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THE JUSTICE DEFICIT: A GLOBAL OVERVIEW

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Executive summary

Violence against women and girls (VAWG) is among the most prevalent of human rights violations. It takes multiple forms yet always has the effect of social control over women and girls, restricting their freedoms, opportunities and realisation of all other rights. One in every three women is subjected to this violence¹ – a number which is even greater for women and girls with disabilities and is compounded by other factors such as forced migration or being a religious or ethnic minority.

One in every three women worldwide will experience physical violence or sexual abuse in their lifetime, most likely at the hands of someone they know.²

Despite that, there is widespread impunity for violence against women and girls. Instead of governments ensuring that legislation, policy and practice protects women and girls and imposes sanctions on perpetrators, women and girls who have been subjected to violence face barriers at every turn. From legislation that explicitly or implicitly permits violence such as rape in marriage or domestic violence, to humiliation at the hands of police officers, judges and lawyers, to stigma and destitution, the barriers that women and girls face can seem insurmountable. Compounding all this are related issues such as women’s poverty, illiteracy and restrictions on women and girls’ freedom of movement. In the most extreme cases, simply reporting a case of rape can mean a woman or girl risking her life or liberty.

In many of the countries where ActionAid UK works, countries are still dealing with colonial legacies. Patriarchal laws that privileged 19th century Europeans are still in place, reinforced by archaic and inappropriate procedures that alienate most citizens, especially women and girls. Governments choose to continue with these systems, laws and procedures despite their detrimental impact on more than half of their populations.

This global overview paper represents the start of a major campaign by ActionAid UK to bring these issues to public attention, to mobilise governments and the UK public and to support human rights organisations working in partner countries. The

document complements case studies conducted in partner countries where specific issues are examined in greater detail. It provides a global snapshot, addressing barriers to women and girls’ access to justice at the national, regional and international levels.

There is much positive and transformative work and practice taking place. Effective law and policy reform campaigns and lobbying done by women’s rights organisations and civil society, coupled with receptive and rights-based actors in governments, are making changes to laws and policies on violence against women and girls. These organisations, in addition to bringing about legislative change, also work tirelessly to hold governments accountable for the implementation of legislation.³ The number of countries without specific legislation on domestic violence is decreasing and some countries that appeared intransigent about child marriage are rethinking their position.⁴ International commitment is reflected in the Sustainable Development Goals which recognise the centrality of effective justice for women and girls to realise development across all sectors.

But there is more to be done. Discriminatory legislation needs to be repealed or reformed, justice provision needs to be physically accessible, police and court personnel need to understand their mandates and apply them without discrimination, while attrition for violence against women and girls needs to come down to the same level as any other crime. Governments need to honour their obligations under the international standards that they subscribe to, and adhere to the universal human rights standards of non-discrimination, the rule of law and accountability.

Recommendations

Until women and girls who have been subjected to violence have access to justice, there will continue to be impunity.

However, there is much that governments, donors, international bodies and others can do to improve the response to these human rights violations. Although this paper focuses on the criminal justice system, it is clear that what is needed, in addition to a multi-sectoral approach, is a structural approach that addresses the failure of the justice system, religion and cultural dynamics within the context of the global political, economic and social structures. Good practice in this regard includes the Essential Services Package for Women and Girls Subject to Violence,⁵ laws that provide public services for women such as a new law in Albania that provides low-cost housing for survivors of domestic violence⁶ and provision for ‘one-stop centres’ integrating health, counselling and legal services.

For governments:

- Implement relevant recommendations of the UN and regional treaty monitoring bodies and Special Procedures and adopt the jurisprudence of international courts and tribunals.
- Implement the Essential Services Package for Women and Girls Subject to Violence.
- Develop national action plans on the justice sector, where there are none, and ensure political follow-through where plans exist that promote gender equality, remove barriers to women and girls’ access to justice and include rigorous monitoring mechanisms.
- Increase and make national budgets available for access to justice and formulate gender-responsive public services.
- Review relevant legislation so that it does not discriminate against women and girls, perpetuate negative notions of women and girls as second class (or non) citizens and perpetuate VAWG. In particular, reform laws that permit child marriage or allow any *specific* form of violence (including sexual violence) against women in *or out of* marriage or other forms of relationships with men. Adopt the provision in the Convention on the Rights of the Child that all legislation affecting children should make the interests of the child a primary consideration.

- Include access to justice in national action plans on health, education, gender equality, human rights, women, peace and security.
- Train and equip police, prosecutors, defence lawyers and associated personnel to deal appropriately, judicially and respectfully with women and girls who have been subjected to VAWG.
- Ensure that refugee determinations include VAWG as an act of persecution within the meaning of the 1951 Convention.
- Conduct meaningful consultations with civil society – particularly women’s human rights organisations and the legal profession.

For donors and international organisations:

- Ensure adequate resourcing of gender equality measures across programming in all sectors to (a) ensure that survivors of VAWG are not subject to discrimination and (b) enable access to effective justice for survivors of VAWG.
- Allocate resources to support the reform of discriminatory legislation.
- Invest in justice provision for poor, marginalised communities.
- Support existing initiatives by civil society – particularly women’s human rights organisations – for reform of the justice sector, legislative reform and accountability measures.
- Press for national governments to ratify and implement relevant international standards relating to VAWG.
- Put in place best practice measures for preventing, investigating and sanctioning sexual abuse and exploitation.
- Put in place a systematic programme of support to help recipient countries to implement UN treaty bodies’ and Special Procedures’ recommendations.
- Support to women’s organisations advocating or litigating for legislative reform and government accountability.
- Ensure appropriate expertise in women’s human rights in justice sector support.

Introduction

Why Action Aid UK is addressing this issue

Violence against women and girls (VAWG) is one of the most prevalent and widespread human rights violations in the world today. It both reflects and reinforces patriarchy, used invariably for the social control of women and girls, defining their behaviour, restricting their freedoms, preventing their participation in public life or decision-making and ensuring that men retain their positions of power and control over their lives.⁷

The Declaration on the Elimination of Violence Against Women – the founding, global document in this area – defines VAWG as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”⁸ The UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee) states that: “Violence that is directed against a woman because she is a woman or that affects women disproportionately” both constitutes a human rights violation and impairs the realisation of women and girls’ human rights – economic and social rights as well as the right to bodily security and equality at home, at work and before the law.⁹ The prominence of VAWG in the targets and indicators of the Sustainable Development Goals¹⁰ reflects a global recognition that the reduction of VAWG is both an indicator of and a pre-requisite to development.

