

# Understanding the Barriers

## *Analysis of Women's Access to Justice*

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# CONTENTS

INTRODUCTION.....	3
<b>1. STATE’S OBLIGATION UNDER INTERNATIONAL LAW TO ENSURE EQUAL ACCESS TO JUSTICE FOR ALL.....</b>	<b>5</b>
<b>2. LEGAL BARRIERS.....</b>	<b>7</b>
2.1 DISCRIMINATORY LAWS.....	7
2.2 LACK OF LEGAL AWARENESS.....	9
<b>3. INSTITUTIONAL BARRIERS.....</b>	<b>10</b>
3.1. LACK OF GENDER TRAINING FOR JUSTICE AND LEGAL PROFESSIONALS... 11	
3. 2. ABSENCE OF GENDER BUDGET.....	12
3.3. NEGLECT OF WOMEN’S REPRESENTATION IN THE LEGAL AND JUSTICE PROFESSIONS.....	12
3.4 FAILURE OF SPECIAL COURTS, UNIT, PROGRAMS AND MECHANISMS.....	14
3.5 LEGAL SYSTEM BIAS AND GENDER-INSENSITIVE JUDGEMENTS.....	14
<b>4. ECONOMIC BARRIERS.....</b>	<b>16</b>
4.1. ACCESSIBILITY OF LEGAL AID.....	17
4.2. FINANCIAL DEPENDENCE ON ABUSERS.....	18
<b>5. CULTURAL AND SOCIAL NORMS, VIOLENCE, AND THREATS.....</b>	<b>19</b>
CONCLUSION.....	22
LIST OF ABBREVIATIONS.....	24
BIBLIOGRAPHY.....	25

## GLOBAL HUMAN RIGHTS DEFENCE

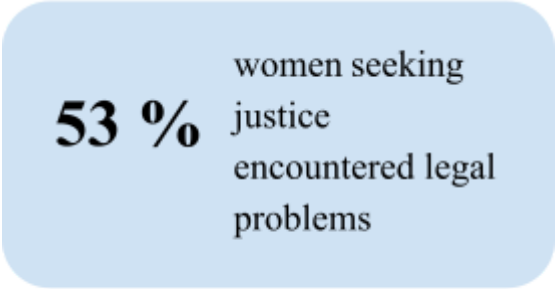
# INTRODUCTION

This report will examine the various challenges and obstacles encountered by women who pursue justice. Access to justice is not only a fundamental human right, but also a mechanism for the realisation of other human rights. According to the United Nations Development Program (UNDP), access to justice encompasses “the ability of people to seek and obtain remedy through formal or informal institutions of justice, and in conformity with human rights standards” (UN Women et al. 2018, p. 17). Additionally, the United Nations considers justice as “an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs” and emphasises that fostering the rule of law and ensuring access to justice are essential for sustaining peace (UN Women et al. 2018, p. 17).

Women’s experiences of pursuing justice often differ from men’s. These gendered discrepancies are usually influenced by higher levels of poverty and power imbalances within families and communities. Ensuring women’s access to justice, especially among poor and marginalised groups, through fair, effective, affordable, and accountable mechanisms is essential for safeguarding their rights, addressing abuses of power, and resolving conflicts. Women’s access to justice encompasses their ability to seek and obtain fair remedies through both formal and informal justice systems, as well as their capacity to participate in, and influence, law-making processes and institutions.

Moreover, the 2030 Agenda for Sustainable Development places an emphasis on prioritising those who are the most frequently marginalised, which, due to the aforementioned issues related to poverty and power imbalances, includes women. Overlooking or disregarding these marginalised groups can exacerbate structural discrimination, bias, and stereotypes, leading to complex forms of exclusion. Therefore, justice programming must aim for inclusivity, ensuring that no woman is deprived of justice as a result of legal, economic, institutional, or socio-cultural barriers (UN Women et al. 2018).

According to a study from 2017 conducted by the World Justice Project in 45 countries, 53 percent of women seeking justice encountered legal problems. However, only 13 percent of those women turned to an authority or a third party to resolve their problem. For those who turned to justice professionals, 42 percent experienced a hardship as a result of their problem. In women’s journey to justice, one in four women indicated suffering from a physical or stress-related condition due to their legal issue. In addition, research reveals that one out of five women either experienced job loss or had to



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relocate during their pursuit for justice (World Justice project, 2019).

Overall, ensuring women's access to justice is vital for the realisation of women's rights while protecting them from economic exploitation and abuse (UN Women et al. 2018). It is also crucial for sustaining peace and the rule of law, in addition to fighting against impunity, poverty and exclusion.

This report identifies legal, institutional, and economic barriers as well as cultural and social norms which include violence and act as hurdles for women seeking justice. The report focuses mainly on women's difficulties in seeking justice in civil matters, especially in terms of violence against women and rape cases due to the high level of underreporting and impunity for perpetrators. Chapter One scrutinises the state's obligation under international law to ensure equal access to justice for all individuals, analysing pertinent provisions from international and regional conventions. Chapter Two focuses on the legal barriers, addressing issues such as discriminatory legislation and insufficient legal awareness. Chapter Three analyses institutional barriers including the lack of gender training for justice and legal professionals, the frequent absence of a gender budget, the neglect of women's representation in the legal and justice professions. Additionally, it delves into the failures in arrangement and coordination for the creation, maintenance, and development of special courts, units, programs and mechanisms, and the legal system bias and gender-insensitive judgements. Chapter Four examines legal aid accessibility while Chapter Five details harmful social and cultural norms to women's access to justice. In each chapter, the report offers examples illustrating the barriers to provide context and enhance comprehension.

The report extensively relies on sources from the Council of Europe, primarily emphasising examples from European human rights law. This decision was driven by the abundance of resources available on this topic, establishing it as the most thorough and sophisticated legal framework in this area. Nonetheless, the report also aimed to include examples from more regions worldwide.

# 1. STATE'S OBLIGATION UNDER INTERNATIONAL LAW TO ENSURE EQUAL ACCESS TO JUSTICE FOR ALL

According to international and European human rights law,<sup>1</sup> access to justice is a fundamental principle requiring states to ensure that individuals have the right to seek legal recourse when their rights are violated, either through courts or alternative dispute resolution mechanisms.

