



Strategic Advocacy
Human Rights



**Submission to the United Nations Special Rapporteur
on the Independence of Lawyers and Judges.**

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Submitted by¹ Strategic Advocacy for Human Rights - SAHR

SAHR is an international NGO seeking to fuel a worldwide network of Human Rights Defenders (HRDs) to strengthen laws, policies, and practices to end Sexual and Gender-Based Violence (SGBV), influencing change at the systemic level and pushing for survivor-center and intersectional changes in law and policy.

A. Understanding the issue

Sexual and Gender-Based Violence is the most pervasive human rights violation of our time. The UN Women described violence against women as “a pandemic”² and the violence that is being committed on LGBTQI+ persons, as well as men and boys on the basis of their gender, is similarly grave and serious - though disproportionately underreported.

The justice system is not friendly, supportive, capable and, above all, equitable. Many survivors of violence are turned away, forced to mediate with perpetrators, denied their right to register their reports, and their testimony is treated discriminatorily. Many forms of gender-based violence are also still not recognized as crimes in many countries.

Statistics

- WHO described VAW as a “public health problem of epidemic proportions”³, affecting from 35 to 70 per cent of women and girls globally according to national studies.

¹ The report was co-authored by Catalina Dominguez-Fernandez, Natasha Latiff and Sara Bergamachi of SAHR, together with Evelyn Bisona Fonkem from Cameroon, Turaya Yusr from Yemen, Irene Abbock from Vanuatu, Manisha Dissanayake from Sri Lanka, Enjeela Hedayat from Afghanistan, Isabella Mwangi from Kenya, Mary Adhiambo Ojwang from Kenya, Florencia Valentina Maldonado from Argentina, Perfect Kashoti from Malawi, Marissa Kardon Weber from USA, Galia Melendez from Mexico, Asan Ramadan from South Sudan, Awok Nancy from Kenya, Yuping Zhang from China, Martha Jobe from South Sudan, Pirjo Turk from Estonia, Kaavya Viswanathan from India, Hagin Watwati from Kenya, Sima Jallad from Palestine, and the organizations Africa Youth Trust from Kenya and Women & Justice from India.

² UN Women, “Facts and Figures: Ending Violence against Women: A pandemic in diverse forms”, URL: <http://www.unwomen.org/en/what-we-do/ending-violence-againstwomen/facts-and-figures>.

³ World Health Organization, “Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner violence”, 2013, page 35.

- WHO (2013) stated that more than one in three women worldwide (35.6%) reported having experienced sexual or physical violence. Violence against women evidently “pervades all corners of the globe, puts women’s health at risk, limits their participation in society and causes great human suffering”.⁴
- More than 2.5 billion women and girls are affected by discriminatory laws and lack legal protection, and only 13% turned to an authority or a third party to help resolve the problem⁵.
- Over 50 countries maintain some form of gender discrimination in their national laws, such as denying women the equal right to confer nationality to spouses or linking women’s nationality to their marital status⁶.
- In 2019, in about 101 countries, 53% of women report experiencing a legal problem⁷ and 28% of countries that prohibit gender discrimination in the workplace, do not guarantee protection against retaliation for reporting⁸.
- 16% of the world's women live in countries where domestic violence is not criminalized⁹.
- From 2017-2019 disabled people are victims of violence at almost four times the rate of non-disabled people¹⁰.
- It will take up to 286 years to close gaps in legal protection and eliminate discriminatory laws¹¹.

B. Legal Empowerment as a means to access justice.

Legal empowerment is an approach that utilizes legal mechanisms to pursue transformative improvements to laws and systems in communities confronting injustice. It is a tool used to overcome impunity, that allows all human beings to **know and understand their rights** and provides a deeper understanding of the procedural safeguards and procedures that may be enacted and against which everybody must assert their rights.

⁴ World Health Organization, “Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner violence”, 2013, page 35.

⁵ UN Women 2019.

⁶ Global Campaign for Equal Nationality Rights, “The Problem”, 2018, URL: <http://equalnationalityrights.org/the-issue/the-problem>.

