

Justice Reform and Gender

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There is strong recognition that security sector reform (SSR) should meet the different security needs of men, women, boys and girls. The integration of gender issues is also key to the effectiveness and accountability of the security sector, and to local ownership and legitimacy of SSR processes.

This Practice Note provides a short introduction to the benefits of integrating gender issues into justice reform, as well as practical information on doing so.

This Practice Note is based on a longer Tool, and both are part of the **Gender and SSR Toolkit**. Designed to provide an introduction to gender issues for SSR practitioners and policymakers, the Toolkit includes 12 Tools with corresponding Practice Notes – see *More information*.

Why is gender important to justice reform?

Justice reform includes not only reform of laws but also the development of policies, procedures and mechanisms that allow for the practical implementation of laws and equal access to the justice system. The goals of justice reform include developing: a constitution and laws based on international standards and human rights instruments; an effective, impartial and accountable judiciary; an integrated approach to criminal justice; and mechanisms for oversight of the justice system.¹

Gender refers to the roles and relationships, personality traits, attitudes, behaviours and values that society ascribes to men and women. 'Gender' therefore refers to *learned* differences between men and women, while 'sex' refers to the *biological* differences between males and females. Gender roles vary widely within and across cultures, and can change over time. Gender refers not simply to women or men but also to the relationship between them.

Reform discriminatory laws and promote human rights

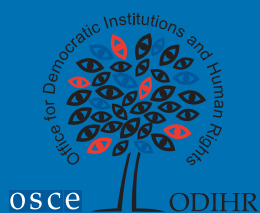
- Many countries maintain laws that are overtly discriminatory with regard to land ownership, inheritance (see Box 1), gender-based violence (GBV), child custody, employment and other issues. Discriminatory laws and regulations need to be reformed in compliance with international human rights law.

Effective, non-discriminatory delivery of justice services

- Stereotypes, discriminatory attitudes and procedural barriers should not undermine the delivery of justice services. All judicial personnel should receive training on gender issues, including appropriate responses to domestic violence and discrimination on the basis of sex or sexual orientation.
- In order to end impunity for GBV, the judiciary needs to be trained in international and national legislation on gender issues.

Ensure equal access to justice

- Men and women have the right to be afforded equal access to justice systems, including through the courts, transitional justice mechanisms, traditional/customary systems and alternative dispute resolution. However, there are many obstacles to women's access to justice including: lack of knowledge about legal rights, corruption, fear of testifying, lack of resources, language barriers and lack of child care.



Jane Watiri petitioned the court to award her one half of a parcel of land that belonged to her deceased father on which she lived with her four children. Her brother objected, arguing that he had cultivated a larger portion of the land during his father's lifetime than his sister and therefore was entitled to that larger portion.

Senior Principal Magistrate H. A. Omondi found that under Kikuyu customary law, an unmarried woman like Watiri lacked equal inheritance rights because of the expectation that she would get married. Magistrate Omondi held that this customary provision discriminated against women in violation of Section 82(1) of the Kenyan Constitution, which prohibits discrimination on the basis of sex. It also violated Article 18(3) of the Banjul Charter and Article 15(1)-(3) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which provide for legal equality between men and women. Consequently, Magistrate Omondi awarded Watiri and her brother each an equal share of their father's property.²

Representative and legitimate justice sector

- If the justice sector is to gain credibility and trust in the eyes of the community, the reform process must include the participation, and address the needs, of all members of society including women.
- To increase legitimacy, justice sector personnel should be representative of the population they serve. Currently women are largely under-represented at most levels in the judicial system, including as judges and lawyers.

Compliance with obligations under international laws and instruments

Taking the initiative to integrate gender issues into justice reform is not only a matter of operational effectiveness; it is also necessary to comply with international and regional laws, instruments and norms concerning security and gender. Key instruments include:

- *The Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW, 1979)
- *United Nations General Assembly Resolution 52/86 on Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women* (1998)

For more information, please see the Toolkit's Annex on International and Regional Laws and Instruments.

How can gender be integrated into justice reform?

Gender-responsive law reform

- Accede to and ratify international and regional human rights treaties and conventions.
- Reform the constitution so that it guarantees the equal enjoyment of human rights and gender equality, and prohibits gender-based discrimination and violence.
- Review existing national legislation and enact new laws to prohibit gender-based discrimination and violence.
- Engage with traditional justice mechanisms to ensure that they uphold basic human rights, including women's rights.

Non-discriminatory procedures and practices

- Scrutinise judicial procedures and practices to ensure that they do not improperly discriminate against women or other groups in society.

