



This Thematic Brief provides quick guidance on the most important issues relating to gender and access to justice.

This Brief is addressed to staff from development cooperation agencies who are involved in programmes and projects related to access to justice.

Here they will find information on the most important gender issues at stake and how to address them, indicators that can be used to monitor whether a programme is integrating gender dimensions, examples of gender-sensitive development actions and references to further information and tools related to gender and justice/the rule of law.

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## Gender issues in access to justice

### Gender inequalities in access to justice

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- **Women are directly discriminated by law:** In some countries, legal barriers institutionalise 'de jure' discrimination and women do not enjoy the same rights as men. They might not have the right to vote; to travel or to work without the permission of a male relative (e.g. husband or father); to inherit land or to obtain credit, etc. Family laws might also discriminate against women, in matters of divorce or child custody for example (EU Commission, 2006). In 2013, the OECD Social Institutions and Gender Index revealed that 86 countries out of 112 still had discriminatory laws or practices in relation to property and inheritance rights (IDLO, 2013). A 2014 report from the World Bank showed that women's economic opportunities were legally restricted compared to men's by at least one legal difference in 90% of the 143 countries analysed. Among those 143 countries, 15 still had legal provisions enabling husbands to prevent their wife from working (World Bank, 2014).

**Some forms of women's human rights violations are often not considered as crimes:** In many countries, violence against women is not considered as a criminal offence but as a private matter. As a result, there is no legislation protecting and ensuring reparation for crimes of violence against women (UN Women, 2012a). In some countries, women reporting violence might themselves face prosecution. For instance, a study conducted by the UN Assistance Mission to Afghanistan in 30 provinces of Afghanistan found out that women reporting rape were almost always charged with the crime of 'zina', or extramarital sex (UN Women, 2012a).

**Lack of legislation to enforce women's human rights:** Inadequate legal frameworks and ineffective legal enforcement prevent women from accessing their rights. For instance, in relation to social and economic rights, women comprise the majority of workers in 'vulnerable jobs' (53%), working as own-account workers, domestic workers, or unpaid workers in family business. These are jobs for which few or no legal protection or rights exist. Furthermore, the share of women in these jobs reaches up to 80% in South Asia and sub-Saharan Africa (UN Women, 2012a). Women subject to multiple forms of discrimination (indigenous, ethnic or sexual minorities, migrant women, women with disabilities) face additional challenges to access justice and their rights, as multiple forms of discrimination are often not recognised by law. This situation leaves the most vulnerable unprotected (IDLO, 2013).

**Under-reporting of crimes committed against women:** Worldwide, incidents of violence against women remain largely under-reported. A study carried out in 57 countries revealed that 10% of women declared having experienced sexual assault, but only 10% of those women reported the incident to the authorities. Interestingly, the study compares this rate with the report rate in cases of robbery where 38% of women who had been robbed declared the incident to the authorities (UN Women, 2012a).

**In developing countries, formal justice systems coexist alongside informal justice systems** (sometimes referred as 'traditional', 'customary' or



'non-state' justice systems) and the recourse to formal justice is limited. Using informal systems is still the main way to seek justice, used in 80% of legal cases (UN Women, 2012a; IDLO, 2013). In Africa, 75% of land and tenure-related questions are still covered by informal justice systems – a percentage that reaches up to 90% in some countries, such as Mozambique and Ghana (IDLO, 2013).

**Informal justice systems might be more resistant to gender equality.** Informal justice systems are usually in charge of dealing with family matters (such as marriage or divorce) and property and inheritance issues. They often grant fewer rights to women than those ensured by formal courts in those areas, as they are usually based on unwritten procedural and substantive rules. In these, the outcomes of proceedings are determined on a case-by-case basis, often depending on the existing social power hierarchies and wealth differentials between the disputants (IDLO, 2013; World Bank, 2014).

**Informal systems can be particularly problematic when dealing with issues related to gender-based violence against women.** Indeed, informal systems might reinforce discriminatory and violent practices, such as female genital mutilation or forced marriage (IDLO, 2013). In some countries, the rape of a woman is often tried in an 'informal' way through traditional justice processes. The perpetrator is usually condemned to pay a fine to the woman's family, or to marry her to preserve the woman's family honour (UN Women, 2012b).

**Access to justice is made particularly difficult in war zones and in periods of conflict (e.g. displacements).** Research has shown that conflict situations increase the risk for women to experience gender-based violence (such as rape or domestic violence); aggravate their lack of access to adequate social services; and result in forced displacement, thus leading to increased levels of violence and insecurity for women (UN Women, 2012b; Hellsten, 2012).

**Transitional justice mechanisms implemented in the aftermath of conflicts have often tended to fail in tackling structural gender inequalities (Hellsten, 2012; UN Women, 2012b).** Restitution and reparation have been understood as a return to the social status quo prevailing before the conflict, thus reinstating and sometimes reinforcing existing gender inequalities. For instance, in South-Africa, many women were not able to receive their 'reparation payments' personally because they did not have a personal bank account. The reparation payment was thus deposited into the account of male family members. Women's control over this payment was thus very limited and tensions over the decisions on how to spend this money contributed to increased incidents of domestic violence against women (UN Women, 2012b).