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Access to justice empowers individuals to safeguard their rights, rectify civil injustices, ensure accountability of governmental authorities, and mount a defence in criminal cases. It serves as a cornerstone of the rule of law, spanning civil, criminal, and administrative domains. Both a means and an end, access to justice is indispensable for individuals seeking to exercise their procedural and substantive rights<sup>2</sup> effectively (FRA & Council of Europe, 2016, p. 16).

Although the phrase “**access to justice**” is not a standard legal term and is not explicitly stated in international law, it covers a range of fundamental human rights. These include the right to a fair trial, the right to an effective remedy, and the prohibition of discrimination based on sex (FRA, 2010). The principle of equality between men and women is enshrined in Articles 1(3), 13(1)(b), 55(c) and 76(c) of the Charter of the United Nations, showcasing that drafters were convinced of the necessity for gender equality in the enjoyment of rights in the post-war era.

On the global level, the prohibition of gender-based discrimination and equality before law were later incorporated into Articles 2 and 7 of the Universal Declaration of Human Rights (UDHR), as well as into Article 26 of the International Covenant of Civil and Political Rights<sup>3</sup> (ICCPR), which states the following:

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (ICCPR, 1966).*

Furthermore, Article 15 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) highlights the principle of equality before the law for women and

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<sup>1</sup> When countries sign and ratify international treaties, they commit to adhering to the standards outlined in those agreements by incorporating them into their domestic laws and ensuring their implementation. International human rights law provides the overarching framework within which national legislation is developed to promote gender equality and empower women (UN Women et al. 2018).

<sup>2</sup> Procedural rights encompass the legal mechanisms and rules governing the enforcement of rights and rectification of wrongs, including jurisdiction, legal procedures, evidence presentation, appeals, judgement execution, legal representation, costs, and related aspects. These rights are distinct from substantive law, which primarily establishes and regulates legal rights and obligations (Weigend et al. 2024).

<sup>3</sup> The United Nations General Assembly adopted this Covenant on December 16, 1966, and it came into effect on March 23, 1976. As of February 2023, it counts 173 State Parties. The ICCPR expands upon the civil and political rights and freedoms outlined in the Universal Declaration of Human Rights. It is legally binding upon States Parties, the Human Rights Committee, established under Article 28, overseeing its implementation (Council of Europe, 2024 b and OHCHR, 2023).

men, while Article 2 requires states to implement measures to achieve substantive equality in all areas of life (CEDAW, 1979, art. 15 and 2).

As far as the right to an effective remedy and the right to fair trial are concerned, the UDHR and ICCPR equally refer to them. The former states in Articles 8 (right to effective remedy) and 10 (right to fair trial), while the latter in Article 14 using the words of “[...]everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [...]” (ICCPR, 1966, art. 14). Article 2(3) states that “Each State Party to the present Covenant undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy[...]” (ICCPR, 1966, art. 2(3)).

On the regional level, the European Convention on Human Rights includes provisions concerning fair trials and the right to a remedy, as outlined in its Articles 6 and 13 respectively (FRA, 2010). Similarly, in other regions such as the Americas, Africa, and Asia, legal texts such as the American Declaration on the Rights, Duties of Man (1948, art. 18), the African Charter on Human and Peoples’ Rights (1981, art. 7 and 26), and the ASEAN Human Rights Declaration (AHRD) (2012, art. 7 and 8) also contain provisions for these rights.

Despite the provisions in international law that States Parties must adhere to, which require them to respect, protect, and fulfil these rights, and to integrate them into their national legal systems, women face greater challenges in accessing justice. This is due to legal, economic and institutional barriers, as well as cultural and social norms, including violence and threats against them, especially in more complex cases like rape and domestic violence (Council of Europe, 2024 a).

CEDAW Recommendation No. 33 describes the right to access to justice for women as fundamental for realising all rights protected under CEDAW. It defines the access to justice for women as multidimensional, covering six essential and necessary components to ensure access to justice for women. These include:

1. Justiciability which involves empowering women to claim their rights;
2. Availability which requires establishing courts in urban, rural, and remote areas;
3. Accessibility which entails making justice systems secure, affordable, and physically accessible to women;
4. Good quality which demands adherence to international standards and gender-sensitive dispute resolution;
5. Provision of remedies which ensures viable protection and redress for harm suffered by women; and
6. Accountability which calls for monitoring justice systems and holding professionals accountable for violating the law.

These components are universally relevant and require tailored implementation by states based on domestic conditions (CEDAW/C/GC/33, 2015).

Lastly, the Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) outlines various obligations for State Parties to ensure access to justice for female victims of violence. These obligations include specialist support services, civil remedies, compensation, sanctions, prohibition of mandatory alternative resolution processes, timely investigation and judicial proceedings, protection for victims, and providing access to legal assistance and free legal aid (Council of Europe, 2021).

## 2. LEGAL BARRIERS

Worldwide, women encounter numerous obstacles and gender-based discrimination, including discriminatory laws. Indeed, in numerous regions across the globe, women's lives are shaped in ways that ignore, misunderstand, or partially capture their needs while largely benefitting the men who created them. In regions where women have access to justice in the first place, one of the predominant issues remains the lack of capacity and awareness regarding judicial and quasi-judicial opportunities.

### 2.1 DISCRIMINATORY LAWS

According to the United Nations, around 90 percent of countries have at least one discriminatory law in their legal frameworks (UN Women, 2017, February 17). Norms can manifest discrimination either through **directly** targeting individuals based on their beliefs or membership in certain groups, or **indirectly**, by ostensibly offering equal treatment to everyone while actually resulting in less fairness for those with particular protected traits. Yet many legal frameworks continue to adopt laws that directly discriminate against women on the basis of their gender. Above all, most states continue to promote gender-neutral laws, ignoring the indirect discrimination they can lead to.

*90 percent of countries have at least one discriminatory law in their legal frameworks*

Those recurring failures to consider and address gender differences in laws perpetuate gender inequality. Indeed, discriminatory laws contribute to women's socio-economic disempowerment and cover a wide range of areas. An in-depth analysis delivered by the Directorate-General for External Policies of the European Union outlines the various domains in which laws lacking sensitivity to gender significantly affect women's lives (Directorate-General for External Policies of the Union, 2020, p. 22).