It is estimated that one in every three women is subjected to this violence, with 35% having experienced either physical and/or sexual violence by an intimate partner or sexual violence at the hands of someone else.¹¹ It is a global phenomenon and affects women and girls of all socio-economic backgrounds. Just a few examples of the many forms that VAWG takes include: so-called ‘honour’ killing in Afghanistan, enforced pregnancy in Argentina, breast-ironing in Cameroon, child marriage in Chad, conflict-related rape in the Democratic Republic of the Congo, sexual harassment in Jordan, sexual slavery in Nigeria, Italy or the USA, domestic homicide against women in the Russian Federation, female genital mutilation (FGM) in Somalia, rape in detention in Sudan, ‘corrective’ rape in South Africa and gang rape in the UK, to name but a

few. No matter what form it takes, this violence is usually met with impunity. As well as often exacerbating the impact of the violence, impunity reflects the explicit or implicit social acceptance of VAWG, in turn contributing to the likelihood of the violence being committed. A man who commits violence against a woman or a girl – whether she is known to him or not – does so because he is confident that he will not suffer any criminal or social sanction.

Across the globe, lack of access to justice means that any effective remedy for survivors of VAWG is out of reach for many – if not most – women and girls. For a variety of reasons, women and girls are frequently unable to report to the police, frontline services or even within the community. Legal and procedural barriers to achieving justice include outdated laws from colonial times that require corroboration in cases of rape or fail to recognise forms of domestic violence; the downgrading of women or children’s testimony; fear of retribution or stigma; and discriminatory social norms held by the judiciary, police and other justice providers. In many countries globally, access to justice is hindered by the fact that many institutions facilitating access to justice are not adequately funded or supported by governments, for example, legal aid and citizens’ advice centres, and women and girls’ refuge centres. In many countries, a range of factors drive survivors to customary or religious institutions. And in some instances, the fear of societal shaming prevents women and girls from seeking justice. In some cases, reporting is itself a life-threatening decision. This means that women and girls are left without remedy, often locked into relationships with violent men, stigmatised, traumatised, injured and unable to realise their full potential.

ActionAid is an international human rights-based non-governmental organisation (NGO) that works with women and girls living in poverty. At the heart of our work is addressing violence against women and girls, which ActionAid sees as central to the rights of women and girls. It is ActionAid’s belief that ending violence against women and girls will lead to the full achievement of other development outcomes for women, girls, their families, their communities and their nations.¹³

Purpose of the global overview paper

ActionAid UK has commissioned this global overview paper to inform a three-year access to justice campaign in the UK and with members of the ActionAid Federation. ActionAid UK's strategy, *Together with women and girls*, creates an unprecedented opportunity to deepen and develop global positions, policy and advocacy work on violence against women and girls in recognition of the central role played by justice – or the lack thereof – in preventing and responding to this human rights abuse. To this end, ActionAid UK is working with Federation partners in the Global South to conduct research to support their policy influencing work. The research will take advantage of the fact that the Department for International Development (DFID) launched its Strategic Vision on Gender Equality in March 2018, re-committing to its work on violence against women and girls. The global Leave No-One Behind agenda affirms the international commitment to ensuring that development is relevant and effective for everyone as does the recognition across the Sustainable Development Goals that issues of discrimination such as violence against women and girls are fundamental barriers to global development.

ActionAid UK, together with our Federation partners in Nepal, Kenya, Jordan and Ghana, will be developing country case studies to reflect a cross-section of instances where laws are lacking, where good laws exist but implementation is lacking and where weak laws and weak implementation collide. The case studies will enable a deeper analysis of women and girls' access to justice for specific types of violence. The global overview paper aims to complement the country case studies, providing a brief, global overview of the barriers that are faced by girls and women and making recommendations for action by governments, the UK public and ActionAid UK to make justice accessible to women and girls whenever they are subjected to this human rights violation.

Structure of the global overview paper

Following this introductory section, the paper outlines the barriers faced by women and girls in accessing justice when they have been subjected to violence. While largely focusing on the criminal justice system, the paper also considers other areas in which women and girls need and are entitled to justice and considers the alternatives that women and girls choose or are obliged to choose

– including no alternative. The paper recognises that forms of discrimination such as those based on race, disability, ethnicity, religion and age (to name just a few) intersect with gender-based discrimination to create and exacerbate barriers to justice.

Section One outlines the main categories of barriers that are faced by women and girls. This section introduces the main influencing factors that result in the justice deficit, such as negative social norms, legislative and procedural legacies and power imbalances.

Section Two outlines the relationship between women and girls' gender and other forms of discrimination and marginalisation in accessing justice.

Section Three gives a brief explanation of the relevant international and regional legal regime, including the international and regional human rights mechanisms and law, relevant international humanitarian law and other international law that has a bearing on women and girls' access to justice.

Section Four addresses what can be done. Adopting the belief that what needs to be done can be done, this section examines what needs to be done most urgently to improve compliance with international and regional human rights standards, making recommendations for national governments, donors (governments and multi-lateral agencies) and for other practice by international organisations (e.g. NGOs). Some instances of promising or positive practice are highlighted in this section, not least to demonstrate that change is possible.

Section Five focuses on the fact that progress must be measured, tracked and recorded to avoid back-sliding, to give encouragement to governments and civil society, and to ensure that good practice is supported, scaled up and replicated where appropriate. Some suggestions are made, therefore, on how to monitor and evaluate progress in women and girls' access to justice.

Section Six ties the global overview paper together and gives some conclusions to guide future programming and other action by governments and the UK public.

Section One: The barriers

The barriers faced by women and girl who are survivors of violence are always gendered. This is either because the barrier they face is specific to their gender or because the barriers are general but exacerbated or compounded by their gender. In all cases, discrimination on the basis of gender – *de jure* or *de facto* – is central, reinforcing, reflecting or enshrining patriarchal norms that subjugate women and girls.

Many countries are still dealing with a legacy of colonialisation, reflected in laws, institutions and social structures, cultural norms and practices. For instance, criminal legislation that reflected the priorities of the 19th century British elite are still in place in some countries that were colonised by Britain and European countries, supported by institutions that reflect colonial powers' need to delegate social control to a trusted sector of society. While these groups vary across contexts, they are invariably male and support male control of societies. While colonialisation is far from being the only or determining factor in preventing women and girls from accessing justice, it has enshrined patriarchal power structures that exist today. Importantly, the governments and institutions of countries that have withstood invasions or gained independence choose to continue patriarchal structures and institutions – reflected by legislation, policy and practice – to the detriment of women and girls.

“There's no crime.”

The primary obstacle to redress or other forms of justice for VAWG is where the violence itself does not constitute a specific criminal offence. Women's rights advocates have found that, without specific legal provision that criminalises the different forms of VAWG, women and girls are forced to rely on generic criminal provision that may not include their experience – particularly regarding domestic violence.¹³ According to the UN, 49 countries have no laws specifically protecting women from domestic violence.¹⁵ Domestic violence usually starts as relatively minor attacks that leave no signs, frequently escalating to serious, sustained and repeated attacks. The lack of a specific provision, therefore, forces women and girls to rely on generic criminal law which may not include acts of violence that fall short of 'serious' violence, such as broken bones or lacerations. In Lebanon, for instance, the 2014 domestic violence law¹⁵

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prohibits crimes such as forced begging and adultery but leaves the crimes of assault and threats to the Lebanon Penal Code.