**Transitional justice mechanisms have fallen short in recognising the whole spectrum of rights violations experienced by women and girls in time of conflict.** Transitional tribunals do not usually address socio-economic losses suffered by women when forced to renounce education; when losing access to social and health care services; or when losing financial support following the death of a relative (Turano, 2011). Women's socio-economic rights can also be violated after a conflict, although these violations are usually not addressed by reparation mechanisms. For instance, after conflict, many women become head of



the household de facto (whether because they are widows or have been abandoned by their husbands). In some cases, in the absence of a transformative reparation process to tackle discriminatory property or inheritance rights, these women are unable to access land and to support their family (Hovil, 2012).

**Informal justice systems can also be deeply damaging during wars and conflict.** Research has shown that in time of conflict, informal justice systems might also be used to ‘retraditionalise’ society and to reinforce previously unequal relations and norms (UN Women, 2012b).

## Several structural and cultural factors can explain gender inequalities in access to justice

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Women face multidimensional structural and cultural barriers in accessing justice. Those barriers are found at every stage of the justice chain (IDLO, 2013).

Some of the main causes impeding women’s access to justice are presented below, those include:

- Structural factors, including:
  - **Legal (*‘de jure’*) discrimination** (as mentioned above) is a challenge.
  - **Legal pluralism** (cohabitation between formal and informal justice systems). This creates a web of complex and overlapping systems, resulting in the institutionalisation of a ‘two-track system’, in which ‘serious crimes’ are tried in formal courts, while crimes considered less serious are dealt with by an informal system. However, the ‘seriousness’ of a particular crime is often decided according to gender-unequal social norms, to the detriment of women (IDLO, 2013; UN Women, 2012a).
- Institutional factors, including:
  - **Cultural biases and stereotypes of justice chain operators:** Legal operators and service providers, such as the police and judiciary, are not free from gender stereotypes regarding the roles and responsibilities of women and men in family and society. These stereotypes might result in poor law enforcement and in biased interpretations of the legislation in favour of men (as seen in the previous section). For instance, in many countries, survivors of domestic violence who seek to press charges against their partners are often denied such rights by law enforcement operators, who consider this crime to be a ‘private matter’ (UN Women, 2012a).
  - **Lack of gender competence and capacity gaps among the police and judiciary** who might thus lack understanding as to the roots and manifestations of gender inequalities, resulting in gender-blind proceedings.
  - **Lack of adequate service provision:** As women assume the majority of unpaid household duties and family responsibilities, the lack of supporting services during judicial proceedings (e.g. childcare facilities or transport services) might impede women from accessing justice. Other service-related factors limiting women’s access to justice include



the absence of provision of translation services for women who do not speak the language used during the judicial proceedings; or the absence of psychological support provided to women who testify about sexual violence.

- **Lack of economic resources provided to women seeking justice:** Women with no or few economic resources might face increased difficulty to participate in judicial proceedings (e.g. they might have to miss days of work and thus lose valuable financial resources for the family maintenance, or they might have to pay significant amounts for transportation to reach the tribunal). Where no free legal aid is made available, the costs of pursuing the case might impede women from seeking justice.
- **Socio-cultural factors**, including:
  - **Gender norms and stigmatisation:** Due to social and cultural norms, women might face difficulty in reporting some types of crimes to justice and law enforcement authorities, especially when police or justice officers are men. Women might also refrain from seeking justice or be discouraged to do so by their relatives or due to fear of experiencing secondary victimisation (IDLO, 2013). For instance, survivors of sexual violence are often victim of sanctions and social stigmatisation after reporting such crimes to the formal justice system. Women trying to challenge gender inequalities through the justice systems (both formal and informal) are often accused of supporting ‘foreign values’, or opposing their local culture (IDLO, 2013).
  - **Women’s economic dependency on men relatives** reinforces their difficulty in accessing justice, especially in matters of family law such as divorce, violence or inheritance issues, as those cases are often presented against another (man) family member on whom they might rely financially (UN Women, 2012a).
  - **Lack of legal literacy:** Another important barrier for women to access justice is insufficient knowledge of their rights and the remedies they have access to.
  - **Lack of gender balance in the police and judiciary.** Research conducted in 39 countries showed that the rate of reporting of sexual violence is higher when women police officers are present (UN Women, 2012a). The lack of gender balance in judiciary is particularly problematic in reconstruction processes. Indeed, women’s perspective on land ownership issues or social services for example might be excluded from the public sphere and not represented in the formal peace negotiations (Turano, 2011).
  - **Lack of gender perspective in transitional justice mechanisms:** Research has shown that transitional mechanisms can reinforce gender inequalities and women secondary victimisation, if they are based upon an individualistic approach to human rights that does not take into account the need to establish social networks and adequate reparation at community level (Hellsten, 2012).



