

SAFEGUARDING ACCESS TO JUSTICE FOR ALL WOMEN & GIRLS IN AFRICA:

CSOS RECOMMENDATIONS & POSITION STATEMENT FOR

CSW70

Priority theme:

Ensuring and strengthening access to justice for all women and girls, including by promoting inclusive and equitable legal systems, eliminating discriminatory laws, policies, and practices, and addressing structural barriers.

Review theme:

Women's full and effective participation and decision making in public life, as well as the elimination of violence, for achieving gender equality and the empowerment of all women and girls.

“When women have access to timely, effective, and affordable access to justice, they can manage their destinies, participate in the political, economic, and social life of their communities, live free from violence and discrimination, and, ultimately, contribute to the development of their communities.” Zainab Malik (2024)

The African Women's Development and Communications Network (FEMNET) in collaboration with the UN Women East and Southern African Office (ESARO) and members of the NGO CSW/Africa convened a series of African-wide consultations to collectively reflect on the theme of the seventieth session of the UN Commission on the Status of Women (CSW70). A total of seven convenings brought together over 1,000 girls, young women, and women's rights activists, legal practitioners, feminists, FEMNET members, gender and social justice advocates and development practitioners from 577 CSOs and 210 youth organizations across 54 countries.

They unpacked the meaning of access to justice, reviewed existing international and regional frameworks that advance gender equality and women's rights, and discussed in-depth the legal, institutional, and structural barriers that continue to hinder women's and girls' ability to fully and meaningfully access legal protection in Africa.

This CSOs Position Statement outlines the most pressing challenges identified by African women's rights and civil society actors and proposes actionable recommendations to be included in the continental and global outcome documents to strengthen inclusive and equitable justice systems, urgently calls for transformative justice systems and policies that are inclusive, affordable, accessible and just for all.

1.Contextual Overview of Women & Girls Access to Justice in Africa

Access to justice is central to the advancement of human rights and achieving gender equality.¹ Yet systemic barriers such as harmful practices, cultural norms,² discriminatory laws and policies make it difficult for women and girls to access justice³ As a result of these barriers, women and girls have inadequate access to and ownership to judicial processes, impacting their ability to seek recourse in the formal justice system.⁴Justice systems in Africa by design are not responsive to specific justice needs of women and girls which exacerbates injustice and inequality. Traditional justice systems often reinforce cultural hierarchies that shape who holds power, whose voices are heard or legitimized and whose rights are prioritized. Women's and girls' rights are violated in the name of preserving 'family harmony' or 'societal harmony'. Inequality in the justice system hinders women and girls from enjoying their economic and social standing in society. Equitable participation of women and girls in society requires that they can fully and effectively access justice.

Feminists' analysis⁵, provide intersectional insights into the struggles faced by women and girls in their quest to access justice. The challenges they experience include systemic barriers such as discrimination, deeply entrenched patriarchal and social norms that relegate women to second class citizens.⁶ For instance, African countries still have discriminatory laws and practices related to family law, citizenship law, property, inheritance and bodily autonomy⁷ These are the areas that intersect with social norms, cultural traditions and patriarchal structures. Feminist perspectives call for values such as autonomy, dignity and equality to be integrated into legal frameworks, institutions and services so that women and girls can actually access and benefit from the justice system.

1.1 Defining Access to Justice

Access to justice is the cornerstone of democracy and rule of law. It is a critical pillar in the advancement of gender equality and human rights.⁸ While there is no standard definition of access to justice, this paper adopts the AU Maputo Protocol⁹, UN Women, CEDAW Committee General Recommendation No.33¹⁰ and UNDP definitions.¹¹

Access to justice is the ability of individuals or groups of people [women and girls]¹² to seek [fair, effective, affordable and accountable mechanisms for protection of rights] and obtain remedy [fair, just] through formal and informal institutions of justice.¹³

Access to justice is woven in a complex tapestry of critical components¹⁴ that need to be laid out for this right to be attainable for women and girls. The critical elements encompass; justiciability, availability, accessibility, provision of remedies for victims and the accountability of justice systems.¹⁵ For instance to be able to access justice there needs to be in place (i) conducive and adequate regulatory frameworks, (ii) appropriate legal information and education, (iii) legal services (legal aid), (iv) access to qualified and competent legal service, (v) accessible justice institutions, (vi) easy to access legal procedures, (vii) adequate legal remedies and legal and non-legal mechanisms¹⁶

Access to justice is therefore the ability of women and girls to adequately access (i) the legal machinery, (ii) have physical access to justice institutions, (iii) ensure that they have linguistic accessibility, (iv) access to legal aid, (v) legal awareness, (vi) available remedies for grievances, capacity and competence of justice personnel, trust and satisfaction in the justice system.