⁷ World Justice Project, “Global Insights on Access to Justice Report”, 2019, URL: <https://worldjusticeproject.org/our-work/research-and-data/global-insights-access-justice-2019>

⁸ Jody Heymann, Aleta Sprague, and Amy Raub, “Equality within Our Lifetimes: How Laws and Policies Can Close – or Widen – Gender Gaps in Economies Worldwide”, URL: <https://www.worldpolicycenter.org/events-launches/equality-within-our-lifetimes-how-laws-and-policies-can-close-or-widen-gender-gaps-in-economies-worldwide>.

⁹ OECD, “Social Institutions and Gender Index”, 2023, URL: <https://www.oecd.org/stories/gender/social-norms-and-gender-discrimination/sigi>

¹⁰ Kiara Alfonseca, “Crime against disabled people is rising and advocates say more needs to be done”, 2021, URL: <https://abcnews.go.com/US/crime-disabled-people-rising-advocates/story?id=81210410>

¹¹ UN, “Alcanzar la igualdad de género para las mujeres costará 300 años al ritmo de progreso actual”, 2022, URL: <https://news.un.org/es/story/2022/09/1514031>.

Through legal empowerment, people affected by inequality and human rights abuses can use the law and justice system to solve their problems and make choices and exercise control over their lives through law, legal information, and action.

UN CEDAW in its General Recommendation 35 defines access to justice as encompassing aspects like justiciability¹², availability¹³; accessibility¹⁴; good quality¹⁵, provision of remedies for victims¹⁶, and accountability¹⁷. What are the indicators of legal empowerment that links with UN CEDAW's framework on access to justice?

Element of access to justice	Indicators of legal empowerment as an enabler of access to justice?
Justiciability	<ul style="list-style-type: none"> ● Access to coordinated mechanisms of holistic services: legal aid, psychosocial support, protection assistance and other. ● Being immune from being penalized (for abortion, illegal migration, sex work etc.) ● Access to information about law and procedure. ● Be able to participate in legal proceedings.
Availability	<ul style="list-style-type: none"> ● Courts, quasi-judicial bodies, tribunals, one-stop centers, legal aid offices, tele-court centers, whether mobile or stationary in urban, rural, and remote areas. ● Free helplines to get legal advice.
Accessibility	<ul style="list-style-type: none"> ● Transportation costs to travel to courts and legal aid offices are provided. ● Infrastructure of the court is arranged to accommodate physically disabled people and supply special needs. ● Risk assessments are conducted for survivors, witnesses, and their family members during a case. ● Representatives and survivors are given adequate police protection before, during and after trials.
Good quality	<ul style="list-style-type: none"> ● HRDs are equipped to find opportunities within procedural and substantive law to contextualize claims, increase victim and other stakeholders' participation in the justice process. ● HRDs are equipped to link the social and economic consequences of survivors seeking justice and ensure

¹² Unhindered access to justice and ability and empowerment to claim rights.

¹³ Establishment of courts, quasi-judicial bodies, or other bodies throughout the State party in urban, rural, and remote areas.

¹⁴ All justice systems are secure, affordable, and physically accessible to women, and be adapted to their needs.

¹⁵ Justice systems are contextualized, dynamic, participatory, competent, efficient, independent, impartial and gender-sensitive.

¹⁶ Viable protection and meaningful redress are provided.

¹⁷ Actions of justice system professionals and their legal responsibility is adequately monitored.