## How to address gender inequalities in access to justice

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For both women and men to enjoy their human rights fully, gender inequalities in accessing justice must be addressed and effectively reduced. Programmes aiming to reinforce access to justice and develop legal remedies need to be **gender-sensitive**, as described below, by:

- Making use and creating demand for **sex-disaggregated data**.
- **Ensuring that women's needs and priorities are voiced, understood and addressed at every stage of the justice chain.** For instance, the lack of gender sensitive legal and judicial proceedings might impede women from seeking justice. In cases of sexual violence, the lack of *in camera* hearings might refrain women and girls from testifying. This specific need should be taken into account and special places provided for hearing women's testimony.
- **Ensuring that women's rights advocacy groups and survivors from human rights violations are consulted and actively participate in the development and implementation of reparation mechanisms.**
- **Working to address discriminatory laws and women's obstacles to access justice, while ensuring that legal reforms are locally owned and coupled with a top-down approach** aiming at putting domestic laws in accordance with international legal standards on gender equality (IDLO, 2013).
- **Avoiding reinforcing gender inequalities, by ignoring the existing unequal gender relations and power disparities between women and men.** For instance, if formal and informal justice systems coexist, both should be considered as potential opportunities to convey progressive reforms towards more gender equality. Thus, programmes aiming to reinforce gender equal access to justice should carefully assess the context in which they are implemented. They should avoid focussing on the formal system only, as this might not be the most pertinent for women's rights. In certain contexts, informal justice systems might be the only form of justice available to women.
- **Planning gender-specific actions, to address problems relating more particularly to one or the other gender, either as separate initiatives or as part of larger programmes.** For instance, specialised courts could be implemented to try crimes of sexual and gender-based violence against women and girls, along with awareness activities targeting women's survivors of sexual and gender-based violence to inform them about their rights.
- **Adopting longer term "transformative" perspectives, supporting women's participation in decision-making both in formal and informal justice systems, by providing women with spaces for discussion and (re)interpretation of cultural and legal rules** (IDLO, 2013). In transitional justice programmes, gender inequalities and discrimination that existed prior to the conflict should be tackled in order to establish a more transformative reparation process and enable the realisation of women and men's equal citizenship.
- **Engaging men, creating awareness on gender inequalities and proving the benefits of gender equality for communities.**
- **When planning small sized women-specific or gender equality projects, they should see them as part of larger programmes.** For instance, projects and programmes seeking to increase women's awareness of their rights should be linked to wider development programmes. In case of reparation programmes,

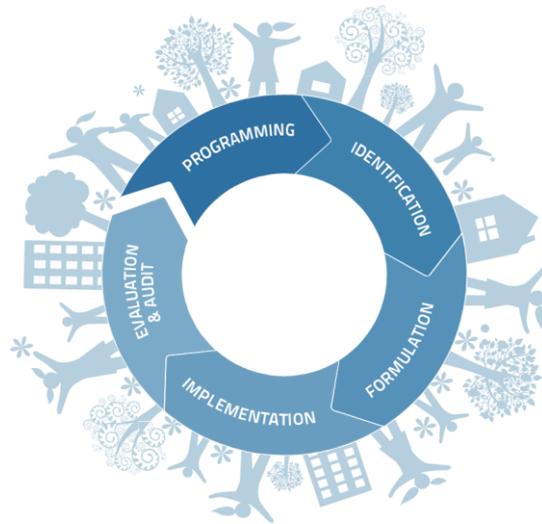


development actors should be included in the development and implementation of such programmes to ensure their long-term sustainability and transformative impact on gender relations.

- **Incorporating gender mandates and indicators in prosecutions, truth-seeking, reparations, national consultations and institutional reforms** (UN Women, 2012b).



## A roadmap for gender mainstreaming in development programmes related to access to justice



Gender equality considerations should be integrated throughout the whole cycle of development planning.

This Section proposes a roadmap for gender mainstreaming in the various phases of a programme – or project - lifecycle.

### 1. Analysis, programming and identification of country strategies

Programming and identification are strategic moments to promote the inclusion of gender concerns in programmes related to access to justice, which serve to redress gender inequalities and promote human rights and justice for all. The most essential steps are:

- To keep gender equality in the policy dialogue agenda;
- To carry out gender sensitive analysis for the diagnostic stage.

Dialogue and negotiations related to access to justice should:

- Be grounded in the shared objectives of the global human rights agenda, and in the common respect of the human rights framework, including gender equality (e.g. CEDAW and the Beijing Platform for Action; the International Covenant on Civil and Political Rights; the International Covenant on Economic Social and Cultural Rights; or the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation).
- Align with the country commitments (laws, policies, strategies), while ensuring that gender equality and human rights and justice for all are guiding principles. Thus, if necessary, dialogues and negotiation should focus on placing discriminatory domestic laws in accordance with international legal standards on gender equality.
- Analyse the different roles and take-off positions of women and men in relation to access to justice and use sex-disaggregated data in diagnostic studies. Identify the best systems and mechanisms for women to access their rights. Gender country profiles or other sectoral studies should be used or commissioned.