According to Child Witness Institute: “There is no access to justice where citizens, especially those who form part of the marginalised groups, fear the system, do not understand the processes and do not access it; where they are unable to access the system for financial reason; where they have no legal presentation; or where they do not have information or knowledge of their rights.”¹⁷

Access to justice encompasses not only the ability to seek and obtain a remedy through formal court systems but also includes the availability and effectiveness of alternative mechanisms such as customary, informal, and community-based dispute resolution processes.¹⁸ In the African context, these non-judicial avenues often play a significant role in how women and girls experience and pursue justice, particularly in rural and marginalised communities where formal legal institutions may be inaccessible or unresponsive. Access to justice is therefore an expansive, comprehensive ecosystem that is built around fairness, equality, affordability, accountability, trust, protection of women and girls that seek remedy from formal and informal mechanisms that can address any breach of their rights and provide adequate and just reparations.

1.2 International and Regional Law and Policy Frameworks

The **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**¹⁹ lays out obligations that Member States need to have in place for women and girls to access justice. State Parties to CEDAW are expected to remove legal, institutional and social barriers to gender equality. States are obligated to provide effective remedies through courts and other tribunals²⁰ and eliminate all forms of discrimination by enacting laws, establishing protections and repealing laws which discriminate against women and girls.²¹ Article 2 (c) and (d) requires States to provide for women and girls on equal basis as men and ensure compliance of public institutions to the non-discrimination provisions. Article 15 (1) provides for women’s equality before the law and equal access to dispute resolution mechanisms. Article 15 (2) requires States to accord women legal capacity identical to that of men and the same opportunities to exercise that capacity. Articles 11, 12, 13, 14 and 16 address specific aspects of eliminating discrimination in employment, health, specifically addressing the rights of women in rural areas, especially the roles they play in survival of their families, marriage and family. CEDAW identifies all the areas that discrimination occurs in the lives of women in girls.

The CEDAW committee²² lays out the State Party obligations to respect, protect and fulfil the rights of women and girls. The obligation puts a mandate on the State to prevent violations, investigate and punish violations, ensuring that there are effective remedies and reparations. The States are also under obligation to remove formal and substantive barriers that women and girls encounter. In order to achieve substantive equality and non-discrimination the States are under obligation to enact laws and procedures that enable women and girls to achieve real equality in access to justice. The States are under obligation to give specific attention to women and girls that face intersectional discrimination as a result of race, disability, age, migration, sexual orientation, economic status and geographic locations.

Goal 16 of the sustainable development goal (SDGs) calls for the promotion of peaceful and inclusive societies for sustainable development, provision of access to justice for all and the building of effective, accountable and inclusive institutions at all levels.²³

At the Africa level, Article 2 of the AU Maputo Protocol provides for State obligations to combat all forms of discrimination against women by setting up appropriate legislative, institutional and other measures.²⁴

Article 3 (1) provides for the right to dignity for every woman, it recognises and protects human and legal rights. Article 3 (2) provides for the right of every woman to the free development of her personality. Article 3 (3) & (4) establishes State obligations to adopt and implement appropriate measures that prohibit any exploitation or degradation of women and also sets parameters to establishing measures to respect dignity and protection of women from all forms of violence particularly sexual and verbal violence.

Article 8 provides for access to justice and equal protection before the law. Article 8 (c) specifically provides for the establishment of adequate educational and other appropriate structures that sensitise everyone to the rights of women, it refers to law enforcement organs and the judiciary. The AU Maputo Protocol is so expansive in language on how State Parties are expected to create and establish an ecosystem of empowerment for women and girls. The Protocol personifies the African values of ubuntu and humanity. Yet what is missing is State action and funding the national level infrastructure much needed to enable women and girls' access to justice. For instance, clear investment in legal education, building courts in rural areas, training legal personnel, gender and human rights training for traditional and religious leaders and decolonising and simplifying legal language.