	<p>that remedies mitigate or prevent such consequences from happening.</p> <ul style="list-style-type: none"> • HRDs are equipped to apply for protection orders for survivors. • Judges and prosecutors are vested with a duty to issue and evaluate the implementation of protection orders and require compliance by law enforcement. • Judicial actors facilitate space for interdisciplinary understanding of a case to ensure that procedures, and decisions are contextualized, practical and gender sensitive. • Non-traditional experts are entitled to participate in the justice process.
Provision of remedies for victims	<ul style="list-style-type: none"> • HRDs are aware of remedies available under national and international law and are able to apply for them. • Judicial actors are mandated to advise, opine on or order remedies beyond the individual level to target non-recurrence of the issue at a systemic level. • Judicial actors meet with stakeholders to understand and assess what would amount to meaningful redress for survivors. • Judicial actors are vested with the duty to monitor and enforce implementation of remedies.
Accountability of justice systems	<ul style="list-style-type: none"> • HRDs are equipped to document cases based on the above principles and gather accurate statistics to inform and advocate towards decision makers. • HRDs are networked with government officials and bodies. • HRDs are able to link violence against women and LGBTQUIA+ persons as a form of gender-based violence and explain the differential impact of violence as a result of their intersectional identities.

C. Barriers to Justice

What are barriers which HRDs face which affect their own legal empowerment when representing or helping survivors?

Parameters	Barriers
Justiciability	<ul style="list-style-type: none"> • Religious laws which govern personal status hinder women's ability to claim their rights. • Some forms of gender-based violence are not crimes, and therefore not criminally prosecutable. • Short statutory limitation periods leave many without legal ability to file a claim once the period is over.
Availability	<ul style="list-style-type: none"> • Most courts are established in urban centers and the cost of accessing them is too high.

	<ul style="list-style-type: none"> ● Court representative bodies within rural areas are not well contextualized. ● Benches of appellate courts are in big cities, making judicial fora unavailable to citizens. ● Even if courts are available, the lack of outreach work by the courts with the community results in most survivors avoiding the court system, especially if their cases touch on taboo topics.
Accessibility	<ul style="list-style-type: none"> ● Harmful gender stereotyping prejudices women's testimony. ● HRDs and lawyers who support survivors are harassed online and offline, stigmatized publicly and alienated through harmful narratives about their work. ● Lack of recognition of grassroots human rights defenders. ● Lack of knowledge on the presence of victim and witness protection and other forms of support on the ground.
Good quality	<ul style="list-style-type: none"> ● Lack of awareness and training on gender-based violence amongst law enforcement and judicial personnel. ● Lack of support prevents many survivors from reporting and proceeding with their claims. ● Circle of re-victimization. ● Victims are reduced to mere witnesses, so they do not have an active role in the process. ● Lack of a comprehensive care that allows survivors to continue healing as they seek justice. ● Biases and discrimination within the legal system/profession ● Lack of judicial precedents and jurisprudence to promote and uphold the rights of survivors and HRDs. ● Case delays lead to survivors' fatigue and deter survivors who want to report violence. ● Lack of cooperation between inter agencies. ● Inadequate resources and ICT equipment in police, courts, and other offices. ● Lack of case management system
Provision of remedies for victims	<ul style="list-style-type: none"> ● The criminal justice system does not deal with underlying issues such as economic inequalities. ● Focus is on punishment and not rehabilitation or restoration. ● Many governments do not have survivors' funds to compensate survivors in case defendants are unable or unwilling to.
Accountability of justice systems	<ul style="list-style-type: none"> ● Due to a state of impunity, survivors are left in vulnerable conditions, and they can suffer violence again.

	<ul style="list-style-type: none"> ● Outdated laws ● Many lawyers, prosecutors, judges are not adequately trained on gender-based violence. ● Transfer of judicial officers. ● The lack of female judges in the legal system. ● Lack of a proper government case management system.
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D. Examples of legal empowerment modalities and innovations

Kenya:

- The Legal Aid Act 2011 allows the paralegals to take part in alternative dispute resolutions which includes mediation and arbitration under supervision. Further, paralegals can sit-in in courts to offer support to the survivor.
- Use of alternative justice systems is encouraged to decongest the backlog of cases in court.
- Existence of a small claims court to handle minor cases and paralegals are allowed to preside over such cases within the community and register the outcome in court.

Cameroon:

- GBV Referral Pathway helps survivors to have access to Case Management Services provided by NGOs and HRDs.
- The Federation for International Female Lawyers support SGBV survivors legally, by ensuring that perpetrators of SGBV are punished and survivors get the assistance they need.
- Listening and Orientation Units support survivors of SGBV with mental health and psychosocial support counseling.

