to be more deeply affected by a lack of social safety nets such as paid sick leave, maternity leave, or health insurance.⁶

Globally, women living with a partner, in most cases married to a man, are less likely to be in the labour force than women living alone (64.3 percent versus 82.4 percent, respectively).⁷ Legislation allowing a woman to be the head of household is positively correlated with female labour force participation across 98 economies.⁸ The ‘marriage bar’ has been lifted in many countries but discriminatory legislation against married women persists, with the Taliban regime in Afghanistan providing the starkest example of institutionalised and politicised legislative discrimination.

In the developing world, it is often easier for women, especially indigenous and rural women, to have access to traditional and informal systems of justice. It is important to recognise the resonance and usefulness of traditional knowledge and informal systems, and not to assume the transplanting of Western forms of law and justice institutions to other countries is the only way to ensure access to justice for women. Equally though, it must not be supposed that just because a system is grounded in the culture or customs of a community that it is beyond reproach. Informal systems can be highly discriminatory and violate international human rights standards. A lack of clear laws can lead to instability when people resort to conflict and violence to redress injustice and inequality.

It is important to understand such systems and ensure that customary principles do not contradict the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), or override the principle of equality.

⁴World Bank. 2021. Women, Business and the Law. [online] World Bank. Available at: <<https://openknowledge.worldbank.org/bitstream/handle/10986/35094/9781464816529.pdf>> [Accessed 20 September 2021].

⁵UN Women. 2020. Women in the changing world of work - Facts you should know. [online] Interactive.unwomen.org. Available at: <<https://interactive.unwomen.org/multimedia/infographic/changingworldofwork/en/index.html>> [Accessed 20 September 2021].

⁶UN Women (2020) cited in UNCTAD, 2020. Impact of COVID-19 Pandemic on Trade and Development. [online] UNCTAD, p.32. Available at: <https://unctad.org/system/files/official-document/osg2020d1_en.pdf> [Accessed 20 September 2021].

⁷UN Women and ILO, 2020. Spotlight on Goal 8: The impact of Marriage and Children on Labour Market Participation.

⁸World Bank. 2019. Discriminatory Laws Against Women. [online] The World Bank. Available at: <<https://documents1.worldbank.org/curated/en/393191548685944435/pdf/WPS8719.pdf>> [Accessed 20 September 2021].



DISCRIMINATION IN THE APPLICATION OF LAWS

Despite some progress and improvements to legal frameworks and justice systems to date, the justice sector's response to discrimination around the world has been notably deficient, and is often not functioning at a level required to address the severity, nature, and extent of gender-based violence, protect the well-being and safety of victims and survivors, and ensure women's access to justice.

While one in three women worldwide will experience gender-based violence at some stage in their life, perpetrators often face no legal consequences. Only a minority of cases of violence against women are ever reported to the police. An even smaller percentage of reported cases result in charges laid against a perpetrator, and in only a small fraction of those cases is there a conviction.

Police, judicial systems, and prison services all need to take urgent and far-reaching steps to tackle institutionalised misogyny and discriminatory practices, including an end to impunity for abusers and more protections for women working in these institutions, as well as for the women who find themselves within the system as prisoners, defendants, claimants, and witnesses.



INACCESSIBLE JUSTICE SYSTEMS

The inability to access legal and justice services can be both a result and a cause of disadvantage and poverty. There are numerous potential barriers to women, including inaccessible use of complicated legal language, limited social awareness of rights which can exclude women from the judicial system and prevent them from defending themselves and obtaining remedies and reparations, geographic and financial barriers to accessing advice and legal services, and legal proceedings being conducted in the official language of a country when women from minority communities are not provided access to translators and interpreters. This issue is particularly serious for doubly disadvantaged groups of women including migrant women, illiterate women, and women in fragile states.

In many cases, women understand their rights but are unaware of the redress available to them in cases of rights violations. The threat of violence makes access particularly difficult for many women. Given that many women seek or would like to seek legal redress from their relatives and other people known to them, simply informing women of their rights does not guarantee them any type of protection; they need to be proactively empowered and defended by the justice system, its institutions, and officials.