First of all, discriminatory laws impact civil and political rights, meaning the right to freedom of movement, the laws on nationality, the right to vote, or the quota systems regarding women's participation in legal institutions. According to a Global Report of the Organisation for Economic Cooperation and Development (OECD) focused on opportunities,

social institutions, and the gender index, discriminatory laws and customs directly affect women's freedom of movement. Nowadays, one fourth of countries worldwide prevent women from travelling by themselves. The report also shows how laws can force women to renounce their natural citizenship. For instance, in Egypt and Iraq, women may lose their nationality upon marrying a foreigner and cannot reapply for it in the event of divorce (OECD, 2019, pp. 152-154). In 25 countries, disparities further persist regarding the right to grant nationality to children (OECD, 2019, pp. 145-147).

Second, access to employment, economic opportunities, and financial resources are also impacted by the practice of discriminatory laws. In 24 countries, women are not able to choose their work without first obtaining the permission of their husbands, and in 90 countries, women are still unable to enter certain professions (OECD, 2019, p.134). In terms of property rights, the OECD further states that 29 percent of countries still prevent or restrict women's access to property after a divorce or separation. Often, the retirement age is also a source of discrimination, as it is in Jordan and Saudi Arabia where the retirement ages are 55 for women and 60 for men (UN Women, 2019, p. 14). Those few examples demonstrate how much women are deprived of accessing the same work opportunities as men and how often their professional careers are shortened.



Third, women face the repercussions of gender-insensitive practices in family law, which are often influenced by conservative views on gender norms. In societies with traditional gender norms the chaperonage principle is encouraged. Women are expected to be accompanied and obtain the approval of a man for dealing with banks, police, or courts. Inheritance rights are also often impacted, in particular in Arab States. According to a UN Women Report, most of the Arab legal frameworks include inheritance laws that favour men. This is usually exacerbated by family pressure on women to renounce their inheritance rights and the practice of “land-grabbing” by male relatives. With regards to divorce proceedings, women are prevented from initiating divorce, since in various Arab states, as the right to divorce is considered a man's unilateral right (UN Women, 2019,p. 13).

Fourth, physical integrity is directly threatened by discriminatory laws. According to OECD figures, around 40 countries reduce penalties for gender-based violence in certain



circumstances (OECD 2019 p.99). **In 70 countries, perpetrators of sexual harassment do not face criminal charges. In 11 countries, rapists can essentially evade prosecution if they are married to or marry their victims** (OECD, 2019, p. 99). Furthermore, sexual and reproductive rights are limited in the majority of the regions. According to the Center for Reproductive Rights, 40% of women of reproductive age live in countries where abortion is restricted or prohibited (Le Monde, 2024). These restrictions imply that, these days, 45 percent of abortions worldwide are carried out using dangerous and invasive methods (WHO, 2021).

Finally, gender-discrimination laws affect young girls' lives, as well. By advocating for gender-sensitive laws, the United Nations demonstrates how child marriage disrupts girls' lives by interrupting their education, restricting their employment opportunities, and compelling them to assume the role of a homemaker. At a very young age, girls are condemned to a life of dependency and poverty and are more vulnerable to violence. Furthermore, early marriage usually implies pregnancy at a very young age, thus directly jeopardising girls' health (UN Women, 2017). The examination conducted by the Directorate General for External Policies of the Union unveils that in the Philippines and the southernmost Muslim-majority provinces of Thailand, Muslim girls can marry as soon as they reach puberty and have their first menstrual cycle, whereas the legal age of marriage for Muslim boys is 15. In Iran, courts or fathers can authorise girls to marry before the age of 13, which is the minimum legal age, while the minimum age for boys to marry remains 15 (Directorate-General for External Policies of the Union, 2020, p. 26)

To conclude, it is apparent that attaining gender equality will necessitate abolishing discriminatory laws rooted in religious traditions, social, and cultural norms that prevail in parts of the world.

## **2.2 LACK OF LEGAL AWARENESS**

Women's unequal access to justice stems not only from discriminatory content or laws, customs, and practices but also from a lack of capacity and awareness about judicial and quasi-judicial opportunities. Insufficient education and information among women regarding their rights, as well as among justice actors regarding their responsibilities within the justice system, are bound to lead to the impunity of perpetrators of women's rights violations.

Achieving equal access to justice requires the empowerment of women through exercising their rights. If women are not aware of the legal recourse available to them, one can not expect them to demand justice. Raising awareness needs to be a priority to allow women, along with other marginalised groups, to access justice. Enhancing women's access to legal aid by providing information is crucial, particularly for women who live in rural or remote areas, where educational opportunities and awareness of the existing means to overcome rights violations remains limited. Women from indigenous, afro-descendant, and

minority groups experiencing intersectional discrimination may also be unaware of their legal rights and therefore receive inadequate protection (UN Women, 2018, p. 23).

The promotion of complaint mechanisms within justice institutions by independent and trained legal professionals is essential, in tandem with awareness and information on how to access those structures. Comprehensive programming is needed to address discriminatory social and cultural norms and to enhance opportunities for women to assert their legal rights with autonomy. States should provide capacity to use complaint mechanisms and aid in holding perpetrators accountable. The programs already implemented in some parts of the world show encouraging results (UN Women, 2018, Practitioner's Toolkit on Women's Access to Justice Programming,p92).

For instance, there is the case of Somalia where local mediation techniques were put in place in 2016. Mobile courts operated at the federal level, while local radio programmes and group awareness sessions on the availability and use of legal aid were provided to the Somalian people. These simple initiatives reached 667,890 people in Mogadishu, Kismayo, Baidoa, and Puntland, as well as 4,180 in Somaliland (UN Women, 2018, p. 132). Nevertheless, based on evidence from other parts of the world, as in West Africa, it can be assumed that these initiatives improve women's access to justice.

This is the case in Liberia, where the Access to Justice for Women project was implemented in three districts in the southeast of the country. It achieved significant positive outcomes for women. This program, which includes legal aid, increased by 45 percent the number of women willing to seek justice through the formal legal system, especially in cases involving rape, inheritance disputes, and persistent non-payment of child support. Furthermore, it enabled the training of 23 women in conflict mediation skills (UN Women, 2018,p. 135).