Rape in marriage is one of the most frequent examples of where the law is either silent or – in 37 countries – specifically excepted (where non-consensual sexual intercourse is prohibited except against a spouse).¹⁷ In either case, no crime of rape can be committed when the man is married to his victim.

In some cases, different forms of VAWG are legitimised by national law. In the state of Massachusetts, for example, a court can allow a child to be married. In the UK and Brazil the marital age is set at 16 with parental consent. And Zambia's report to the CEDAW Committee explained that there is no legal minimum because any girl who has attained puberty can be married.¹⁷ Regarding female genital mutilation (FGM), many countries (and states within countries) have been reluctant to comprehensively criminalise this human rights abuse, bowing to political lobbies¹⁹ or powerful religious bodies²⁰ or (as in the UK until 2003) in the belief that it may drive the practice underground.²⁰

In cases where legislation *does* prohibit VAWG, survivors may not report the crime because social norms suggest that no crime has occurred. For instance, when rural women and men in Sierra Leone talk about rape, it is almost always in the context of the rape of a child, never of an adult woman,²¹ while in many countries, if a woman is suspected of being at all promiscuous at any point in her life, it may be considered that she 'cannot' be raped.²² This phenomenon may overlap with other forms of denial. During the Darfur conflict in the mid-2000s, for instance, the Sudanese government arrested senior representatives of *Medecins Sans Frontieres* for publishing a report about the rape cases it was treating.²⁴

“Previous complainant behaviour excuses the crime.”

Discriminatory norms may be reinforced by the treatment of complainants by law enforcement or prosecution agencies. For instance, in England and Wales, it is now standard procedure for the police to take the complainant's phone away in case there is any evidence of her giving previous 'consent' to sex with the defendant, although previous sexual history has not been routinely inadmissible since 2003 and this does not usually happen in other criminal cases where the parties are known to each other.²⁴ In instances such as this, where it is the complainant's behaviour which is scrutinised, the message to women and girls is that she will not be considered a legitimate victim; that no real crime has taken place. In jurisdictions where investigation for sexual violence is dependent on a medical report, only rape that is medically obvious can be prosecuted.

Reporting is risky

Legislation in many countries is so punitive against survivors as to amount to a legal ban on reporting. For instance, in countries such as Afghanistan, Qatar and Saudi Arabia, the law of *zina* applies, whereby any form of sex outside marriage is a criminal offence.²⁵ Women in these countries who have been raped may be punished for adultery – held to be as equally culpable as their attacker.²⁶ In countries where abortion is illegal unless the woman or girl can show she was raped – such as Argentina and Brazil – a woman or girl risks prosecution and imprisonment (as well as death) if she resorts to an illegal abortion.²⁸

In other examples, women and girls will be reluctant to report criminal acts of violence because they have no confidence that they will be believed – and this is unique to male violence. Put simply, women are considered to be less credible witnesses when alleging male violence – particularly sexual violence. Hence the perceived need in some jurisdictions or legal systems for corroboration by medical or 'independent' witnesses, the willingness of juries in the UK to think of a child as a 'fantasist'²⁸ or the repeated questioning of rape complainants by police in Thailand and Vietnam.²⁹ Although it would be puzzling to think that a person alleging a burglary, car-jacking or assault by someone of the same sex was probably lying, it is common³⁰ for various motives (such as attention-seeking, covering up that she consented, revenge or psychological disturbance) to be ascribed to women and girls alleging male violence.³¹ While this is most obviously the case where the complainant's account is not corroborated (whether or not the law demands corroboration), it is

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also often a well-founded fear for women who may find themselves suspected of having brought it on themselves by being in the 'wrong' place, wearing the 'wrong' clothes, being with the 'wrong' person or not really being a victim because her behaviour is interpreted as compliant – for instance that she had stayed with a violent husband or she had had sex with that man or other men previously.

Nowhere to report

It is often stated that most people in developing countries seek redress or dispute resolution through non-state means (most often male dominated traditional or religious mechanisms or informal mediation). While there are many reasons for this, the reality is that in many countries there is so little provision, especially in rural or marginalised areas, that there is simply no-one to report any crime to. Under-resourced justice institutions often cannot provide police stations in areas where poor or rural people live; magistrates, lawyers and social workers are more likely to be based in capital cities. Even human rights organisations often have difficulties in finding the right people to attend to poor or marginalised communities. Women (and men) are therefore compelled to rely on informal mechanisms or no mechanisms at all.

The absence of state structures may appear gender-neutral but is in fact essentially gendered and influenced by other factors of marginalisation. Firstly, when governments make choices about which services to finance, they often prioritise those which are relevant to security or commercial interests, rather than public services. Within the justice sector, governments and donors may choose to prioritise commercial legal systems to promote ease of doing business rather than providing the type of accessible justice provision that women, poor people and minorities need the most.

The *impact* of the lack of justice sector provision is also gendered. Where the nearest police station is a day's walk or an expensive journey away, it is women – more than men – who will find this prohibitive. Taking a day away from caring and earning responsibilities to go to a police station or a court is more onerous for women compared to

men, who have greater freedom of movement and choice about how they spend their time and money. The gendered nature of poverty also means that the cost of attending a police station or court may represent a greater part of a woman's income. As well as time and money, women are less likely to meet other requirements for accessing justice such as possessing identification documents. In many countries, women are less likely to have necessary proof of citizenship.³² Where illiteracy is prevalent, women's literacy lags behind the literacy of men, further reducing women's capability to access justice services.³³ These factors, combined with a lack of awareness about their rights, contribute to women's lower social confidence to the extent that many women do not contemplate going to court or initiating a prosecution.

Problems with the process

Once a woman or girl does initiate a criminal case, there are barriers which can prevent her continuing with legal action.³⁴ These barriers include repeated court adjournments, which mean that the complainant must go to court multiple times for no result, humiliation in the court proceedings by being treated with contempt by court staff, by having no anonymity or other protection in the hearings, or relatively simple matters, such as having to share waiting space with the defendant or his supporters. Simply appearing in a public court room may be considered disgraceful for a woman or girl and – at best – will set gossip in motion, potentially destroying her reputation and the reputation of her family.