- Systematically involve and support “gender stakeholders”, from government, donors and civil society, at all stages. This can include gender coordination groups, gender focal points in ministries, gender experts, representatives of women survivors of violence groups, lawyers' associations, women’s rights advocacy groups, etc.
- Build on previous and current initiatives to promote gender equality in the sector or in contributing sectors, map existing needs and financing gaps, and avoid duplication of efforts.
- Assess whether the institutions that will be responsible for programme management and service delivery have resources and capacities to promote gender equality and plan for competence development initiatives, including at law enforcement and service delivery level.
- Assess the needs for institutional changes in national justice services, at the level of organisational mandates, procedures and cultures.

## 2. Formulation and budgeting

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The results of gender analysis should be used to tailor the formulation of programmes and projects. The formulation phase is particularly important, as it affects all subsequent phases of the programme (implementation, monitoring and evaluation). This entails:

- Design objectives and activities to address gender gaps identified and include them in programme documents, plans, logical frameworks, financing agreements and budgets.
- Include and budget for initiatives to address specific needs and constraints faced by women or men, including legal empowerment programmes for women to access justice in plural legal contexts.
- Allocate resources for gender mainstreaming, capacity building and awareness raising at all levels and in ways that are adapted to the needs of different target groups, for example programme staff, staff from relevant local institutions intervening in the justice chain (judges, lawyers, police, law enforcement authorities representatives), staff from service delivery institutions (health care professionals, social workers, etc), women and men beneficiaries;
- Allocate resources to gender-specific activities when needed (e.g. women’s survivors of sexual violence psychological support).
- Commit to pursue a strategy for continued gender mainstreaming in the programme (donor and country led processes). This may be formalized in an action plan which should then clearly assign responsibilities, resources and results to be achieved, as part of the broader programme’s result chain.
- Establish formal mechanisms of consultation with gender stakeholders to ensure that women can participate in defining the programme objectives.
- Design and budget for participatory and gender-sensitive monitoring processes, particularly at the implementation phase of the programme, such as design, mandate and implementation of reparation courts in case of conflicts.
- Define performance monitoring frameworks and processes which can capture progress in gender-related objectives.
- In direct budget support initiatives, include gender indicators in financing agreements between donor and recipient countries. For example, useful indica-



tors could be: *existence of laws protecting women's human rights (e.g. social, economic, political and sexual); existence of protocols to implement laws and mechanisms to ensure coordination between different institutions intervening in the legal chain.*

- Respect equal opportunity principles in management arrangements and establish accountability structures for gender mainstreaming at programme level.

### 3. Implementation and monitoring

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At this stage what is planned in relation to gender equality should be maintained, monitored and corrected as needed. The most important points to consider are:

- Continued coordination, dialogue and consultation on gender equality within working groups on justice sector reform; with institutional stakeholders in law enforcement and judicial authorities as well as with a broader range of actors from civil society.
- Effective monitoring of the progress of the various gender dimensions of the programme and sub-programmes, including at service delivery level (e.g. removal of practical barriers for women to access justice), collecting opinions and experiences of women and men on their access to justice, collecting gender disaggregated data on prosecution and outcomes of different types of crimes;
- Integration of gender in joint sector reviews and policy dialogues (particularly at the level of the SWAP committee);
- Monitoring if resources planned for gender equality are spent, and if not, why.

### 4. Evaluation

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- Terms of Reference of (mid-term) evaluations should require gender expertise in the evaluation team and give account of the differential impacts of a programme on women and men, identify potential negative impacts on women or men and offer recommendations and lessons learned useful to further pursue gender equality in the sector;
- Evaluators and monitors should be able to use participatory techniques and sex-disaggregated beneficiary assessments of access to justice and outcomes of legal proceedings;
- Evaluations should also build on past gender evaluations of programmes in the sector.

#### GENDER TOOLS FOR THE DIFFERENT AID MODALITIES

An ample selection of analytical and planning tools useful at each phase of the development cooperation cycle, according to the different aid modalities, is available in the “Aid Modalities” Section of the EU Resource Package on Gender Mainstreaming in Development Cooperation.

The following Section offers a list of gender-analysis questions that can be used in Programmes related to access to justice.



## Questions for gender analysis in access to justice<sup>1</sup>

Gender analysis helps acquire a different perspective on the complexity of a development context, and understand how to better address other forms of social inequalities. It looks at how economic and social structures at multiple levels can reinforce, or help overcome, gender inequalities and imbalances in power relations between women and men.