### **3. INSTITUTIONAL BARRIERS**

Unlike legal barriers, which involve discriminatory laws and norms, institutional barriers refer to difficulties in accessing judicial institutions. When addressing institutional challenges to accessing justice for women, the primary focus is on institutional capacity. According to the Council of Europe, capacity refers here to all “elements that determine the capacity of the justice system to effectively address justice needs and fulfil the right to access justice without discrimination”. " It includes:

- Gender training for justice and legal professionals;
- Gender budget analysis;
- Participation of women in the legal and justice professions;
- Institutional arrangement and coordination capacity for the creation, maintenance, and development of special courts, units, programmes and mechanisms; and
- Effective access to justice free from discrimination (Council of Europe, 2021, p. 13).

### 3.1. LACK OF GENDER TRAINING FOR JUSTICE AND LEGAL PROFESSIONALS

Women are subject to a wide range of social assumptions rooted in traditional preconceptions about sex or gender. In general, those assumptions or stereotypes deal with the status of women in society and the role of women in their family and in their community. People hold deep-rooted expectations of women's behaviour and responsibilities.

The widespread beliefs or preconceptions individuals hold about sex or gender result in assumptions regarding the characteristics of women and men. Today, gender stereotypes are interfering with women's access to justice. Those "preconceived ideas whereby males and females are arbitrarily assigned characteristics and roles determined and limited by their sex" inform people's judgments, including those of judges, police officers, or workplace higher-ups (EU & Council of Europe, 2017, p. 25).

In cases of gender-based violence, such stereotypes can undermine the claims of the victim. Stereotyping distorts perceptions, is often founded on myths and preconceptions, and leads to biased decisions, misinterpretation, or a misapplication of the law. It can even compromise a variety of rights such as the right to a fair trial or the impartiality of judges and prosecutors' decisions. Frequently, judges, legal, or police professionals influenced by those standards penalise women for not conforming to the traditional expectations. Harmful or wrongful gender stereotypes can directly affect the credibility given to women's voices (EU & Council of Europe, 2017, p. 27).

This phenomenon has alarming consequences, particularly in cases of domestic violence or rape. When perpetrators are not held legally accountable, they may repeat their actions, sometimes escalating to even more severe offences. In the case *Kontrovà v. Slovakia* (2007), a woman filed a criminal complaint against her violent and abusive husband (ECtHR, 2007, *Kontrovà v. Slovakia*). A police officer advised her to provide the court with a medical report proving she had been suffering physical abuse. Once the report was delivered, the case was placed under the Minor Offence Act and no further action had been taken (the classifying of such an incident as a minor offence act eliminated the need for opening an investigation). The following day, the applicant's husband fatally shot their two children before committing suicide. This tragic instance in case law illustrates that scepticism towards and dismissal of a woman's statements can jeopardise their safety, potentially leading to further victimisation by the perpetrator. Prosecutors and judges should indeed take specific measures, especially for domestic violence cases, since they have the highest rate of secondary victimisation (Council of Europe, 2015, p. 19).

The creation of gender-responsive legal practices is an absolute necessity for women. There remains an urgent need for professionals to be educated on women's barriers and experiences seeking justice. Thus, the legal system needs to be adapted, which involves investing in training for its representatives (EU & Council of Europe, 2017, p. 20).

To provide guidance on how to handle gender-sensitive cases, the Council of Europe has provided some recommendations for some of its Member States through the “Training Manual for Judges and Prosecutors on Ensuring Women’s Access to Justice” (Council of Europe, 2017, p8). This training manual has been developed in close partnership with several national training institutions including those of Armenia, Azerbaijan, Georgia, Moldova, and Ukraine. The hope is that the impact of this book will extend beyond these Eastern-European countries. This tool aims to support the inclusion of equal access to justice for women through the training of legal professionals and provide instructions to a gender-sensitive approach. This initiative would have immense benefits for women’s access to justice, if it were expanded to an international scale (UN Women, 2018, p. 4).

### **3.2 ABSENCE OF GENDER BUDGET**

Government budgeting impacts women as well. Because women have specific needs when seeking justice, in particular in case of rape and domestic violence, national justice systems need to put in place a gender budget analysis. The accessibility of the justice system is at risk as studies have indicated that budgets are not impartial in terms of gender. States should create an “enabling environment for women’s access to justice” and provide adequate budgetary, technical assistance, and highly qualified human resources as part of that environment (UN Women, 2018, p. 17).

In fact, the Committee on the Elimination of Discrimination against Women advises, in its General Recommendation No. 33, that State Parties “provide adequate budgetary [...] assistance to all parts of justice systems, including specialised judicial, quasi-judicial, and administrative bodies, alternative dispute resolution mechanisms, national human rights institutions, and ombudsperson offices” (CEDAW/C/GC/33, 2015).

Gender budget analysis is necessary to provide the resources required to ensure the quality and effectiveness of programs such as legal aid services or training programs for justice and legal professionals. Setting aside a portion of the budget also facilitates the establishment of specialised units and courts to combat domestic violence and violence against women (Council of Europe, 2021, p. 15).

### **3.3 NEGLECT OF WOMEN’S REPRESENTATION IN THE LEGAL AND JUSTICE PROFESSIONS**

Women often emerge as the most powerful advocates for securing women's access to justice, as they draw upon their distinct perspectives and personal experiences. The underrepresentation of women in the judiciary deepens the lack of a gender-sensitive approach in the justice system. Given the male-dominated justice systems in most countries, diversity in the justice profession is necessary to safeguard the impartiality of legal

professionals. Indeed, for the justice system to reflect the society it serves, women must participate in the judiciary more than they currently do (UN Women, , p. 98).

Women judges can promote the implementation of laws on access to justice for women and girls. The existence of women justice professionals also makes the system more approachable for certain women. Often the absence of women in the justice system discourages many women from turning to legal instruments. It may be the case in instances relating to rape or sexual violence. For instance, a study on access to justice in Egypt, Jordan, Lebanon, and Yemen revealed that women resort to court for personal status issues only as a final option, and societal gender norms continue to stigmatise women for asserting their legal rights through the judicial system (UN Women, 2019, p. 18).