A woman's confidence in the courts is affected by her knowledge or perception that the odds are stacked against her. Women know, for instance, that where corruption is prevalent, it is men who are more likely to be able to 'buy' the judge or prosecutor and that – given that most lawyers and judges are men – they are more likely to share beliefs about gender with the male suspect (particularly where he shares the ethnic affiliations of the judge).³⁵

Where corruption is not an issue, in many jurisdictions it is expected that the complainant will have her own lawyer, even in the common law system where the crime is committed against the state and the complainant is a witness, not a prosecutor. For the reasons outlined above, women are less able to afford legal assistance, have less access to information about how to get a lawyer and have less knowledge about ensuring that their lawyer is acting in their best interests.

In many cases, there is impunity or leniency for VAWG because – in the eyes of the tribunal – the consequences for the man are greater than the crime that he has committed. The 2016 US case of Brock Turner, a Stanford University student who received a six-month jail sentence for serious sexual assault on an unconscious woman, is a stark example,³⁷ while instances such as the acquittal of footballers and the discourse around trials for historic sexual abuse by celebrities in the UK are examples of how the court culture and process can lean towards protecting men's privilege and power.³⁷

The results of prosecution can be counter-productive for women. For instance, where the penalty for domestic violence is a fine, this can result in the woman complainant becoming even more poor as the money is taken from the family purse. Without adequate protection and measures for ensuring that the survivor does not carry the burden of prosecuting, women may fear retribution that is greater than the original violence. Where stigma is a major issue, women, girls and their families may feel that it is better to stay silent than to face being ostracised. Bringing a violent husband to court may end the marriage; in contexts where marriage is universal and to be single is a matter of shame or ridicule – or makes a woman vulnerable to further violence or destitution – it is therefore a matter of enormous bravery to pursue a domestic violence case. This is not to say that a 'survivor-centred' approach should not prosecute unless the woman or girl is happy to face all the consequences; that way lies impunity. Rather, it is that a truly 'survivor-centred' approach addresses these issues as barriers to justice.

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Section Two: Gender and other forms of discrimination

Non-criminal justice

Although this paper focuses on the criminal justice system, access to justice includes the non-criminal justice systems, such as family, housing and employment law. In these cases, however, the legal system in many countries also seems stacked against women and girls. For instance, where custody of the children is given to the husband or his family, the mother has an impossible choice between living with a violent man or losing her children.³⁸ These factors are compounded by the stigma and disapprobation of the community if she is perceived to be bringing shame to the family, community, clan or tribe, or to be splitting up the family. In non-criminal cases, the need for women to have legal assistance and protective services can be even more urgent, given that the litigation is between the parties. To keep her land, her children, her home and her livelihood, a woman must find and pay for legal advice and representation, meaning that she must first know her rights, or at least know that she may have some rights, as well as know where and how to find a sympathetic and competent lawyer, be able to pay that lawyer and be able to meet the costs of court proceedings such as lodging an action or paying the man's court fees if she loses. At the same time, constraints on government spending have a discriminatory impact on women's services. Legal aid, shelters and advice services are all among the first to be cut when countries face austerity measures, such as when they are burdened with debt.³⁹

Employment laws and procedures in most countries do not serve women well. For instance, sexual harassment at work rarely features in national legislation, with some notable exceptions such as in India⁴⁰ and Pakistan⁴¹ where, as a result of women's activism, national law now recognises that sexual harassment at work constitutes a detriment to women's employment. Unfortunately, even in these cases, women who work in precarious conditions with little access to legal advice and fewer employment rights as those who are the most marginalised, such as bonded labourers and those in domestic servitude, have no access to this protection. Some trade unions such as the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) are taking steps to

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recognise their own responsibilities for including sexual violence as a matter of collective action.⁴²

Intersectional issues

Women and girls' access to justice varies not only according to the country, national legislation and justice provision, but also according to their other status, such as whether they have disabilities, are migrants or refugees, their sexuality, their age, whether they belong to a minority religious, racial or ethnic group, or whether they are from a 'lower' caste. Often, these factors have a direct relationship with women's socio-economic status which – as we have already discussed – influences their access to justice. In addition, their additional marginalisation compounds barriers to justice *per se*. For instance, a woman from a minority religious group in Pakistan⁴³ is more likely to be very poor, illiterate, unaware of her rights and live in an area where there is little state provision. In addition, her reception by police and courts is likely to be negatively influenced by discriminatory attitudes.⁴⁴ Even lawyers from minority religious and ethnic groups report that they experience discrimination sometimes amounting to humiliation by their colleagues, so it is obvious that potential clients or complainants are going to experience additional barriers.⁴⁵

Women and girls with disabilities are between 1.5 and four times more at risk of VAWG than non-disabled women and girls. They also experience violence for longer and are less able to escape, and are less likely to be able to access justice.⁴⁶ It is well-documented that some men exploit their power when working, living or associating with women and girls with disabilities, knowing that they are safe from exposure or prosecution.⁴⁷ Women and girls with disabilities are often invisible – kept away from the public gaze by families because of shame or stigma – and there is little data available either about women and girls' experience of VAWG or their access to justice.

Women and girls with disabilities are also amongst the poorest. When they, their families or civil society organisations do try to get justice for crimes committed against them, they can face overwhelming obstacles. Getting to (and into) police stations or court can be impossible with mobility impairments, and visual impairments mean that some women and girls are dependent on others to read the relevant documentation. Added to this are negative views about women and girls with disabilities, including distorted views of women and girls with disabilities' sexualities.⁴⁸ Where the perpetrator is a man of standing, or someone whom the family is dependent on, such as an employer or teacher, women and girls with disabilities are often discouraged from causing difficulties or jeopardising the family's welfare.

Women and girls who leave their homes – whether they are forcibly displaced, trafficked, economic migrants or seeking asylum in another country – face a multitude of complex barriers to justice. In situations of violent conflict, VAWG often forms part or even all of the reasons why women flee their homes, or are attacked in the course of their migration.⁴⁹ The recent case of Rohingya women fleeing Myanmar is an example of where rape and other sexual assault of women features prominently amongst the human rights violations that have driven almost one million people to leave their homes. Where the state is complicit in the persecution, effective investigation, prosecution or sanctions are unlikely, despite the fact that these offences often constitute international crimes of the highest order. In these cases, women and girls are reliant on international criminal justice mechanisms such as the International Criminal Court (ICC). As will be seen in Section Three, international criminal justice mechanisms such as the ICC are designed to take up 'situations' rather than individual cases.

Section Three: The international legal regime

VAWG is a human rights issue. The relevance of the international legal regime for women and girls' access to justice is twofold. Firstly, the international human rights regime codifies and enshrines that states have the primary responsibility – even where violence is committed by individuals – to protect its citizens and to provide adequate justice. Governments should, therefore, strive to make sure that national law, policy and practice conforms with international standards, in accordance with the international human rights principles of universality: non-discrimination; inalienability; the rule of law; accountability; participation and inclusion; and indivisibility. As reflected in the Sustainable Development Goals, the global regime creates a human rights framework for addressing access to justice, rather than a 'minimum standards' approach. The challenge lies in making international and regional human rights law useful and accessible to individual women and girls.