### DIFFERENT LEVELS OF GENDER ANALYSIS

**Macro analysis looks at national level law, policy and decision making**, including ratification of women's rights international conventions, or existence and implementation of national strategies to eradicate women's human rights violations. It helps identify how access to justice programmes can contribute to, or hamper, broader development strategies. It assesses whether legislation or policies contribute to gender inequalities, or to their elimination. It is particularly useful when programming or identifying development cooperation strategies, programmes and projects.

*For example:*

*A gender analysis of an allegedly neutral transitional justice process in a post-war area can uncover additional human rights violations that women can suffer after the end of the conflict if gender inequalities prior to the conflict are not taken into consideration and gender blind restitution policies are implemented.*

**Meso level analysis looks at institutions, services, infrastructures** which serve as a link between laws/policies and people, enabling them to benefit (or be excluded) from policy effects: communication and transportation systems, health services, education, decentralized public services (police, shelters).

This is particularly useful at programme formulation, as it also assesses the extent to which gender roles relationships and cultural issues can influence the effectiveness of service delivery and other policy and programme implementation mechanisms.

*For example:*

*The costs of transportation, along with gender norms considering that women should not travel far away from their home can impede women from claiming their rights. Mobile courts can be a useful way to bring justice closer to women, especially when tribunals are located far from their village.*

*In plural justice system, programmes that focus on strengthening the formal justice system only might not have the desired impact in term of gender equality, due to the substantial share of women's human rights violations that are tried in informal justice courts.*

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<sup>1</sup> More on gender analysis is available in the EU Resource Package, Section "Building Blocks".



## DIFFERENT LEVELS OF GENDER ANALYSIS

**Micro level analysis studies people:** women and men as individuals, and the **socio-economic differences** between households and communities. It considers women and men's roles, activities and power relations within the household and the community, and how these influence their respective capacities to participate and benefit from development programmes. It is particularly useful at formulation, implementation and monitoring levels.

*For example:*

*A gender analysis of 'neutral' reparation mechanisms could reveal the issues faced by women to access to their individual reparation payments. Many women might have to receive their payment through the bank account of a relative (usually a man). Women's control over this payment might thus be limited.*

The following section proposes guiding questions for gender analysis in access to justice programme, at macro, meso and micro levels.

### Macro level

#### Macro level. Policies and laws

- What gender equality commitments have been made by the government, for instance in the framework of the Beijing Platform for Action, CEDAW, the SDGs? Is there a law and/or a policy on gender equality in the country?
- Are those international commitments integrated to the national laws, at both normative and procedural levels (e.g. integration of the measures recommended in relation to the prosecution of sexual violence by the Rules of Procedure and Evidence of the Rome Statute of the International Criminal Court)?
- Do national policies related to the functioning of the justice chain reflect these commitments through awareness of inequalities between men and women, and do they outline the means to address them? Are there gender policies and action plans in the justice sector? Do national programmes and sub-programmes related to the functioning of the justice chain align to and support these gender plans?
- Are national gender equality commitments and policies able to reach informal justice systems?
- Do current policies, laws and regulations (e.g. family, inheritance, violence) address women's and men's rights separately? Do they have discriminatory provisions? Do they have measures for equal opportunities and women's rights (e.g. inheritance and land tenure rights)?
- Is the social and health protection system inclusive of women's needs and rights? Are certain groups excluded (e.g. women belonging to a minority, rural women, unwed mothers)?
- Do standardised protocols and regulations to enforce laws and mechanisms ensure coordination between different institutions intervening in the legal chain?



- In the case of transitional justice processes, do national policies setting up the reparation courts address previously existing gender inequalities and seek to redress them?
- If transitional justice programmes have been developed and related institutions implemented, are their mandate based on good governance principles and include crimes against women as a matter of core concern?
- Do these programmes ensure accountability for crimes against women and prevent impunity for perpetrators?
- Have legal aid mechanisms been implemented? Are those mechanisms taking into account women's specific barriers in accessing justice?

#### Macro level. How are decisions made in national-level institutions?

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- Are there decision makers (in government, parliament) who are ready to champion gender equality and women's human rights?
- Are governmental institutions responsible for women's rights and gender issues, involved in decision-making at national policy and planning levels?
- Are there gender thematic groups that could be involved in sector level consultations? Are those consultations targeting both the formal and informal justice systems?
- In case of transitional mechanism processes, were national-level consultations organised prior to setting up the justice institutions?
- Are women's rights advocate groups involved in the decision-making process around the implementation and monitoring of transitional justice mechanisms? Are they involved in the selection process of the members of the courts?
- In case of post-conflict situation, is there a victims and witnesses unit in place, and advisers with legal expertise on sexual and gender-based violence, as required by the Rome Statute?

#### Macro level. Data and information

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- Are there policy documents or agreed gender assessments to ensure that information and statistics on the gender gaps and priorities in the justice sector are collected?
- Are data collected on women and men's human rights violations (in relation to their social, economic, politic and sexual rights)?
- Are sex-disaggregated data available on the prosecution of human rights violations; the outcomes of legal cases; the rate of attrition depending on the type of crimes prosecuted?
- Are sex-disaggregated data available on recourse to informal justice systems?
- Have similar programmes/projects been implemented in the country? Were gender-sensitive evaluations carried out? What are good examples of women's empowerment in the study area? Which attempts to achieve gender equality were unsuccessful (e.g. because they were taken over by men or had adverse effects on women)?