Vanuatu:

- Authorized persons in remote villages can act as Court Representatives of GBV/ SGBV to refer women to Safe Houses.
- Village chiefs are involved to resolve intimate partner violence.

Colombia:

- Hospitals carry guidelines on available psychological and legal support to educate and give awareness to victims about the legal process and services available.

Argentina

- Women and LGTBQI+ organizations are able to intervene in legal proceedings and address oppressive structures and practices within the judicial system.

Afghanistan: (2001-August 15, 2021)

- Some organizations established Safe Houses or Shelters for SGBV survivors. Various facilities, such as psychological and legal assistance, are available in those Safe Houses. GBV survivors in cities and rural areas who did not have access to the legal system can access justice through consultations within the safe houses.

Malawi:

- Some organizations are building the capacity of teachers in psychosocial counseling

to help them offer support for SGBV survivors among students.

- More efforts have been dedicated to increasing the awareness of rights defenders and police leading to reductions in GBV case withdrawals.

Sri Lanka:

- Organizations have been formed with the support of the formal Bar Associations to provide young lawyers with support in terms of finances and mental health.

India:

- Supreme Court judgments are translated into regional languages to increase access to justice¹⁸

Others:

- The introduction of GBV hotlines simplifies the issue of referrals, thereby strengthening the work and connections between human rights defenders, police, lawyers, and health practitioners.
- Provisions (along with an adequate data protection framework) for court proceedings to be conducted virtually in cases of SGBV. The option to attend court hearings virtually will reduce the risk of retraumatization of SGBV survivors on seeing the perpetrators face to face.

E. Examples of partnerships between lawyers, paralegal and other justice advocates

Kenya:

- Partnership between legal advocates and police departments led to the creation of SGBV desks to support survivors of GBV in rural settings who are traditionally prevented from voicing their views and owning property.

China:

- Non-profits specialized in property management partnered with a government agency, working closely with residents of different “micro districts” to advocate for women and children’s rights.
- Shelters in micro-district were set up giving community residents easy, confidential access to shelter spaces and hotlines.

South Sudan:

- Judiciary and other legal entities partner to create mobile courts, providing services on a monthly basis to reach communities with poor access to the justice system and who are at higher risks of SGBV.

Sri Lanka:

- Some public interest litigation cases filed have sought the appointment of committees, operating under the aegis and mandate of the court, who are tasked with specific functions and duties to further the relief sought in the petitions.

¹⁸ <https://www.hindustantimes.com/cities/delhi-news/sc-judgments-to-be-now-available-in-4-languages-says-cji-101674588729524.html#>

F. List of Recommendations

- Promote coordination of multi-disciplinary teams, and push for comprehensive and coordinated policies that place the victim/survivor at the center of the measures.
- Advocate for legal literacy programs, legal aid, or alternative dispute resolution mechanisms, to achieve the principle of equality into practice.
- Review gaps in existing laws and develop new laws that protect people against gender-based violence and, above all, adapt the legal systems so that they are treated with dignity and effectiveness¹⁹.
- Implement and enforce Prevention of Sexual Harassment Exploitation and Abuse policy in the workplace, particularly female and LGBTQUI+ staff so that they feel safe at work.
- Recognize and promote legal empowerment of women and LGBTQUI+ intermediaries at the international level by supporting paid fellowships and internships, provision of scholarships and work opportunities.
- Investigate acts of intimidation, threats, violence and other abuses against human rights defenders and lawyers.
- Eliminate structural drivers of gender inequality that impede empowerment, agency, and participation of women and LGBTQUI+ by promoting safe work environments where their agency can be exercised, practiced, and achieved.
- Develop monitoring and evaluation goals, objectives and indicators which are based on feminist principles, and which foster agency and participation of women and LGBTQUI+ persons in high-level and systemic decision-making.

¹⁹ <https://rm.coe.int/cepej-2022-10-guidelines-on-gender-equality-en-adopted/1680a95679>