International human rights law

The issue of justice for women and girls who are survivors of violence sits at the intersection of almost all international human rights instruments. From Article One of the Universal Declaration on Human Rights: *All human beings are born free and equal in dignity and rights* to the detail of treaty bodies' recommendations, the principles of human rights coalesce at the point at which a woman or girl is subjected to violence.

All UN member states are parties to at least one international human rights treaty that provides for the right to seek justice for human rights abuses.⁵⁰ While the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is the pivotal instrument regarding VAWG, other treaties are directly relevant and provide remedies where states fail in their obligations to provide justice for women and girls who are survivors of violence.

Article Two of the International Covenant on Civil and Political Rights enshrines the inalienable right to a remedy for relevant violations (including forced marriage, discrimination, torture and violations of the right to personal security), while Article

14 states that *All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*

First promulgated by CEDAW and now a matter of customary international law, gender-based violence against women and girls constitutes a form of discrimination,⁵¹ obliging states (even countries such as the US, Iran or Sudan, which are not parties to CEDAW) to take appropriate action to prevent VAWG and to provide adequate remedies for survivors of VAWG. In this regard, the Convention Against Torture (and associated mechanisms such as the Committee Against Torture) recognise that VAWG – as a form of discrimination – can constitute torture or cruel, inhuman or degrading treatment whether committed by state personnel or with the complicity of the state (in other words, where the state refused to investigate or prosecute VAWG).

The UN Convention on the Rights of the Child (UNCRC) – to which all countries but the US is now a state party – provides that the best interests of the child are a primary consideration in judicial proceedings; that children are entitled to the protection of the law without discrimination. The UNCRC recommends that children should not be discriminated against and prohibits trafficking of children or subjecting them to unlawful forms of deprivation of their liberty. Children must also be allowed to participate in judicial proceedings that affect them. The Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography – now ratified by over 100 countries – prohibits children from being sold or used to solve a dispute between families and imposes obligations on states to take appropriate action to prevent and prosecute these offences and to provide support to victims.

The UN Convention on the Rights of Persons with Disabilities (CRPD) recognises that women and girls with disabilities are made particularly vulnerable to VAWG, obliges states to *take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms and to guarantee to persons with*

*disabilities equal and effective legal protection against discrimination on all grounds.*⁵² Thus, given that violence against women and girls with disabilities constitutes discrimination on both grounds, states are obliged to take particular measures to ensure that violence is prevented, prosecuted and sanctioned and that women and girls with disabilities are able to pursue appropriate remedies through the justice system.

In addition to the main human rights treaties, other instruments have direct relevance to access to justice for survivors of VAWG. The 'Palermo Protocol' on human trafficking,⁵³ for instance, recognises that people are trafficked by the use of deception as well as force and removes any defence of consent. It obliges states to enact appropriate legal measures to investigate, prosecute and punish relevant offences and to protect victims. The body of legislation around forced labour, slavery and slavery-type practices includes some forms of forced marriage,⁵⁴ obliging states to take measures to prevent and to provide legal remedy.

The law relating to international protection – mainly the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol⁵⁵ – includes provision for women and girls fleeing VAWG, whether in times of violent conflict or as a form of persecution within the terms of the Convention. The principle of refoulment (that no-one should be returned to the danger of persecution), which applies to asylum seekers as much as to recognised refugees, provides the greatest level of protection. In terms of access to justice for survivors of VAWG, this provides an international remedy for women and girls who flee their homes because they fear female genital mutilation⁵⁶ or – by extension – forced marriage.

The UN Security Council has recognised through a series of resolutions (starting with 1325 in 2000) that adequate access to justice is central for women's protection and participation in peacebuilding⁵⁷ and emphasises the responsibility of states *to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard stresses the need to exclude these crimes, where feasible from amnesty provisions.*⁵⁸ Later resolutions of the UN Security Council take up these issues. For instance, following resolutions specifically addressing sexual violence in situations of armed conflict, resolution 1960 (2010) provides for a 'name and shame' list of states where sexual violence is used in conflict and calls upon parties to armed conflict (state or non-state) *to make and implement specific commitments on timely investigation of alleged*

*abuses in order to hold perpetrators accountable.*⁵⁹ The most recent resolution in this series, in 2015, recognises the use of VAWG by terrorist and extremist organisations as a means of subjugating women and communities, and reiterates the need *for states to strengthen access to justice for women in conflict and post-conflict situations, including through the prompt investigation, prosecution and punishment of perpetrators of sexual and gender-based violence, as well as reparation for victims as appropriate.*⁶⁰

As a result of the tireless work of many, the legal framework of the ICC integrates gender in its structures, substantive jurisdiction and procedures. The structures of the Court foresee the fair gender and regional representation of judges and staff as well as gender-specific legal expertise. Regarding the ICC's substantive jurisdiction, the Rome Statute is the first instrument of international criminal law to expressly include crimes of sexual violence and acknowledges sexual and gender-based violence as the constitutive acts for genocide, crimes against humanity and war crimes. It further includes the principle of non-discrimination in the application and interpretation of the law, including on the basis of gender. The procedures foresee the rights of victims to participate and apply for reparations and special measures, especially for victims and/or witnesses of crimes of sexual violence.

Women's Initiatives for Gender Justice
(www.4genderjustice.org)

The Rome Statute of the International Criminal Court specifically includes many forms of VAWG as international crimes. It also makes provision for the effective prosecution of these crimes for victims and other witnesses seeking to avoid some of the barriers that were faced by women and girls seeking justice through the International Criminal Tribunals for Rwanda and the Former Yugoslavia (ICTR and ICTY). Enforced pregnancy, prostitution and rape are all included as crimes against humanity (which can be committed in peacetime as well as violent conflict), as well as potentially forming a constituent of genocide or war crimes if the other criteria are met. The body of jurisprudence on VAWG in times of violent conflict has grown substantially in the last 20 years, since the judgement in the case of *The Prosecutor v. Jean-Paul Akayesu*,⁶¹ where the indictment was amended to include sexual

violence when it arose as a result of evidence from prosecution witnesses. Judgements at the ICTR, ICTY, the International Criminal Court and other courts trying international crimes (such as the Sierra Leone Special Court) have included sexual violence as constitutive elements of genocide and war crimes and as crimes against humanity, including torture.