The Committee on the Elimination of Discrimination against Women recommended in the General Recommendation No. 33 that State parties “confront and remove barriers to women’s participation as professionals within all bodies and levels of judicial and quasi-judicial systems and providers of justice-related services” (CEDAW/C/GC/33, 2015). For change to occur in the legal system, women need to gain the ability to influence and participate in the law-making processes and institutions. They need to be able to access top positions and be protected from bias and discrimination from their colleagues and society. The latter is essential, as women have been proven to be more frequently scrutinised on their competences and private projects than their male counterparts when applying to any position. Moreover, women are frequently encouraged to pursue less prestigious positions as well (UN Women, 2018, p. 99).

Measures in favour of the integration of women in the justice and security sector have proven to be effective in terms of increasing reports of gender-based violence. In 39 countries, it has been determined that the presence of female police officers results in greater reporting of sexual assault (UN Women, 2018, p. 99). This inclusion can also create a more conducive environment for women in court. Nowadays, only 27 percent of judges and a mere nine percent of the police force are women (UN Women, 2018, p. 99).

Studies demonstrate that women’s representation in legal and judiciary positions approaches 50 percent in Eastern Europe and Central Asia. Unfortunately, in other parts of the world, the gender gap in the judiciary is still very wide. For example, in Tunisia, the percentage of women’s representation in the judiciary is close to 30 percent, ahead of Algeria or Tunisia, whose percentage does not exceed 23 percent (UN Women, 2018, Practitioner’s Toolkit on Women’s Access to Justice Programming, p99). In some parts of the world, women can dominate the informal dispute resolution mechanism. This is the case of Ghana, where the “Queen mother” is the woman in charge of the resolution of disputes. Still, this example remains an exception rather than the rule. Therefore, women’s leadership in decision-making must continue to be promoted (UN Women, 2018, p. 95).

### **3.4 FAILURE OF SPECIAL COURTS, UNIT, PROGRAMS AND MECHANISMS**

Ensuring the creation, maintenance, and development of entities and mechanisms guaranteeing women's right to access to justice without geographic discrimination is a recommendation of CEDAW. The ability of actors to coordinate and organise mechanisms serving the women's cause indicates the capacity of a system to address women's needs. This obligation of access without discrimination includes the organisation of judicial mechanisms "in remote, rural, and isolated areas, giving consideration to the establishment of mobile courts" (CEDAW/C/GC/33, 2015).

There is an excellent illustration of fulfilling this obligation with the implementation of mobile courts in South Kivu in the Democratic Republic of Congo. Almost 15 years ago, the Congolese government vouched "to accelerate the implementation of a national strategy for reforming the security sector, including the adoption of special measures for the prevention of acts of violence against women and children [...]", such as through the creation of mobile court hearings. Originally, these hearings were organised as a palliative to justice since, in the South Kivu, only four courts had jurisdiction. They were designed to facilitate access for victims who were unable to attend, to help gain a better understanding of the place and socio-political context, and to have an educational dimension by allowing the families of the victims to attend (Manet M., 2024).

The United Nations also noted that "especially in the justice sector, the development of the capacity of the justice system has been improved, in part, thanks to mobile court hearings". The DRC emphasised that mobile courts had led to the conviction of many perpetrators. Indeed, those courts sentenced eleven men to life imprisonment for acts constituting crimes against humanity, as they had kidnapped and raped young girls between 2013 and 2016. This instance demonstrates how collaboration among different stakeholders— such as the United Nations through the MONUSCO mission, the EU by providing financial assistance to these specialised courts, NGOs advocating against violence and aiding civilians, and the government via funding— can significantly improve women's access to justice. Nonetheless, those courts continue to "seem like a drop of justice in an ocean of impunity" (Manet M.,2024). Thus, other countries where women face exclusion from the judicial system would benefit from such initiatives (Manet M.,2024).

### **3.5 LEGAL SYSTEM BIAS AND GENDER-INSENSITIVE JUDGEMENTS**

Victims of rape, domestic violence, and other ill-treatments encounter various obstacles, particularly because of the scepticism attached to their claims and testimonies. This frequent phenomenon of excessive suspicion often leads to gender-insensitive judgements. This highlights the unsuitability of the current legal systems regarding gender-based violence.

It is crucial to enable women to access legal mechanisms free from discrimination in order for them to use their rights and freedoms, recover from their traumas, and no longer suffer secondary victimisation.

The significant institutional challenges faced by women in their quest for justice is exemplified by the lack of success in cases concerning violence against women brought before the European Court of Human Rights under Article 14 of the European Convention on Human Rights. The authorities of the Court do not seem willing to accept the dimension of gender based violence and the implications (Council of Europe, 2015, p. 7).

The case of *Opuz v. Turkey* (2009) illustrates this issue ;

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A woman and her mother claimed they had been subject to discrimination by their local authorities while reporting domestic violence. The European Court underlined that the national law in question does not make an explicit distinction between men and women in the enjoyment of their rights. However, the true discrimination arose from the reaction of the Turkish institutions, and the troublesome passive attitude of the authorities to which women were subjected when they lodged the complaints. Indeed, in this case, the police acted as a mediator and tried to convince them to go home since this matter was “a family matter in which they could not interfere” (ECtHR, 2009, *Opuz v. Turkey* §195). Frequently, domestic violence reporting is not handled as something urgent, but more as a mediation action. This reflects gaps in the judicial system’s ability to protect women, as well as the prevalence of discriminatory attitudes (Council of Europe, 2015,p. 12).

It also appears that there is a gap between women’s needs while seeking justice and the interpretation of the Convention by the Court regarding gender-based violence cases. Since national institutions tend to undermine the claims of women, considering them to be purely familial matters, the Court does not seem to be exploiting the potential of the European Convention on Human Rights. For example, in the case of *Irene Wilson v. RU* (2012) the inadmissibility was pronounced over the simple absence of repeated and credible complaints of violence and threat of violence. The woman was considered to only have been beaten once which led the Court to assess that she was not vulnerable enough to seek the protection offered by Article 8 of the Convention and that the local authorities did not fail their duty to protect Ms. Wilson’s rights (ECtHR, 2012, *Irene Wilson v. RU*, §48). This shows how poorly women are cared for by institutions and how insensitive current judgments are to gender issues. For all those reasons, the Committee on the Elimination of Discrimination against Women underlined, in its General recommendation No. 33, the necessity for States Parties to create a justice system “adapted and appropriate to the needs of women, including those who face intersecting or compounded forms of discrimination” (CEDAW/C/GC/33, 2015).