Africa's Agenda 2063 is explicit that gender equality, justice and rule of law are central to Africa's development. The aspiration 3 focuses on enjoyment, affordability and timely access to independent courts and judiciary that deliver justice without fear or favour for everyone.²⁵ African leaders have prioritised peace by highlighting the need to have mechanisms for peaceful prevention and resolution of conflicts at all levels.²⁶ Aspiration 6 calls for centering people especially women and children stating that no child or woman shall be left behind. African leaders are aspiring to empower women to play their role in all spheres of life, having full gender equality in all spheres of life. This includes eliminating gender-based violence, discrimination (social, economic and political), removing all harmful social practices like female genital mutilation and early and forced child marriage.

Although significant strides have been made in adopting gender equality laws and instruments, implementation remains uneven undermining its effectiveness in the lives of women and girls in all their diversity. Women and girls across Africa continue to experience various forms of structural exclusion and discrimination. For instance, the African Court on Human and Peoples' Rights (the Africa Court) issued a judgement in 2018 where it held that the Malian Family Code²⁷ violated women's rights by setting the minimum age at 16 years, which is contrary to the regional and international law. This being the first case to address women's issues shows the low uptake of women and girls in filing cases or seeking access to justice at the regional level. In addition, commitment to implementing the AU Maputo Protocol has been slow, especially as seen in how States are reporting on the Protocol, concerns on reservations or the number of cases filed that deal with women and girls' rights. Of the 46 Member States that have ratified the Protocol,²⁸ only 22 have submitted reports as obligated in Article 26 of the Protocol. Most have failed to use the State Reporting Procedures and Guidelines, which has significantly undermined efforts to monitor and evaluate progress in the promotion and protection of women's and girls' rights at the national level. In addition, 9 AU Member States (Algeria, Cameroon, Ethiopia, Kenya, Mauritius, Namibia, the Sahrawi Arab Democratic Republic, South Africa and Uganda) maintain reservations, further weakening the scope of legal protections and leaving women and girls vulnerable.²⁹

Notwithstanding, the AU Maputo Protocol has progressive advancements, for example the steps taken to adopt three General Comments to expand on HIV and women³⁰, right to reproductive freedom,³¹(family planning education and safe abortion) and the third one on ending child marriages. These are all positive steps in expanding on how legal frameworks need to be established to defend and advance the rights of women and girls in these thematic areas of HIV, reproductive health and child marriages.

However, for progressive women's rights treaties, conventions and protocols like the AU Maputo Protocol to be meaningful and operative, the institutions established to enforce them must translate the legal norms into tangible outcomes through interpretation and application. For instance, the African Court demonstrates its readiness to adopt a liberal interpretation of procedural matters to ensure greater protection of women rights.³²

Article 34 of the Protocol on the Statute of the African Court of Justice and Human Rights stipulates that *at the time of ratification of the Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under Article 5(3) of the Protocol. The Court shall not receive any petition under article 5(3) involving a State which has not made such a declaration.* Article 5(3) states that the Court may entitle relevant Non-Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34(6) of the Protocol. Yet, between 1998 and 2022, only 12 African States have deposited their Declarations (i.e. Benin, Burkina Faso, Cote d'Ivoire, Gambia, Ghana, Guinea Bissau, Mali, Malawi, Niger, Rwanda, Tanzania and Tunisia), with 5 States have withdrawn (Benin, Cote d'Ivoire, Rwanda, Tanzania and Tunisia), and therefore leaving only 7 Member States, including NGOs in these countries, who can refer their cases to the Court for determination.

The inherent challenge for women's ability to access justice is also mirrored at the African Commission on Human and Peoples Rights (ACHPR) level where the Commission has only been able to deal with 10 communications regarding women specific communicate since its establishment in 1987.