International humanitarian law

The Geneva Conventions of 1949 and their Additional Protocols are at the core of international humanitarian law (IHL), the body of international law that regulates the conduct of armed conflict and seeks to limit its effects. This body of law is also known as ‘the law of armed conflict’ or ‘the law of war’. It specifically protects people who are not taking part in the hostilities (civilians, health workers and aid workers) and those who are no longer participating in the hostilities, such as prisoners of war or wounded combatants. The Conventions and their Protocols call for measures to be taken to prevent or put an end to all breaches. They contain stringent rules to deal with what are known as ‘grave breaches’. Those responsible for grave breaches must be sought, tried or extradited, whatever nationality they may hold. While the treatment of VAWG in the treaties⁶² is based on historical notions of women’s honour, a growing body of jurisprudence in treaty, national, customary and ‘soft’ law acknowledges the importance of combating impunity for VAWG as well as breaches of IHL. In particular, there is increasing recognition of the need for states to enact and implement law that prohibits breaches of IHL, including VAWG, and to ensure that survivors are able to access justice during and after armed conflict.⁶⁴

At the regional level, the African Charter on Human and Peoples’ Rights (ACHPR) is unequivocal that states have both an obligation to prevent and protect citizens from violations of physical integrity as well as all forms of discrimination and torture, and to provide effective remedies for victims of violations. The Charter’s Protocol on the Rights of Women in Africa (the ‘Maputo Protocol’) has a strong emphasis on violence against women, including harmful practices such as FGM and forced marriage – belying the claim by some detractors that focusing on VAWG is a ‘Western’ construct. The Protocol also pays specific attention to access to justice and identifies the need for better sex balance within national judiciaries to ensure that women have access to justice.

The European Charter on Human Rights does

not contain specific wording on women’s rights, although the provisions in Article 14 that prohibit discrimination and Article 13 on the right to a remedy for breaches of rights have been used repeatedly to address issues of women’s human rights, including those relating to VAWG. The Council of Europe has enacted the Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) which is “based on the understanding that violence against women is a form of gender-based violence that is committed against women because they are women. It is the obligation of the state to fully address it in all its forms and to take measures to prevent violence against women, protect its victims and prosecute the perpetrators. Failure to do so would make it the responsibility of the state. The convention leaves no doubt: there can be no real equality between women and men if women experience gender-based violence on a large-scale and state agencies and institutions [fail to take action]”.⁶⁴

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (the ‘Belem do Para’ Convention) locates VAWG clearly in the power imbalances between women and men and adopts a holistic approach to the issue by emphasising restoration and rehabilitation services as well as access to criminal justice.

Access to justice through international mechanisms – monitoring treaty compliance

In reality, individual women who are subjected to violence in, for example, rural Kenya or the plains of Nepal do not have immediate or individual access to international human rights instruments. Rather, access to justice for women through these instruments is through representative organisations, strategic litigation (which can be individual cases), by triggering mechanisms and by exposing states in international fora.

The variety of ways for women to obtain some form of justice for VAWG include representations to the UN human rights treaty bodies such as CEDAW or the Committee on the Rights of the Child that their country has defaulted on its obligations. In these cases – heard at intervals of years – the treaty monitoring body will hear from the state and from civil society and make observations and recommendations for improved compliance with the relevant treaty. These observations and

recommendations tend to be taken seriously by the state and even if they are not acted upon, give civil society organisations a concrete framework for action.

Women can also make a complaint directly to the CEDAW committee if their country is a party to the Optional Protocol and once all national remedies have been exhausted or are impossible to pursue. This mechanism for individual complaints made directly to the relevant committee is much quicker than the ordinary course of treaty reporting and can constitute a more effective way of holding a state to account.

Human rights Special Procedures such as Special Rapporteurs and Working Groups can be another effective way of holding states to account: individuals or organisations alert the UN body to an alleged breach of the state’s obligations, triggering an urgent response. This is particularly useful in cases of torture, enforced disappearances or violence against women. In other cases, the Special Procedures, such as the Special Rapporteur on Violence Against Women, its Causes and Consequences, can ask a country to ‘invite’ them so that they can investigate the situation and report both to the state, its civil society and the Human Rights Council. Most Latin American and several Caribbean countries are parties, although the US and Canada have not ratified the Convention.

Access to justice through international mechanisms – tribunals

When states breach their international obligations – either to specific human rights instruments or to customary human rights law – individuals may seek remedies through international tribunals. They first have to exhaust national remedies or demonstrate that the state is unable or unwilling to provide an effective remedy. Most cases brought to the international tribunals are pursued by civil society organisations or, less frequently, by the survivors or families of victims/survivors. Where this results in improved national provision, it is called the ‘boomerang’ effect. As has already been discussed in Section Two, many states’ compliance with their obligations is far from satisfactory and they often show little enthusiasm for positive change. In these cases, strategic litigation at the international level can be ground-breaking.

Each of the regional instruments referred to previously has an associated tribunal by which women or their representatives can bring cases

to enforce compliance. For instance, both the Inter-American Court of Human Rights and the Commission on Human Rights can receive individual complaints⁶⁵ in relation to breaches of the American Convention on Human Rights or one of the many other treaties – including the ‘Belem do Para’ Convention outlined previously. The Inter-American Court of Human Rights has developed a strong jurisprudence on issues of VAWG, including the case of Gonzalez et al. (“Cotton Field”) v. Mexico *IACtHR*, 16 Nov 2009. In this case, a young woman and two girls from Ciudad de Jerez were eventually found dead, having been mutilated, tortured and sexually abused, apparently for days. Their families had reported them missing and received no viable response from law enforcement agencies who said they were “probably with their boyfriends”. The Court held that Mexico was culpable for multiple breaches of relevant human rights law for failing to protect the victims, for discrimination and for contributing to “an environment of impunity that facilitates and promotes the repetition of acts of violence in general and sends a message that violence against women is tolerated and accepted as part of daily life”.⁶⁶

The African Court of Human Rights has recently created important jurisprudence in relation to VAWG in the case of *APDF and IHRDA versus the Republic of Mali* where the Court found that the Malian Family Code was in breach of the national constitution for allowing girls to be married while children – at age 16. This is the first judgement of the Court relating to women’s rights and lays down an important precedent for holding governments to account for discriminatory national legislation.

Barriers in the international system

As mentioned above, the international system is designed around an inter-state paradigm. Although there are some avenues for individual complaint, they are mostly out of reach for individual women and girls, especially those without access to expert, international legal advice. Many women and girls have little information about national law and have even less awareness of their rights under international jurisdiction. Lawyers who work mostly at the national level may also be unable or unwilling to help their clients pursue cases through the international system. Cases can take years without any enforcement mechanism, diminishing the incentive for survivors of VAWG (or any human rights violation) to spend time or money, particularly where there are fewer human rights organisations with the expertise to do so.

A significant constraint in the international human rights legal regime is lack of enforcement. There is no ‘arrest warrant’, no provision for sanctions to be imposed against a state for breaching its human rights obligations and no single oversight body.⁶⁷ Although states tend to care about the findings of the treaty bodies and are usually concerned to be thought well of on the international stage, there are numerous examples where the recommendations are ignored, obligations are flouted and public opinion seems immaterial.