In another similar case, *A. v. Croatia* (2011) ;

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The Court rejected the applicant's claim under Article 14 of the Convention since there was no sufficient statistical evidence of violent attitudes (ECtHR, 2011, *A v. Croatia*, §97). Once again, this issue has been emphasised by the same Committee, and so has the obligation to “revise the rules on the burden of proof in order to ensure equality between the parties” that was imposed on the States Parties (CEDAW/C/GC/33, 2015).

## **4. ECONOMIC BARRIERS**

Economic barriers, such as financial constraints, costly and lengthy proceedings, restricted or gender-blind provisions on the accessibility of legal aid and financial dependence on the abuser (particularly prevalent in instances of domestic violence), severely limit women's right to seek redress. The expenses associated with accessing justice extend beyond legal fees and court-related charges; they encompass costs such as transportation to court or securing accommodations or seeking childcare. As a result, women living in poverty or disposing of low income levels, along with other vulnerable groups of women, such as the elderly, disabled, migrants, rural residents, or those who identify as LGBTQIA+, bear the brunt of these economic obstacles. While men may also face similar expenses, the primary distinction lies in women's institutionalised dependence on others, such as their husbands, to meet these financial obligations. Moreover, women typically bear the burden of care-giving in the family. These dependencies and obligations may deter women from filing complaints or pursuing legal claims (Council of Europe, 2013).

For low-income groups in Latin America, for example, the high costs of legal representation and court fees may present formidable barriers to initiating and sustaining legal processes. Additionally, there are numerous supplementary expenses such as travel, document procurement, photocopying, and communication costs, which may seem insignificant to many, but pose substantial and potentially insurmountable obstacles for the poor in accessing justice.

Furthermore, the perception of justice being costly extends beyond economic expenses to encompass corruption. In Latin America it is widely believed that favourable outcomes in legal matters require additional payments, reinforcing the notion that justice is accessible only to the wealthy. The correlation between wealth and access to justice is deeply entrenched, leading to widespread mistrust in legal systems fueled by perceived corruption, which disproportionately affects women as the primary victims. Studies conducted among low-income groups show that significant percentages of citizens across countries such as Peru, Ecuador, and Colombia consider their legal systems to be corrupt. Minorities are often disadvantaged when seeking legal redress, as they lack the resources to secure competent



legal representation or facilitate corrupt payments that expedite legal processes (Gargarella, 2002).

#### 4.1. INACCESSIBILITY OF LEGAL AID

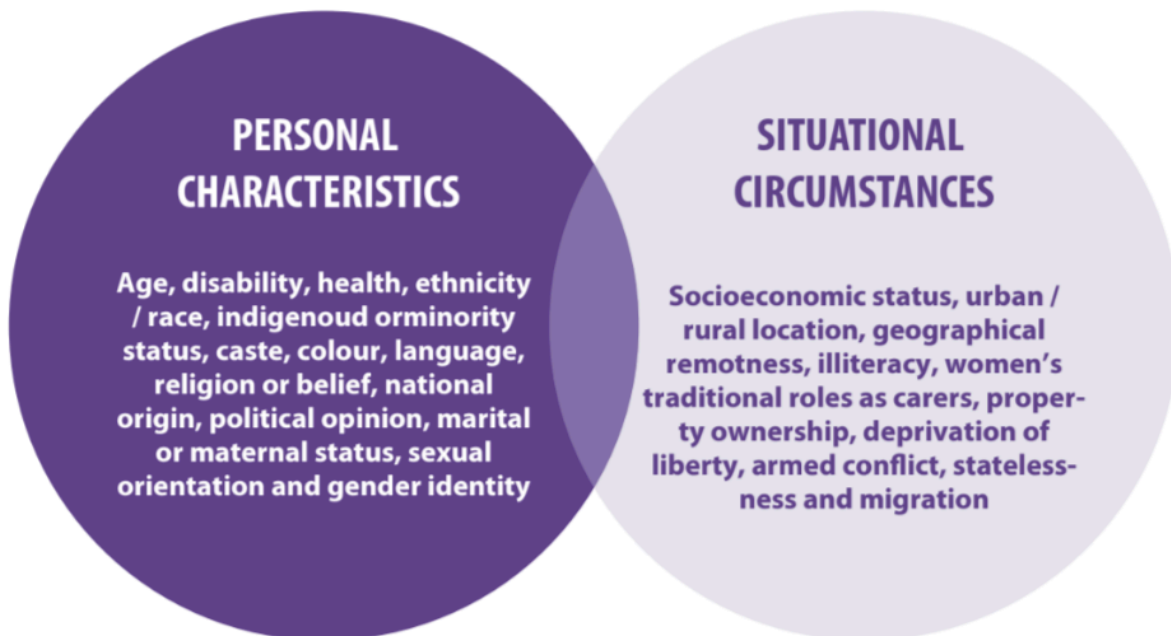
Legal aid seeks to counterbalance these economic inequalities and ensure the right to fair trial for those with insufficient financial resources. For instance, **under the European human rights system, the right to legal aid is enshrined in the European Convention on Human Rights as part of the right to fair trial.** Nevertheless, legal aid is not bound to a specific format; states have the autonomy to determine how they fulfil their legal responsibilities. Hence, there is often considerable disparity in legal aid systems across Member States of the Council of Europe, given that the provision of legal aid to an individual hinges on factors such as the case's significance to the individual, its complexity, and the individual's income as well as ability to self-represent (FRA & Council of Europe, 2016, p. 58).