Special measures to address GBV

- Establish special measures in relation to sexual and domestic violence for the protection of witnesses and victims and to increase the number of cases going to trial. Special measures can include gender-sensitive roles of evidence and procedures that are not based on harmful stereotypes and that avoid the 're-victimisation' of survivors (see Box 2).

Gender training

- Deliver training on women's rights (derived from national, regional and international laws and obligations), legal procedures for GBV and the 'gendered' impact of the judicial system to all actors within the judicial sector, including: judges, prosecutors, defence counsel, private lawyers, court personnel, police and paralegals.

Access to justice

- Employ paralegals to build legal literacy of the general population through teaching people how to access the justice system, what their legal rights are and how to utilise available legal resources.
- Provide legal aid to marginalised populations, including women.
- Support civil society organisations (CSOs), including women's organisations, that facilitate access to justice (see Box 3).

In response to low conviction rates, South Africa introduced Sexual Offences Courts and Thuthuzela centres. Sexual Offences Courts are specialised courts designed to streamline the handling and prosecuting cases of sexual abuse; the personnel have all been specifically trained to deal with sexual offences. Thuthuzela, or comfort, centres are attached to these courts and serve as a one-stop service for rape victims. A centre is manned by a project manager and provides police services, health care, counselling and legal services all under one roof, allowing for improved management of rape cases. Conviction rates have increased to 75–95% and the typical case is now resolved within 6 months from the date of the first report. Prior to these centres, case resolution took on average 18 months to 2 years.³

Representative judicial sector

- Promote the equal representation of women and men in the justice system through initiatives to increase female recruitment, retention and advancement. Temporary special measures, or affirmative actions, such as law scholarships or quotas may be required to speed progress towards parity (see Box 4).

Oversight and monitoring

- Include key stakeholders from the judiciary, prosecution authority, law associations, police, prisons, civil society, women's networks and NGOs in justice reform processes.
- Strengthen gender-responsive international, national and civil society oversight and monitoring mechanisms. For instance, the national women's machinery or a task force on gender bias in the courts can work to hold the justice system accountable for the elimination of gender bias in the courts, discrimination on the bench, or improper prosecution of GBV cases.

Also available in Tool 4...

- 'Nine Ps of Gender and Justice Reform'
- Best practices in the legal definition and criminalisation of rape
- Tips on establishing a task force on gender bias in the courts
- Good practices for engagement with traditional justice mechanisms
- Tips for the integration of gender into Truth and Reconciliation Commissions

Post-conflict challenges and opportunities

The post-conflict period presents a unique opportunity to adopt strategies for the re-establishment of the rule of law and the promotion of gender equality within the justice sector, as well as the direct participation of women throughout the justice reform process. The peace process and transition from conflict are strategic entry points to promote accountability for GBV and discrimination. Transitional justice mechanisms, such as ad hoc criminal tribunals, truth and reconciliation commissions and reparations programmes, are often important factors in this endeavour.

Box 3

Increasing public access and awareness in Timor Leste

In Timor-Leste, Fokupers, a non-governmental organisation, provides accessible legal aid services for female victims and raises public awareness of domestic violence and women's legal rights. Its information brochures are distributed to service providers, religious institutions, government agencies and lawmakers.⁴

Challenges for the integration of gender issues

- The judiciary is often dysfunctional, its independence compromised and corruption rife.
- Many conflicts include massive sexual violence against women and girls, and also against men and boys, which needs to be specifically addressed in post-conflict justice reform.⁶ Sexual and domestic violence often continue at elevated rates after conflict; justice mechanisms to address GBV are an urgent priority.
- The police and penal system are part of the problem: police not having the capacity or will to effectively respond to GBV cases and prisons being overcrowded and rife with abuse.
- The general public, especially women, often have no confidence in the judicial system.

Opportunities for the integration of gender issues

- There may be more political will of the international community, international organisations and newly-established governments to invest in gender-responsive justice reform processes.
- The peace-building process can create entry points for the direct participation of women and other key stakeholders in the justice reform process, giving them the opportunity to express their needs and priorities.
- Justice reform processes open up the opportunity to provide gender training and recruit more women and other under-represented groups.
- There may be widespread support for the establishment of transitional justice mechanisms, which provide an opportunity to incorporate gender issues, including the effective prosecution of GBV.