The international human rights mechanisms can also be perceived as political. Although the members of the treaty bodies and Special Procedures are always careful to leave their nationality and political imperatives at the door, some appointments (such as to the ICC) are made with political considerations at play and there is a risk of a perception of a political or nationalist bias. Added to this is the elite, gendered and male-dominated nature of the international courts and tribunals.

Section Four: Recommendations

Until women and girls who have been subjected to violence have access to justice, there will continue to be impunity, yet there is much that governments, donors, international bodies and others can do to improve the response to these human rights violations. Although this paper focuses on the criminal justice system, it is clear that what is needed is a multi-sectoral approach that considers the intersections of women and girls’ lives and identities. Good practice in this regard includes the Essential Services Package for Women and Girls Subject to Violence,⁶⁸ laws that provide for public services for women such as a new law in Albania to provide low-cost housing for survivors of domestic violence⁶⁹ and provision of ‘one-stop centres’ integrating health, counselling and legal services.

For governments:

- Implement relevant recommendations of the UN and regional treaty monitoring bodies and Special Procedures and adopt the jurisprudence of international courts and tribunals.
- Enact and implement legislation to nationalise the provisions of the Rome Statute of the International Criminal Court.
- Implement the Essential Services Package for Women and Girls Subject to Violence.
- Develop national action plans on the justice sector, where there are none, and ensure political follow-through where plans exist that promote gender equality, remove barriers to women and girls’ access to justice and include rigorous monitoring mechanisms.
- Include access to justice in national action plans on gender equality, human rights, women, peace and security.
- Review relevant legislation so that it does not discriminate against women and girls, perpetuate negative notions of women and girls as second class (or non) citizens and perpetuate VAWG. In particular, reform laws that permit child marriage, fail to penalise any specific form of violence (including sexual violence) against women in or out of marriage or other forms of relationships with men. Adopt the provision in the Convention on the Rights of the Child that all legislation affecting children should make the interests of the child a primary consideration.

- Specifically criminalise forms of VAWG where current legislation does not provide or is clearly lacking in implementation. For instance, consider enacting legislation that includes psychological violence or coercive control in intimate relationships, prohibit rape in marriage and impose criminal sanctions of the highest order for acts committed against women or girls in the course of official duty.
- Invest in justice provision for poor, rural, indigenous or marginalised communities so that women and girls are not thrust upon the decision-making of non-state actors in situations of VAWG.
- Provide legal aid and assistance for complainants and defendants.
- Support women’s human rights organisations and professional bodies concerned with women’s rights to monitor progress, conduct strategic litigation and provide expert advice.
- Train and equip police, prosecutors, defence lawyers and associated personnel to deal appropriately, judicially and respectfully with women and girls who have been subjected to VAWG.
- Put in place rigorous internal measures in security and law enforcement agencies (police, border personnel, prison officials, the judiciary) to prevent sexual abuse or exploitation.
- Ensure that refugee determinations include VAWG as an act of persecution within the meaning of the 1951 Convention.
- Cease the detention of women and girls (and their families) who make asylum claims on the basis of VAWG.
- Ensure that state actors do not perpetuate acts of VAWG against minority, indigenous, marginalised or displaced women and girls in the context of internal violent conflict.
- Conduct meaningful consultations with civil society – particularly women’s human rights organisations and the legal profession.
- Ensure that national budgets are available for access to justice and formulate gendered policies to inform public services.⁷⁰

For donors:

- Ensure adequate resourcing of gender equality measures across programming in all sectors to (a) ensure that women and girls subjected to VAWG are not subject to discrimination and (b) enable access to effective justice for survivors of VAWG.
- Ensure appropriate gender expertise in donor programming or other, donor-led initiatives.
- Put in place a systematic programme of support to help recipient countries implement UN treaty bodies and Special Procedures' recommendations.
- Allocate resources to support the reform of legislation to eliminate discriminatory provision.
- Use the Sustainable Development Goals as a guiding document for support to national governments and civil society.
- Press for national governments to ratify and implement relevant international standards relating to VAWG.
- Adopt and improve good practice models and initiatives from donors, civil society and international organisations.
- Use diplomatic channels in-country and at international fora and mechanisms to promote adherence to international and regional human rights standards.
- Allocate resources to support the work of women's human rights organisations and other civil society organisations in the justice sector. Include resources for capacity building and ensure that this support is flexible to meet the needs of smaller, grass-roots organisations.
- Invest in justice provision for poor, marginalised communities.
- Allocate resources to support national governments to implement the Essential Services Package for Women and Girls Subject to Violence.
- Monitor all assistance for compliance with international and regional human rights law and standards.
- Ensure that donor organisations, personnel sent by donors (for example, police, peacekeepers, aid workers and development workers) and organisations in receipt of donor funds have in place rigorous and effective measures for preventing and imposing appropriate sanctions for sexual abuse and exploitation.

- Include access to justice in national action plans on women, peace and security.
- Use metrics relating to gender-based and other forms of discrimination to measure value for money.

For international organisations:

- Use the Sustainable Development Goals as a guiding document for support to national governments and civil society.
- Support existing initiatives by civil society – particularly women's human rights organisations – for reform of the justice sector, legislative reform and accountability measures.
- Ensure that international justice mechanisms adhere to the highest standards of compliance with international human rights principles.
- Support national capacity to implement the Essential Services Package for Women and Girls Subject to Violence.
- Support national capacity to implement the Nairobi Declaration on Women and Girls' Rights to a Remedy and Reparation.
- Put in place best practice measures for preventing, investigating and sanctioning sexual abuse and exploitation.

Section Five: Tracking and recording progress

This document adopts the premise that progress is possible and therefore measurable. Indicators for positive change can be at all levels, from the stark to the detailed and from national to the very local level. Adopting a survivor-centric approach to monitoring and evaluation means asking: "What difference has this made to women and girls who have been subjected to VAWG?" In some cases, national ministries, departments and agencies will be able to easily put these measures in place, while in others they will require the assistance of civil society, international organisations and donors.

Measurement of change should always be contextually-specific, while adhering to international and regional human rights standards. The following presents a limited number of measures that can be taken by national governments, civil society and their development partners.

Overall

The UN treaty monitoring bodies make specific recommendations for each member state and provide general guidance to states. This provides a framework for measuring compliance and progress at the national level.

Similarly, where cases have been heard at the regional courts and tribunals, these can form the basis of monitoring progress (for example, where the regional court has found that there is no procedure in place for recording reports of VAWG, change can easily be measured).

Measuring instances and reports of VAWG is notoriously problematic. Changes in reporting tend to indicate increased confidence in and the accessibility of justice mechanisms, rather than an increase in the incidence of VAWG. Therefore, rather than measure reported instances of VAWG, it is better to measure the attrition rate, from first report through to appellate level.