2.1 Key Barriers to Access to Justice for Women and Girls in Africa

2.1.1 Complex and costly legal processes

Access to courts is expensive.³⁴ Women and girls pursuing justice encounter barriers such as costly legal and administrative fees. This is coupled with lengthy court procedures and language barriers, which prevents them from accessing justice. Vulnerable and marginalized women and girls are further left without legal representation because legal aid and judicial systems fail to prioritize their needs and experiences. For instance, survivors of sexual and gender-based violence (SGBV) have limited access to forensic and medical services resulting in delayed trials, which is further compounded by the poor coordination among institutions mandated to support them in generating the much-needed evidence to prosecute perpetrators. There are consequences faced by individuals that engage the justice system. According to the World Justice Project 48% hardships and costs are faced as a result of legal problems.³⁵

“Political interference and corruption within justice institutions discourages survivors from reporting or following through with cases.”

Participant during the West Africa Regional Consultation co-convened by FEMNET/ NGO CSW/Africa³⁶

2.1.2 Weak Enforcement of Laws and Lack of Accountability

Weak enforcement of laws and lack of accountability impede access to justice. Delayed judgements, failure to enforce protection orders and perpetrators violating and undermining court orders result in lack of accountability. Failure to account by court officials and perpetrators result in a major barrier to access justice. According to the Afrobarometer in 2017 confidence in the court system is very low with 14% stating unfair treatment and another 13% lack of trust³⁷ The Afrobarometer in 2017 further states that 54% of respondents found it difficult to get assistance from the courts and 30% reported having paid a bribe to get assistance. There is a general perception that judges and magistrates are involved in some level of corruption. Enforcement of existing laws remains inconsistent. Justice delayed is justice denied. Political interference and corruption within justice institutions discourages survivors from reporting or following through with cases. Judges' recesses, case adjournments and withdrawals and inadequate protection for witnesses and survivors undermines access to justice and deter survivors from seeking legal redress. Women's economic dependence and lack of protection for witnesses and survivors force many to return to abusive environments.

2.1.3 Limited Access to Legal Services and Infrastructure

At the global level, it is estimated that 1.5 billion people are not able to obtain justice³⁸ While 4.5 billion are excluded from opportunities that the law might provide for instance, some people do not have identity documents, formal work and over 253 million live in extreme conditions of injustice.³⁹ According to the World Justice Report in 2023, 62% of the world's population did not access justice through dispute resolution mechanisms.⁴⁰ In Africa, comprehensive data on individuals who have not accessed justice remains largely unavailable. The severity of limited access to justice is evident in the number of lawyers per capita, most notably in Niger with a ratio of 182,030 people per lawyer. This inequity is further compounded by regional disparities, with 70–90% of lawyers concentrated in capital cities, leaving rural communities severely underserved.⁴¹ These figures give insight into what geographically excluded women living in the rural areas are experiencing when it comes to access to justice. During the CSW70 Consultation meeting co-hosted by FEMNET, one member noted that access to justice remains severely constrained in rural and marginalized areas for example Northern Ghana and parts of Senegal due to the absence of legal infrastructure such as courts or long distance to the legal centres to access legal aid.

Legal and judicial services are heavily centralized in urban areas. Women and girls living in rural areas face restricted access due to the absence of local-level courts or legal aid offices. This exclusion is compounded by limited legal literacy and low awareness of available legal services. Women and girls with disabilities face compounded challenges because many courts and police stations are physically inaccessible, lack sign language interpreters, and have no alternative communication systems. Although national disability laws exist, enforcement remains weak.

2.1.4 Data, Decision Making and Accountability

Africa has made inroads in politicising data collection, analysis and use with several institutions like the African Development Bank investing in strengthening the capacity of statistical bureaus across the continent, the UN Women has invested over 80 million in the Making Women Count Programme since 2016. UN Women has been instrumental in expanding the production of gender statistics. Yet there are still major gaps in turning data collected into decision making and accountability for women and girls. The lack of data impedes progress in the development of informed and effective policies that advance the rights of women and girls. The general lack of investment in the process of using this data to inform decision making and for accountability. There is a lack of reliable, accessible and disaggregated data on gender equality and access to justice for women and girls. Without data, it is difficult to assess impact, track progress, or influence reform.