In addition, in various European countries, like France and Germany, free legal assistance is often granted based on personal or family income. However, this approach overlooks the fact that not all women have access to family resources or possess independent income. In Sweden, for example, legal aid is restricted to low-income individuals and does not cover disputes regarding asset division after a divorce. Since women seeking a divorce frequently find themselves in a financially disadvantaged position, these regulations might discourage them from asserting their legal rights, resulting in them exiting the relationship without receiving their entitled share. Consequently, such gender-neutral eligibility criteria can significantly impede women's ability to access legal aid (Council of Europe, 2013).

In Turkey, women also face significant economic barriers to accessing justice. Although female suspects and accused have access to free legal assistance regardless of their financial status, the situation differs in civil matters, particularly those involving domestic violence, where access to legal aid is constrained by financial eligibility criteria. Consequently, the financial burden of civil proceedings rests on the victims. Insufficient budget allocation is a primary factor contributing to the limited availability of legal aid. Lawyers lament that the allocated budget fails to meet the demand, resulting in legal aid units being unable to accommodate all applicants. Another limitation is that legal aid appointments endorsed by bar associations' units are frequently rejected by the courts (Council of Europe, 2022).

Eligibility criteria for free legal aid or fee waiver programs fail to consider the actual income available to applicants inherently discriminate against women, who typically have access to a smaller portion (if any) of household income compared to men. Factors such as limited access to private transportation, lower literacy, and educational levels, all contribute to hindering women's access to justice compared to men. Figure 1 illustrates these factors, referred to as “situational circumstances,” in conjunction with personal characteristics like race, age, maternal, and marital status, underscoring the significance of intersectionality in designing accessible legal aid programs.

Lastly, the quality of legal guidance and representation acquired through such assistance is paramount. Women seeking legal aid often belong to disadvantaged or highly vulnerable demographics. Case handlers' lack of awareness regarding the challenges these women encounter can result in difficulties presenting evidence or establishing a trusting relationship (Council of Europe & the European Union, 2021, pp. 9-10).



*Figure 1.* The pivotal role of intersectionality in accessing legal aid. Source: Council of Europe & the European Union, 2021.

## **4.2. FINANCIAL DEPENDENCE ON ABUSERS**

Even in Europe, the region claiming the most advanced human rights protection system, female EU citizens earn, on average, 16 percent less per hour than their male counterparts. As a result, women are typically less able to afford justice-related expenses, such as legal fees, transportation, and lodging. Furthermore, women, who frequently bear the primary caregiving duties, may encounter difficulties in pursuing legal recourse due to time constraints or financial dependency on their partner (EIGE, 2017).

Women who leave abusive relationships often face multiple barriers, such as having dependent children, unemployment, no personal property, and limited access to finances. Consequently, many return to their abusers due to the likelihood of experiencing a decline in living standards and financial security. Shockingly, 85 percent of women who leave abusive relationships eventually return, with financial dependence on the abuser being a significant factor, according to the US-based National Coalition Against Domestic Violence (Salamone, 2010).

Although progress has been made in acknowledging economic abuse as a type of violence against women in the Istanbul Convention,<sup>4</sup> challenges remain. For example, not all European Union member states are legally bound by its rules. Despite the EU officially ratifying the Convention in October 2023, five EU member states—Bulgaria, the Czech Republic, Hungary, Lithuania, and the Slovak Republic—have refused to fully adopt its provisions and thus did not ratify it. Furthermore, both Armenia and Azerbaijan have declined to ratify the Convention, thereby rejecting some of its provisions (Council of Europe, 2024 c).

As far as other countries are concerned, in Jordan, for example, the national and international organisations working on legal aid have identified the affordability of justice as a major barrier for women's access to justice, particularly in Personal Status Law (PSL) matters. Women often refrain from seeking justice in court due to their inability to pay fees, exacerbated by recent amendments to Sharia court fees which have increased costs for cases typically pursued by women, such as alimony and custody. These increased fees, combined with low incomes, make PSL cases financially burdensome, costing three to five times the monthly income of individuals on minimum wage. If they can, women typically finance their pursuit of justice through family support, selling assets, or taking loans from friends (Barakat, 2018).

## **5. CULTURAL AND SOCIAL NORMS, VIOLENCE, AND THREATS**

Socio-economic and cultural obstacles often severely restrict women's ability to seek justice. Many of these barriers stem from unequal power dynamics that favour men, leading to disparities in wages, higher rates of poverty, gender-based stereotyping, and an uneven distribution of household responsibilities that disproportionately burden women. Discriminatory attitudes, stereotypes, and biases at the cultural level can also significantly impact access to justice. Especially in matters related to the family domain such as child support, domestic violence, and divorce proceedings, where fear and threats also deter women from seeking justice, combined with a lack of awareness of their rights and their lack of knowledge about the available remedies (Council of Europe, 2013).

Culture exerts a significant influence on women's access to justice, extending beyond legal frameworks. Discriminatory cultural norms can pose substantial barriers to women seeking justice, even in environments with just and inclusive laws. Understanding cultural paradigms is essential to comprehending how justice and access are defined beyond legal

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<sup>4</sup> The Council of Europe Convention on Preventing and Combating Violence against Women (Istanbul Convention), which came into force in 2014, is the first legally binding international instrument addressing violence against women and girls on the European level. It outlines a comprehensive framework of legal and policy measures aimed at preventing such violence, supporting victims, and penalising perpetrators. See: <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-eu-accession-to-the-istanbul-convention>

frameworks. Especially in developing countries with deep patriarchal structures, such as in Afghanistan, Bangladesh, and Pakistan, cultural factors significantly impact women's choices regarding seeking legal recourse. Women who do so often face stigma, particularly if their claims involve family members. Fear of societal judgement and loss of family support, crucial for economic stability, further deter women from seeking justice (Maranlou, 2014).

In Pakistan, for example, the concept of honour (*izzat*) heavily influences and culturally mandates the behaviour of most women. Deviating from societal norms and practices often leads to stigmatisation, as it is perceived to bring “dishonour” to the family (Khan and Manzoor, 2020). Similarly, in Bangladesh, strong social and cultural norms discourage women from claiming their proprietary rights, even during family settlements or in court. There's a societal concept of a “good sister” who relinquishes her inheritable rights to her brother and is praised for her actions. Despite inheritance laws ensuring women's economic rights, cultural pressures such as the fear of losing the label of a “good sister” or “good woman”, often deter women from asserting their legal rights in court proceedings (Nayeen, 2020).