Traditional, quantitative methods of surveying progress may be limited with regard to access to justice. It is better, therefore, to use qualitative and/or proxy indicators. For instance, it is better practice and more reliable to ask: "If you knew a woman who had been subjected to violence, would you recommend that she goes to the police?" than "If you were raped, would you go to the police?"

Women's human rights organisations have years of experience in monitoring access to justice. They have often developed tools, gained access to courts and government institutions and conducted strategic litigation. Support to coalitions of women's civil society and women's professional legal bodies can ensure that progress is tracked at a concrete and authentic level.

At all levels, the number – and retention levels – of trained women justice sector personnel is a useful indicator, both of the national approach to tackling VAWG and of the likelihood of women and girls receiving justice. It is important, however, that this is treated as a means of improving access to justice, not the end goal.

At institutional level, the degree to which improving access to justice for women and girls subjected to VAWG is incorporated into performance appraisal systems, recruitment and promotion policies for justice sector personnel is an indicator of progress. It also sends a signal across the justice sector that this is an important issue.

The public financial management of the justice sector and associated provision is a useful indicator of progress. This relates both to the allocation of resources from central government and the management of those funds. For instance, magistrates or prosecutors who deal with domestic violence or sexual violence cases should be paid on a par with other specialists dealing with commercial litigation.

Coordination across the justice chain – including case management systems and the transfer of information such as witness statements, indictments and judicial decisions – is a useful way of tracking whether VAWG cases are being treated adequately or whether they are being dropped (and at what stage this is happening).

Legislation and policy

It is relatively easy to tell whether national legislation prohibits all forms of VAWG and whether there are discriminatory provisions that act against the interests of all women and girls or those from specific groups (for instance, the new UK Domestic Violence Bill excludes women who do not have established immigration status). General human

rights, women's rights, disabled people's and migrant rights organisations are well-equipped to analyse existing or prospective legislation and should be resourced to do so.

Policies can also be subjected to scrutiny to determine whether they are explicitly or implicitly discriminatory. Examination of policies should be extended to those which affect women and girls who have been subjected to violence, for instance, where girls are excluded from school if they are pregnant or where women or girls are subject to 'virginity' tests before receiving services. These policies will have an effect on women and girls' ability to access justice services and will further stigmatise those who have been raped. In other words, policies should be scrutinised from a survivor-centric and gendered perspective.

Police

As stated above, an increase in reporting to police demonstrates positive changes in women and girls' confidence in policing. In many cases, however, this is difficult to measure because police may not record allegations of VAWG. A useful proxy indicator, therefore, is the extent to which data is available. At the same time, initiatives such as training for police officers and police station infrastructure, such as whether there is a confidential room available for interviewing survivors, can be measured.

It is more effective to measure improvements in the response of individual police stations than to track individual women or girls' experiences or to follow individual police officers. The latter are frequently redeployed or leave the police for other work or family-related reasons. Measuring change at police station level, however, can be done over time and gives a clearer indication of institutional change.

Courts

As well as measuring attrition rates, the treatment of VAWG cases and the women and girl complainants can be measured by direct or proxy means. For instance, the extent to which there is a separate space for complainants in sexual assault or domestic violence cases – away from the defendant and his supporters – indicates not only the likelihood of women and girls attending court, but the approach to these crimes by the courts administration and senior judge.

The implementation of case management systems in the justice sector and the degree to which this relates to VAWG cases is a useful indicator,

especially when combined with monitoring of the number of and reason for adjournments. It is important both to monitor this for VAWG cases and to compare VAWG cases with other cases to detect whether there are discriminatory factors at play. Where there are frequent adjournments, this can operate as a proxy indicator for failures at other parts of the chain, such as that women and girls cannot get to the court, and can trigger initiatives such as mobile courts.

Section 6: Conclusions

This paper has briefly discussed some of the most significant barriers facing women and girls who have been subjected to violence. It is clear that there is a long way to go to eliminate impunity for this human rights violation and form of social control. Current laws, policies, social norms and practices reflect and reinforce gender-based discrimination. The situation is compounded for women and girls facing multiple forms of discrimination. Yet there are measures that can be taken. The international human rights field gives reason to be optimistic, as evidence-based knowledge is increasingly available. The challenge is to make this a reality for women and girls across the globe and to translate these standards to every town, village and household so that, if a woman or girl is subjected to violence, she really can move from victim to survivor, with the full force of her national law behind her.

It is clear that there is a long way to go to eliminate impunity for this human rights violation and form of social control.

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50. Although the USA has not ratified the Conventions on the Rights of the Child or the Elimination of All Forms of Discrimination Against Women, it has ratified the International Covenant on Civil and Political Rights in 1992.

51. CEDAW General Comment 35

52. Articles 6 and 5.2 respectively of the Convention on the Rights of Persons with Disabilities

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

53. International Labour Organisation Convention 1930 (no. 29)

54. The 1967 Protocol removed the restrictions on the 1951 Convention.

55. Guidance Note on Refugee Claims Relating to Female Genital Mutilation, UNHCR 2009

56. Operational Paragraph 8, UN Security Council resolution 1325 (2000)

57. Ibid Operational Paragraph 11

58. Operational Paragraph 5, UN Security Council resolution 1960 (2010)

59. Operational Paragraph 14, UN Security Council resolution 2242 (2015)

60. (Trial Judgement), ICTR-96-4-T, International Criminal Tribunal for Rwanda (ICTR), 2 September 1998, available at: www.refworld.org/cases,ICTR,40278fbb4.html[accessed 10 March 2019]

61. The four Geneva Conventions of 1949 and their Additional Protocols

62. 32nd International Conference of the Red Cross and Red Crescent, Sexual and gender-based violence: joint action on prevention and response. Accessed at <https://casebook.icrc.org/case-study/32nd-international-conference-red-cross-and-red-crescent-sexual-and-gender-based-violence>

63. www.coe.int/en/web/istanbul-convention/home

64. The court by referral from the Commission, not directly from individuals.

65. <https://blogs.lse.ac.uk/vaw/regional/the-americas/inter-american-court-of-human-rights/>

66. The International Criminal Court prosecutes individuals for international crimes, not states. The

67. Security Council can impose sanctions in cases of threats to international peace and security.

68. www.unwomen.org/en/digital-library/publications/2015/12/essential-services-package-for-women-and-girls-subject-to-violence

69. www.unwomen.org/en/news/stories/2019/3/feature-story-new-law-in-albania-will-provide-low-cost-housing-for-domestic-violence-survivors

70. www.actionaid.org/publications/framework-2018-gender-responsive-public-services

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ActionAid is an international charity that works with women and girls living in poverty. Our dedicated local staff are helping end violence against women and girls and changing lives, for good. We won't stop until women and girls are out of danger, out of poverty and on track to create the future they want.

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