2.2 Structural Issues Affecting Women's and Girls' Access to Justice

2.2.1 Legal Pluralism

The legacy of colonisation left most African countries with plural legal systems, in which different legal systems exist and function side-by-side within the same social field. These systems are based on common/received, customary, and religious laws. The conflict that arises from legal pluralism impacts women more than men, particularly in the context of customary and religious laws, which normally subordinate women to men. How plural systems have been addressed in Africa is the enactment of constitutional provisions that subordinate cultural and religious laws and practices to the constitution are paramount. This ensures that where customary and religious laws and practices have the effect of infringing the constitution and women's rights, they are deemed to be invalid to the extent of their inconsistency with the constitution and relevant human rights standards. It is fundamental that the different actors and institutions that interpret and enforce legal systems, especially those applying customary or religious norms, are regularly trained on inclusive and equitable justice systems, so that their decisions and practices follow constitutional standards and safeguard the rights of women and girls.

Deep legal pluralism can be viewed as a recognition of cultural and religious diversity as well as the unshackling of African communities in particular from Eurocentric and Christian-focused laws, rules, and more. It can also improve access to justice and dispute resolution when religious and cultural communities and even families resolve differences at the local level. In reality, however, "it is doubtful whether people, especially women and girls, subject to religious or cultural legal systems other than the secular system, really have an option to choose between alternative legal systems." The result is failure to secure social justice for women and girls in areas such as inheritance, land property and gender-based violence. According to the 2017 Afrobarometer, the main reason most people do not go to court is because they turn to traditional leaders or local councils⁴² Most women rely on informal traditional and religious systems to handle matters around inheritance, land and property rights and family disputes. However, although these informal systems are generally more accessible, affordable and quicker than formal courts, they often disadvantage women and girls because they uphold rigid patriarchal norms and discriminatory practices.

Integrating reparations into plural legal environments requires deliberate, feminist design⁴³ Reparative processes must be plural in form and engage all parts of the justice ecosystem formal courts, customary fora, religious bodies and community mechanisms while ensuring that every mechanism upholds human rights and gender equality. Practically, this means fully involving traditional mechanisms in reparative processes but removing discriminatory practices from informal systems. States should work closely with feminist movements to conduct gender audits of customary practices; guarantee meaningful representation of women and survivors in customary decision-making bodies; and create clear referral and appeal pathways into formal courts. Crucially, survivors must have access to free legal aid and culturally appropriate psychosocial support throughout the reparations process.

The legacy of colonialism and the resulting legal pluralism demand that African states, when addressing reparations, examine how these parallel systems have affected women and girls.⁴⁴ Many governments have been aware of and at times complicit in the discriminatory impact of certain customary norms.⁴⁵ States therefore have an obligation to ensure that as formal law evolves, customary and informal practices are aligned with international and regional standards protecting women's rights and enabling meaningful access to justice.

2.2.2 Gender Based Violence (GBV)

GBV is widespread and according to UN Women, 1 in 3 women (36.6 per cent) have experienced sexual violence⁴⁶ physical/ intimate partner violence.⁴⁷ Marital rape is not explicitly criminalized under many of the African countries' penal codes. In certain legal systems, murders committed in the name of "honour" are punished less severely because the law recognizes them as mitigating circumstances.

African countries face different challenges in preventing and or responding to GBV. Women and girls have to deal with weak legal institutions, stigma, customary practices and fear of retaliation, leading to widespread impunity when dealing with GBV cases. Survivors of GBV face systemic barriers from the reporting stage at the police stations and through the whole legal chain value system when pursuing justice.⁴⁸ This results in a general mistrust of the access to justice institutions as a result of the insufficient protections and secondary victimisation in legal proceedings. At the global level 235 million persons affected by violence have not reported their victimisation.⁴⁹

2.2.3 GBV in Fragile and Conflict Contexts

Poor access to justice is a feature of fragile and conflict contexts. Countries with higher levels of fragility have lower levels of access to justice.⁵⁰ Out of the 21 countries listed as being in fragile and conflict-affected situations by the World Bank, 13 are from the African continent (i.e. Burkina Faso, Cameroon, Central African, Democratic Republic of Congo, Ethiopia, Mali, Mozambique, Niger, Nigeria, Somalia, South Sudan and Sudan).