## Macro level. Monitoring frameworks

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- How is the country faring on gender equality targets established at international level?
- Has the government developed indicators that allow for monitoring progress in justice from a gender equality perspective? Which data exists to show the impacts of the programme/project for women and men?
- Has there been a gender analysis of government spending in this sector and in the sub-sectors? Does the government have a system to track the gender sensitivity of development programmes?
- Is it possible to have a benefit incidence analysis by sex of beneficiaries? (Method of computing the distribution of public expenditure across different demographic groups, such as women and men.)
- In sector budget support modality, can payments be linked to progress made on the gender objectives and gender indicators? Is part of the budget earmarked for specific gender equality objectives?
- If transitional justice mechanisms are in place, are the challenges faced in prosecuting crimes against women monitored and reported centrally?
- Has the government developed clear timelines and benchmarks for implementing the recommendations of the transitional justice courts and commissions?

## Meso level

### Meso level . Service provision

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- If economic help to access legal aid are in place, are they accessible for women as well as for men?
- Are women and men treated equally in accessing formal and informal justice systems? What are the differences of treatment that women and men receive when seeking redress in formal and informal justice systems (e.g. at procedural level; during investigation for evidences...)?
- Are there plans to improve the outreach capacity of local-level service delivery institutions to poor communities and in particular to women (E.g. mobile courts to enable population in remote areas to seek redress and access justice; or gender-sensitive reparation payment processes)?
- Are women's organisations or NGOs able to promote the rights of women to access to justice in case of human rights violations?
- Is there a gender balance in programme and project implementation units? At what levels?
- Have procedures and mandates been developed for services providers (police, forensic services, prosecuting agencies, legal support and courts)?
- Are formal and informal legal services providers and law enforcement authority operators provided with gender equality training?
- If there are legal empowerment activities planned (such as legal education), who are the beneficiaries of those activities? Are disadvantaged and marginalised



groups reached by those activities? Are both justice systems users and providers targeted by those activities?

- Are there one-stop shops and specific legal services in place for women survivors of violence? Are steps taken to tailor those services to women's needs?
- Are specific procedures in place to facilitate women's testimony in cases of violence (e.g. *in camera* hearings)?
- Are there mechanisms to increase prosecution rate and reduce attrition in case of crimes against women (e.g. psychological support; *in camera* hearings; awareness raising activities provided to the community to avoid stigmatisation of women after their testimony)?
- Are there sanction mechanisms in place in case of failures to address crimes against women?
- If transitional justice mechanisms are in place and include crimes committed against women as a matter of core concern, are adequate incentives provided to the staff of transitional justice institutions to enable them to respond to the mandate of the institution regarding gender equality? (UN Women, 2012, A window)
- Are actions taken to remove women and men's obstacles to access justice (e.g. translation services; free system of transportation to the courts; childcare facilities)?
- Are mechanisms in place to provide survivors of human rights violations with preferential access to certain type of services (e.g. psychological support and health services for victims of sexual and gender-based violence)?
- Are programmes in place to provide displaced persons with specific support (e.g. in relation to economic subsistence and security)?

#### Meso level. Decision making and consultation

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- Does the programme envisage support for, and empowerment of, groups of survivors of human rights violations? Are women represented in those groups? Which women?
- Are gender equality institutions and structures at local level being involved?
- Are there mechanisms to address gender imbalance in the justice system and its institutions (e.g. mechanisms to recruit more women at all levels of the judiciary and police)?
- Were women consulted when developing and implementing the reparation mechanisms?
- Are women able to voice their interests in formal and informal justice systems and courts?

#### Meso level. Data collection and monitoring processes

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- What data can be collected throughout the programme to monitor the impacts for women and men? Who will be responsible for collecting this data, and how frequently? Will they be trained in participatory, gender-sensitive data collection techniques?



- How are consultation processes on reform of justice systems organised at various levels? Are both women and men involved in community level consultation processes? How are women's interests represented? Is there a need to set up new fora?
- Are adequate resources allocated for participatory consultation, monitoring and sex-disaggregated beneficiary assessments of all services of the justice chain?
- Are data collected at this level disaggregated by sex? What is the capacity of the national statistical office, and of enumerators, to collect sex disaggregated data and produce gender sensitive statistics?
- Are data collected on the practical obstacles that can prevent women and men from accessing justice, at formal and informal level?
- In case of post-conflict situation, are data collected on the gendered psychosocial impact of the conflict?
- Are data collected on women and men's access to reparation mechanisms, by type of mechanisms?
- Are findings from the courts and commissions analysed and are gender-differentiated data based on those analyses made available?