THE WAY FORWARD

A holistic, long-term, and collaborative approach to understanding women's justice needs

Improving access to justice for women and strengthening the rule of law requires a holistic, multi-stakeholder and long-term approach, consistent with the UN's Sustainable Development Goals, the Beijing Declaration, and the commitments made at the Generation Equality Forum. Governments, the legal community, and civil society each have distinctive contributions to make which can generate momentum towards lasting progress in the years ahead.

All constituencies have a responsibility to truly understand women's justice needs, which vary enormously, depending on their socio-economic and family status, location, ethnicity, and other sources of advantage and disadvantage, as well as the nature of the legal system and the extent of protection and discrimination under the law.

Governments have a particular responsibility to repeal existing discriminatory laws, and enact legislation that genuinely protects women

Eliminating discrimination in law goes beyond explicit discrimination to addressing adverse effects that arise due to underlying structural inequalities and a lack of capabilities to claim rights and ensure accountability for enforcement. The focus here is on the role of the law and legal reform, while recognising that these are just part of a larger picture and a multipronged effort to change norms that result in discrimination against women.

Governments must improve data collection and analysis to develop a more comprehensive understanding of the scale of the justice gap as it affects women

Many countries have collated information about the performance of their justice institutions, including the number of crimes reported to the police, the number of court cases, or how long it takes to reach a judgement. But data is usually insufficiently disaggregated, and reveals little about women's true experience of justice systems. There is also a need for improved data and analysis on issues that are of particular importance to women, such as intimate partner violence.

The legal community has the responsibility to increase the number of women in senior positions within the justice system

Globally, the vast majority of justice institutions – the judiciary, magistracy, police, and Ministries of Justice - have more men than women in senior positions. For example, though there has been progress in some countries where women make up more than 30 percent of judges (e.g., France, 71 percent; Italy, 53 percent; El Salvador, 49 percent; and Germany, 45 percent) in others, the numbers are persistently low. Kuwait has no women judges, Iraq has just 7.6 percent, and Nepal 3.8 percent.⁹ Even in the places where more women have been appointed as judges, they are still vastly under-represented in top-ranking positions. Senior justice system officials have considerable influence over both the laws that are passed and the way they are enforced. It is therefore critical to increase the number of women in decision-making positions within justice systems at all levels.

Legal institutions and practitioners should take proactive steps to ensure that services for women are accessible and empowering

All actors seeking to advance justice should support appropriately funded policies and programmes designed to overcome the challenges facing poor and excluded women, alongside investments in legal literacy and poverty reduction programmes. Promoting efforts to provide pro-bono and paralegal services for vulnerable girls and women is one way of helping to improve their access to the justice system.

Civil society actors have a role to play in articulating the need for a people-centred approach to justice

A people-centred approach to justice should be one where the needs of people, rather than institutions, are at the heart of justice systems. This approach must be inclusive of community-level justice advice and assistance that empowers people to better understand and use the law. People-centred justice systems should prioritise the needs of those who are most marginalised, and enable fair outcomes and remedies to justice problems.

Services for survivors of gender-based and domestic violence must be regarded as essential by governments and should be resourced and made accessible, especially to marginalised and impoverished groups

Civil society should be funded and equipped to increase grassroots services providing holistic support and legal services for women and girls, particularly for survivors of sexual violence.

⁹UN Stats, 2021. SDG indicator metadata. [online] Unstats.un.org. Available at: <<https://unstats.un.org/sdgs/metadata/files/Metadata-16-07-01c.pdf>> [Accessed 20 September 2021].

CONCLUSION

The global experience of COVID-19 has highlighted the importance of prevention and preparedness in dealing with public health crises. Precisely the same logic applies to closing the justice gap and protecting the dignity and rights of women.

A people-centred justice system concerned with pro-actively preventing injustice, not just addressing its consequences, can reap large societal benefits in terms of improved health and well-being, more peaceful societies, better economic outcomes for individuals and communities, and improved returns on government investment.