In the context of countries where armed conflicts and civil wars are ongoing, there is increased exploitation and endangering of the lives of women and girls, denying them access to essential services like health, education and opportunities to participate and contribute to national and community level leadership and governance. This has also significantly undermined their access to justice and restricted civic spaces for women's collective organizing and advocacy. Widely cited as one of the world's most neglected humanitarian crises, the Democratic Republic of Congo (DRC) and Sudan have continued to register high rates of GBV. Recent analyses by the UN reveal persistent incidents of rape, exploitation and abuse affecting women and girls in the DRC, particularly those in displacement camps, transit locations, and community settings. In Sudan, the UN Women reports that women's bodies continue to be used as weapons of war, whilst compounding their vulnerability to hunger, violence and death⁵¹.

The collapse of the rule of law as a result of the conflicts has meant that the threat and use of sexual and gender-based violence including rape are a daily reality for the women and girls.⁵² According to the United Nations Special Rapporteur on Violence against Women "forces on all sides in the Congo Conflict [have] committed war crimes against women and girls, [and] frequent and sometimes systematic use of rape and other forms of sexual violence in the Rwandan-occupied areas of the eastern Congo. Rape is often used against women who are known or suspected to support opposing parties".⁵³

In the context of war, conflict, terrorism and the attendant sexual and gender-based violence against women and girls that it is used as a tool to silence and intimidate communities. According to Equality Now, rape in the African context is estimated to be at 33% and as high as 50% in the context of conflict.⁵⁴ Some of the barrier to address sexual violence is the lack of clear definition of the crime of rape, failure to recognise certain violations as rape and the failure of having both criminal and civil remedies. According to Equality Now “legal, procedural and societal obstacles to addressing rape, very few cases make it to court and even fewer result in a conviction.”⁵⁵ In Sudan the special rapporteur on trafficking person, especially women and girls have highlighted an increase in conflict related sexual violence. It has been documented that there will be a 96% increase in sexual related violence as of 2022.⁵⁶ According to Medecins Sans Frontieres team has provided care to over 659 survivors of sexual violence in the Dafur region in a period of one year. 86% of the individuals that reported that they had been raped, 94% of the survivors were women⁵⁷ Therefore conflict women and girls face brutal attacks, sexual violence and rape.

2.2.4 Technology-Facilitated GBV

Technology-facilitated gender-based violence (TFGBV) poses a challenge to women and girls in Africa. New technologies have reshaped society at the social, economic and political level and in doing so have changed how women and girls experience GBV.⁵⁸ The changes in how women experience gender based violence as a result of TFGBV means policy and legal responses need to catch up and address the new forms, modes of perpetuation and impacts of GBV.⁵⁹ Sexual harms in digital spaces mirror offline unsolicited interactions that often escalate into defilement, rape and physical harassment. In Uganda while the police reported 14,225 sexual related offences, the police did not document TFGBV cases.⁶⁰ Yet women are more likely to experience online sexual harassment, body shaming, hate speech and non-consensual intimate image sharing.

The prevalence of online violence is estimated at 33% from studies in Kenya and South Africa.⁶¹ TFGBV impacts the safety and security of women, and it also erodes democracy, peace and security. Women and girls face gendered threats such as sexualised trolling, deep fakes, doxing, body shaming and gendered abuse. It also takes the shape of stalking, bullying, hate speech, defamation and exploitation. Women and girls, especially women in politics or public figures experience increased offline and online violence during electoral periods. There is increased sexual violence of gender diverse persons including LBTQI individuals that are threatened with sexual violence. Women judges, prosecutors and lawyers, key players in the access to justice, are not immune to online violence and doxing⁶². Female judges constantly experience online violence, where these attacks are a calculated attempt at weakening the moral authority of the judiciary.⁶³ The African Commission has taken positive steps to issue a resolution calling on Member States to invest and undertake research on digital violence against women, develop awareness raising programmes targeting men and boys, facilitate access to education and calls for continuous training for practitioners and professionals working closely with persons affected by digital violence. The rapid integration of Artificial Intelligence tools in the legal processes, presents new risks for women and girls and therefore calls for Member States to enact laws that recognise and address the impact of technology especially TFGBV.