In Afghanistan, the conservative norms implemented since the rise to power of *the Taliban* have required women to be accompanied by a male relative (*mahram*) for any outing. The restriction of women's freedom of movement has direct impacts on the possibilities for women to turn to an authority or a third party to resolve their problems. Besides that, raising awareness among young girls remains a challenge since 80 percent of Afghan girls and young women of school age are not enrolled in education, due to wifehouse or breadwinner's standards rooted in the Taliban ideology (UN News, 2023).

In Nigeria, conservative laws may prevent victims of rape or sexual assault from reporting to local authorities. Indeed, the Penal Code of Northern Nigeria criminalises adultery, making married victims unable to report any sexual violence without breaking the law (Office of the High Commissioner for Human Rights, 2017).

In the Latin American region, patriarchal constructs make women's access to justice quasi-impossible. Stigma and shame still rule the majority of countries. In Ecuador, it is estimated that approximately 40 percent of complaints lead to action, whereas only about eight percent of reports concerning sexual and intrafamily violence result in action. Moreover, a mere three percent of sexual and family violence cases that are brought to court culminate in a conviction (Cahiers du Genre, 2023, 205-226).

In Nepal, the case of Fulmati Nyaya demonstrated that beyond the rape suffered by a young girl from military men, the very strong stigmatization and rejection on behalf of her community, due to the loss of her virginity, continued ruining her life for years. In addition, the marginalisation and shame she experienced prompted her to abstain from reporting the crimes to any authority (OHCHR, 2019).

Lastly, findings from a previous survey conducted by Global Human Rights Defence on the harmful social and cultural norms that women encounter when seeking justice, along with possible explanations for why stigma and shame pose significant obstacles to women

speaking up, indicate that victim-blaming attitudes, fear of retaliation, and lack of trust in legal systems are among the most frequently mentioned hindrances (GHRD, 2024). Women usually anticipate facing public scrutiny and punishment from their communities or social circles, regardless of the outcome of their complaint or report. Additionally, they often internalise feelings of guilt or responsibility, causing them to refrain from making complaints out of a sense of being complicit in their own suffering.

Women are also deterred from denouncing the actions of their aggressors, particularly when the latter are public figures, due to aggressive media campaigns that may invade their privacy as victims. Similarly, corporate environments often suppress reports of misconduct by senior members, leaving women vulnerable to backlash. Consequently, the fear of speaking out remains widespread, with women often experiencing equal or greater harm than the perpetrators themselves.

# CONCLUSION

As highlighted in the present report, the obstacles faced by women seeking access to justice remain numerous. From legal and institutional issues to cultural barriers, in addition to economic challenges, the multidisciplinary nature of these obstacles underscores the urgency of improving many aspects of the current judicial systems.

The prevalence of discriminatory laws affects civil and political rights, employment opportunities, property rights, family law, and physical integrity, often leaving women vulnerable to violence and financial dependence on their partners or families. Additionally, women's unequal access to justice stems from a lack of legal awareness and capacity. Many women are unaware of their rights and available legal avenues, hindering their ability to seek justice.

As showcased in Chapter Three, gender training for justice and legal professionals is essential to combating gender stereotypes that hinder women's access to justice. These stereotypes can lead to biased decisions and undermine women's credibility, particularly in cases of gender-based violence. Furthermore, the absence of gender budgeting in national justice systems further impedes women's access to justice. Failures in arrangement and coordination for the creation and maintenance of specialised courts and mechanisms similarly hinder women's access to justice. Legal system bias and gender-insensitive judgments often result in secondary victimisation.

Economic barriers, including financial constraints, expensive legal proceedings, and limited access to legal aid, hinder women from pursuing justice, especially in cases of domestic violence. These barriers extend beyond legal fees, encompassing costs like transportation and childcare. In addition, women in poverty, elderly women, those with disabilities, and those in rural or migrant communities bear the brunt of these obstacles.

Lastly, socio-economic and cultural obstacles hinder women's access to justice by perpetuating unequal power dynamics, wage disparities, poverty, and gender-based stereotypes. Discriminatory cultural norms, particularly in family matters like domestic violence and divorce, create fear and stigma which deters women from seeking legal recourse. Understanding cultural paradigms is crucial to addressing these barriers, especially in patriarchal societies where societal judgement and loss of family support discourage women from pursuing justice.

The challenges are still significant, and the prospects for improvement are considerable. Yet it is possible to re-establish judicial fairness and balance in society for women. Certain initiatives, as evidenced by the so-called Gender Justice Platform, established by the UNDP and UN Women, demonstrate this possibility.

In 2020, both UN divisions have joined their forces to enable access to justice for 42,000 individuals. In 14 conflict-affected areas spanning Africa and the Middle East, the UNDP and UN Women facilitated the provision of access to justice services and spearheaded advocacy efforts to bolster women's leadership. This project aims to unite a diverse range of stakeholders, including states, civil society, academia, and UN entities, towards a common goal: creating more equitable justice systems for women. At the heart of the project lies a holistic approach to gender justice, urging stakeholders to endorse women's participation in the justice system, promote equitable and gender-sensitive legal frameworks, raise awareness about opportunities within the justice system, and improve gender-sensitive adjudication for survivors of sexual and gender-based violence (UNPD, 2022).

May we maintain optimism that such initiatives will serve as catalysts for continued advancement, fostering greater inclusivity in the ongoing endeavour to enhance women's access to justice.

## **LIST OF ABBREVIATIONS**

ASEAN Association of Southeast Asian Nations

CEDAW Committee on the Elimination of Discrimination against Women

ECHR European Convention on Human Rights

EIGE European Institute for Gender Equality

EHtHR European Court of Human Rights

EU European Union

FRA European Union Agency for Fundamental Rights

ICCPR International Covenant on Civil and Political Rights

MONUSCO United Nations Organization Stabilization Mission in the Democratic Republic of the Congo

OECD Organisation for Economic Co-operation and Development

OHCHR Office of the High Commissioner for Human Rights

UN United Nations

UDHR Universal Declaration of Human Rights

UNPD United Nations Development Program

WHO World Health Organization



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