## Micro level

### Micro level. Gender division of tasks and labour

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- What are women and men's traditional activities?
- In case of post-conflict analysis, what were women and men's activities prior to the conflict? Have these activities changed? How?
- In case of displacement, what are women and men's activities in camps? How do they differ from their usual activities?
- What is the impact of women's (and girls') activities on the risk of experiencing human rights violations?
- What is the impact of women's (and girls') unpaid work on their opportunity to engage in paid work (or education)?
- What is the impact of women's (and girls') unpaid work on their capacity to seek legal redress?

### Micro level. Gender relations: Access and control over resources and services

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- What are the general economic and demographic conditions of the household? Of the community? What are men and women's main sources of income?
- Which factors influence access to and control over resources (for example, age, sex, wealth, ethnicity, peri-urban versus rural locations, education level, networks and patronage)?
- Are there gender inequalities in access to and control over resources and benefits, such as property rights or land tenure?
- At the household level, who takes decisions about resources, activities and access to services?



- At the community level, how are decisions made about rights and responsibilities of women and men?
- If community-based organisations exist (e.g. cooperative, traditional sociocultural organisation, religion-based etc.), are women members? Do they participate? At which level? If not, why not?
- Are women involved in decision over legal disputes taking place in the community? Do women occupy decision-making positions in the informal courts?
- Are women able to seek redress for violations of their human rights on their own initiative?
- In the case of post-conflict situations, if women have received reparation payments, who has control over it?

### Micro level. Perceptions about gender equality

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- What are women and men's perceptions on gender-based violence (inside and outside the home) and harmful traditional practices?
- Are women aware of their rights and institutions that should protect them?
- What has been the impact of conflict on women and men's perception of their rights?
- For which type of human rights violations do women and men seek redress? To whom?
- In the case of post-conflict situations, what are women and men's perceptions of the conflict, its causes and consequences?
- What are women and men's perceptions of certain human rights violations (e.g. sexual violence) and their perceptions of people who seek justice and testify about those violations?
- Are women and men who testify stigmatised by their community afterward? In which ways?
- What are women and men's perceptions different types of administrative reparation programmes (e.g. individual or community reparation)?
- Are men openly resistant to gender equality? Are there groups of men who are more supportive/resistant than others? Who can influence them?

### Gender sensitive indicators for the justice sector

Gender sensitive indicators aim at 'creating awareness of the different impacts of a development intervention on men and women, taking into consideration their socio-economic and cultural differences.' (FAO, n.d. – Gender sensitive indicators for Natural Resources Management). Gender sensitive indicators reveal valuable information to identify the specific problems faced by women and men; to assess the extent of gender inequalities in access to and use of resources and services in relation to the justice chain, and provide the basis for evidence-based policy-making processes (FAO, n.d.).



The table below provides some examples of gender sensitive indicators.

| Area/Sub-sector   | Indicator  |
|---|--|
| <p>Institutional framework for mainstreaming gender equality in access to justice</p> | <p>Existence of constitutional provision on gender equality and women's rights</p> <p>Ratification of CEDAW and optional protocols</p> <p>Existence of legislations protecting women's human rights (e.g. social, economic, political and sexual)</p> <p>Existence of a national justice policies formulated with gender concerns</p> <p>Number of law and court reforms that address gender-based discrimination in access to justice</p> <p>Number of law reforms that advance gender equality and are compliant with the CEDAW, by focus area (e.g., land and property ownership, inheritance, gender-based violence, citizenship, marriage and family law, electoral law, and employment law)</p> <p>Number of law and justice agencies with gender equality policies or strategies and evidence that they are implemented</p> <p>Existence of protocols to implement laws and mechanisms to ensure coordination between different institutions intervening in the legal chain</p> <p>Existence of an established and operational national structure for addressing violence against women. In transitional justice programmes, existence of a Victims and Witnesses Unit</p>  |
| <p>Monitoring women's and girls' access to the justice system(s)</p>                  | <p>Percentage of women and men accessing justice through the courts for civil and criminal cases, by type of case</p> <p>Percentage of women and men accessing justice through formal and informal justice systems</p> <p>Percentage of women and men who use customary or informal dispute resolution systems (by type of case) and their reasons for doing so</p> <p>Views of women and men on custom court processes and their outcomes, in relation to the rights of women and girls</p> <p>Average time and cost for an individual wishing to pursue a complaint by available mechanisms, disaggregated by sex</p> <p>Percentage of women and men who receive legal aid, by type of case and location (rural or urban)</p> <p>Percentage of women, men, girls, and boys (disaggregated by location; ethnicity) who report that they are able to access the formal legal system, and percentage who have confidence in the legal system to treat them fairly</p> <p>Percentage of crimes reported to police which result in arrest and prosecution, comparing civil and criminal cases with crimes of physical and sexual violence against women and children</p> <p>Conviction rates for crimes of violence against women and children, compared with rates for all crimes</p> <p>Attrition rate for crimes of violation of women's human rights compared with rates for all crimes</p> |