The world faces a critical opportunity to shift the justice paradigm as part of the wider post-pandemic recovery, and all actors have a responsibility to step forward and seize the moment.

Annex 1: International law – an explainer

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both in force since 1976, clearly state that the rights and freedoms of these legal instruments must be afforded equally to women and men.

Yet there is a significant gap in domestic adoption and implementation of international law. In countries that have enacted laws that uphold their international commitments, there is frequently the underlying issue of non-enforcement.

Cultural, political, and religious spaces continue to be dominated by men in many poor countries, forming a barrier to the realisation of gender equality. Also lacking in many states are community level initiatives - an important step towards cultivating a culture that empowers women at all levels. Additionally, there is a significant role to be played by sub-regional initiatives such as ASEAN, SAARC, or the Union of South American Nations in fostering collaboration between states to end all forms of discrimination against women and girls.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted in 1979, sixteen years before the Beijing Declaration and Platform for Action, and has been ratified by over 180 countries. The Convention remains the most consolidated legal instrument on empowering women, incorporating provisions from previous conventions on women's rights, and serving as an international bill of rights for women. The Beijing Declaration in 1995 intensified efforts to fully implement these international human rights instruments.

Despite the provisions of CEDAW, many girls and women still do not enjoy the same labour rights as men. There continue to be obstacles for women seeking access to higher education opportunities or vocational courses in developing countries and marginalised communities. These include social, cultural, and financial barriers that prevent women from having an equal stake in the labour market.

The International Labour Organisation (ILO) adopted the Equal Remuneration Convention in 1951. The Convention, in force in more than 170 countries, aims to ensure that men and women employed for “work of equal value” have equal pay without gender-based discrimination.

Seven years later, in 1958, the ILO adopted the Discrimination (Employment and Occupation) Convention. It required States Parties, of which there are 175, to introduce measures for groups, such as girls and women, that require special protection from discrimination.

Provisions from the Convention on the Political Rights of Women (1952) were incorporated into Articles 7 and 8 of CEDAW. These provisions stipulate women must be on equal footing in their participation in political and public life. Yet in many countries around the world, women still face barriers to being active participants in voting, policymaking, and civil society. These obstacles are a particular concern for women and girls in marginalised communities. According to international law, States Parties to the CEDAW must prohibit employers from dismissing their employees based on pregnancy, maternity leave, or marital status.

The ILO also adopted two conventions that outline the rights of women and men in family and working life: the Workers with Family Responsibilities Convention (1981) and the Maternity Protection Convention (2000), reasserting that family responsibilities should not impede one's ability to advance economic activity or serve as a basis for discrimination.

Protection against gender-based violence is a critical element of the international legal framework that can deliver access to justice for women. The 1993 UN Declaration on the Elimination of Violence against Women defines “violence against women” as an act of violence perpetrated against women that can result in “physical, sexual, or psychological harm or suffering” (Article1).

In addition to acts of violence, the definition also includes threats to violence, coercion, and arbitrary detention, whether in a woman's private or public life. Article 2 of the 1993 Declaration, and UN's General Recommendation 19 on CEDAW, go further to state that “violence against women” includes domestic forms of violence perpetrated by the family, including: sexual abuse; dowry-related violence; acid attacks; forced marriage; marital rape; and female genital mutilation. These prejudices, as elaborated under Article 4(j), feed into persisting manifestations of historically unequal power relations between men and women, and gender stereotypes and inherent biases that shape the norms, behaviour and expectations of men and boys.

The CEDAW General Recommendation 19 (1992) states that gender-based violence severely restricts rights and freedoms afforded to women. Adding to the definition of “gender-based violence”, the UN document distinguishes it as violence specifically inflicted on a person because of their gender, and forms of violence that disproportionately impact women. It also clarifies that the CEDAW provisions apply to violence perpetrated by state authorities.

“ **The Elders can speak freely and boldly,
working both publicly and behind the scenes.**

**They will reach out to those who most need
their help.**

**They will support courage where there is fear,
foster agreement where there is conflict and
inspire hope where there is despair.**

Nelson Mandela, 2007, Founder of The Elders



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