Box 4

More female judges in the European Court of Human Rights

The European Parliamentary Assembly in its Resolution 1366 (2004) decided that it would no longer consider lists of candidates for the European Court of Human Rights that did not include at least one candidate of each sex. This rule was changed a year later to allow for unisex candidate lists, provided they were from the under-represented sex on the Court (currently women). When this measure was decided upon, there were 11 female judges to 32 male judges: women made up only 26% of the Court's composition. As of April 2007, the situation had improved, although only slightly: there were 14 female judges to 32 male judges; women making up 30% of the Court's composition.⁵

? Questions for justice reform

One of the best ways to identify entry points, strengths and weaknesses for incorporating gender perspectives into justice reform is to conduct an assessment. Below are some sample questions on gender issues that could help to make judicial assessment, monitoring and evaluation more complete.

- Which international and regional human rights instruments have been ratified?
- Do the constitution and national laws conform to international and regional human rights obligations, including with regard to gender equality and GBV?
- Do traditional and religious laws and customs include discriminatory practices?
- Are adequate laws in place to prevent discrimination – e.g. laws that prohibit: discrimination against women and men with HIV/AIDS; discrimination or dismissal on the grounds of pregnancy, maternity leave or marriage; and sexual harassment in the workplace?
- Is there de facto and/or de jure discrimination in the laws or the way they are applied?
- Do women and men, in both rural and urban settings, have full and equal access to the justice system?
- Are gender-responsive legal literacy programmes in place?
- Are cases of GBV adequately processed and sanctioned? Are special mechanisms in place to protect and support witnesses and victims?
- Have all justice sector personnel received adequate gender training?
- Do female offenders have equal access to alternatives to imprisonment?
- Is the justice sector budget gender-responsive, such as including funding for gender training or legal aid for women?
- Are policies and procedures in place to increase the equal representation of men and women in the justice system?
- Are CSOs, including women's groups, fully included in justice reform processes and oversight and monitoring bodies?

More information

Resources

ARC International – *Gender-Based Violence Legal Aid: A Participatory Toolkit*, 2005.

ILAC – *Building Partnerships for Promoting Gender Justice in Post-Conflict Societies*, 2005.

Molyneux, M., & Razavi, S. – *Gender Justice, Development and Rights*, 2003.

Nesiah, V., International Centre for Transitional Justice – *Gender Justice Series, Truth Commissions and Gender: Principles, Policies and Procedures*, 2006.

OECD DAC – *OECD DAC Handbook on Security System Reform – Supporting Security and Justice*, 2007.

Texas Center for Legal Ethics and Professionalism – *Guidelines for Gender Neutral Courtroom Procedures*, 2001.

UNDOC – *Criminal Justice Assessment Toolkit*, 2006.

World Bank – *Gender Justice and Truth Commissions*, 2006.

Organisations

International Legal Assistance Consortium – www.ilac.se

ICTJ – www.ictj.org

Gender and SSR Toolkit

1. Security Sector Reform and Gender
 2. Police Reform and Gender
 3. Defence Reform and Gender
 4. Justice Reform and Gender
 5. Penal Reform and Gender
 6. Border Management and Gender
 7. Parliamentary Oversight of the Security Sector and Gender
 8. National Security Policy-Making and Gender
 9. Civil Society Oversight of the Security Sector and Gender
 10. Private Military and Security Companies and Gender
 11. SSR Assessment, Monitoring and Evaluation and Gender
 12. Gender Training for Security Sector Personnel
- Annex on International and Regional Laws and Instruments

Each of these Tools and Practice Notes are available from: www.dcaf.ch, www.un-instraw.org and www.osce.org/odihhr.

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¹ Organisation for Economic Co-operation and Security, *OECD DAC Handbook on Security System Reform: Supporting Security and Justice*, Draft Edition, (OECD: Paris), 2007, p. 182.

² International Association of Women Judges, 'Jurisprudence of Equality Program Decisions.' <http://www.iawj.org/jep/jep.asp>

³ Thuthuzela Care Centres, *The Country's Anti-rape Strategy Improves Perpetrator Conviction Rates*, 8 May 2006. <http://www.npa.gov.za/ReadContent407.aspx>

⁴ In-depth Study on all forms of Violence Against Women, Report of the Secretary-General (6 July 2006), UN document A/61/122/Add.1, para. 299.

⁵ Report of the International Symposium on Sexual Violence in Conflict and Beyond, 21-23 June 2006, Brussels, Palais d'Egmont. http://www.unfpa.org/emergencies/symposium06/docs/final_report.pdf

⁶ Bastick, M., Grimm, K. & Kunz, R., *Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector*, (DCAF: Geneva), 2007.