| Area/Sub-sector                 | Indicator  |
|---------------------------------|--|
|                                 | <p>Proportion of sexual and gender-based violence cases resolved through restorative justice</p> <p>Number of women, girls, men, and boys who receive legal assistance for dealing with other rights violations (e.g., related to livelihood or employment, dispossession of land or other property, restrictions on mobility, discrimination, harassment, physical assault, abductions, extrajudicial killings, and corruption, including in conflict-affected areas)</p> <p>Existence of legal literacy education provided to women and men; percentage of women and men who have attended such awareness raising activities</p>   |
| Gender-responsive justice chain | <p>Percentage of women and men in the police force, by rank, location (urban or rural) and type of job</p> <p>Percentage of women and men members of the judiciary</p> <p>Percentage of women and men members of the highest judicial body</p> <p>Number of consultations with women’s organisations and women’s rights advocacy groups engaged in law reform and advocacy, by focus area</p> <p>Number of women’s rights advocacy organisations receiving governmental funding; and amount of funding</p> <p>Number and percentage of women and men law and justice officials (in formal and informal systems) trained in gender equality and women’s rights</p> <p>Number and percentage of women and men law and justice officials trained in gender-based violence</p> <p>Inclusion of women’s rights in general training of law enforcement authority representatives</p> |

Source:

DANIDA, Gender-sensitive monitoring and indicators, 2006  
 ADB, Tool Kit on Gender Equality Results and Indicators, 2013

## Examples of gender-sensitive projects in justice

Several development and cooperation programmes have successfully addressed the issue of gender inequalities in access to justice. Some examples are provided in the table below, and additional documents gathering good practices are listed in the following page.

| Programme/project   | Challenges  | Gender Strategy   | Source   |
|---|---|---|--|
| Thuthuzela Care Centres in South Africa                   | Survivors of sexual violence often experience secondary victimisation, due to the multiple steps they have to take to access justice and during which they are forced to rememorate the violence they suffered. This issue tends to lead to a important attrition rate. | The Thuthuzela care centres were implemented as part of the national anti-rape strategy. Based upon the one-stop shop model, they aim to reduce secondary victimisation by providing women survivors of sexual violence with holistic support, including emergency medical care, counselling and court preparation. Staff of the centres include medical professionals, social workers and police officers, to address both women’s medical and social needs. Among the objectives of the centres are to increase conviction rates and reduce delays in cases. The Thuthuzela care centres deal with about 20% of victims of sexual violence. | UN Women (2012), 2011-2012 Progress of the World’s Women in Pursuit of Justice<br>Available at:<br><a href="http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2011/progressoftheworldswomen-2011-en.pdf">http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2011/progressoftheworldswomen-2011-en.pdf</a> |
| Mobile Courts in Eastern democratic Republic of the Congo | Women’s access to justice might be hindered by their difficulty to physically access the justice system and its institutions, due to, for example, distance or gender norms.  | Based upon a partnership between the government, the American Bar Association and the Open Society Justice Initiative, mobile courts were developed to bring justice to remote areas of Easten DRC. In 2011, in order to proceed to the hearings in a case of mass rape of women and girls in Fizi, the ‘Fizi rape case’, the court staff travelled to those remote areas to collect evidence and women’s and girls’ testimony. Survivors were able to testify in private settings and were provided with psychological support. This was the first time a case of crime against humanity was judged in a mobile court.                       | UN Women (2012), 2011-2012 Progress of the World’s Women in Pursuit of Justice<br>Available at:<br><a href="http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2011/progressoftheworldswomen-2011-en.pdf">http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2011/progressoftheworldswomen-2011-en.pdf</a> |

| Programme/project   | Challenges  | Gender Strategy   | Source   |
|---|---|---|--|
| <p>'Engaging with customary law to create scope for realizing women's formally protected land rights in Rwanda'</p> | <p>In rural areas of Rwanda, some groups of women (including widows and divorced women) face specific obstacles in getting access to and maintaining their ownership of land. Land tenure is still primarily determined by informal justice system, under which women have only few rights, and the impact of land tenure reforms to strengthen women's statutory land rights had been limited.</p> | <p>Research was conducted to determine what would be the most pertinent type of intervention to enable women to defend their interests and rights over land in cases of customary disputes. In order for disputes over land ownership to have an outcome more favourable to women's interest, the research showed that the disputes should be resolved through the existing informal justice system itself, involving the traditional mediation procedures representatives from women's interest groups. Women's land claims carried out in the traditional legal framework might then be better understood and more effectively implemented.</p> | <p>IDLO, 2013, Accessing Justice: models, strategies and best practices on women's empowerment Available at: <a href="http://reliefweb.int/report/world/accessing-justice-models-strategies-and-best-practices-women%E2%80%99s-empowerment">http://reliefweb.int/report/world/accessing-justice-models-strategies-and-best-practices-women%E2%80%99s-empowerment</a></p> |



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