2.2.5 Discriminatory laws and practices

Despite significant improvements in the adoption of laws and policies that advance gender quality, discriminatory barriers continue to limit women's and girls' full access to justice. According to the World Bank, there is a shocking implementation gap that while women enjoy 64% of rights of men only 40% of the systems have been established.⁶⁴

The lack of enforcement of laws tends to keep women and girls on the side line. Yet if laws are fully implemented women have the power to turbocharge the economies of most African countries.⁶⁵ Despite progress in enacting progressive legal and policy frameworks, over 90% of countries have legal provisions that discriminate against women and girls⁶⁶. Discriminatory social norms, deep-rooted cultural norms, stigma, prevalent gender-based violence, high levels of poverty and illiteracy continue to marginalize women from accessing justice. In many communities, harmful practices such as FGM, early and forced child marriage and widow inheritance are treated as private family matters rather than human rights violations that demand for government's intervention and legal accountability.

Discriminatory laws and practices are still enabled in law or how law is interpreted for instance in GBV cases, land, property and family law⁶⁷. The challenges regarding family laws in Africa stem from how these laws are aligned with international human rights standards and the pluralist nature of most African legal systems. The implementation of treaties is still not consistent as they tend to intersect with cultural, religious and customary practice. In South Sudan, the family law is governed by custom which leads to challenges when it comes to property sharing, custody, and minimum age of marriage⁶⁸. Constitutional and statutory provisions across several West African countries continue to entrench gender discrimination. In Nigeria, Section 29(4) of the Constitution undermines the Child Rights Act by recognizing married girls as adults regardless of age, directly legitimizing child marriage. In Mali, the Family Code permits marriage for girls as young as 15 with parental consent, contravening international standards on children's rights. Such inconsistencies between domestic and international law weaken the protection of women's and girls' rights and perpetuate inequality before the law. In addition, most of the legal texts remain inaccessible because they are written in colonial languages (English or French) and not translated into local languages.

Despite the prevalence, rape and incest are not discussed openly in communities as such discussions are considered taboo or "family matters". This leads to violations of women's rights with little recourse and justice due to the secrecy around these offences. Harmful cultural practices, and early and child marriages are rife with estimates showing that 45% of girls in the DRC are married before the age of 18.⁶⁹ In addition, the laws are not sufficiently known by citizens and implementation by the government is slow⁷⁰. Furthermore, refugee and displaced women across Northern Africa face significant barriers, as they cannot rely on their own national family laws to pursue rights such as divorce, child custody, or alimony.

Discrimination is an obstacle that can affect all aspects of access to justice – from awareness and understanding of legal rights, to access to counsel and to dispute resolution mechanisms, and finally the achievement of fair, impartial and enforceable solutions. While de jure discrimination can be repealed through laws, elimination of de facto discrimination requires additional positive strategies. In addition, the patriarchal socio-legal contexts further reinforce gender stereotypes in judicial procedures and practices, embedded inside courts where gender biases by judges towards lawyers, include demeaning speech and dismissive gestures. In times of economic downturn discrimination tends to persist or reappear and so measures aimed at combating inequality and exclusion in the long term are important.

“In Southern African countries, high legal and administrative costs including filing fees, sheriff charges, and transport to courts remain prohibitive for most women and girls.”

Participant during the Southern Regional Consultation co-convened by FEMNET/ NGO CSW/Africa.⁷¹

2.2.6 Economic Justice, Poverty and Access to Justice

55 million Africans were pushed into poverty as a result of COVID-19 pandemic and as of 2022, Africa accounted for more than half (54.8%) of people living in poverty worldwide.⁷² In 2023, 38% of Africans were living below the national poverty line⁷³ Poverty is gendered, about 80% women in Africa live below the poverty line.⁷⁴ Women and girls in rural areas are more likely to experience poverty because of colonial histories, patriarchal power structures and unequal access to land, resources and decision-making that have continued to systematically marginalize them. In Kenya data shows that 44% of all women are poor and 94% of those are from rural areas.⁷⁵ Therefore, geographic location, identity and social legitimacy deeply impact access to justice. Women and girls especially those living in extreme poverty, those with disabilities, those forced in displacement, queer and trans women are often marginalized from justice systems.

Women and girls experience deeply entrenched socio-economic inequalities that restrict their access to justice. In rural areas, limited financial resources and failed road infrastructure force them to travel 50–200 km just to reach police stations or courts, further hindering their ability to access justice. Many survivors of gender-based violence (GBV) cannot afford to initiate or sustain legal processes due to structural barriers such as delays in investigations, stigma, backlogs in courts. Long distances to access courts further pushes many women and girls in rural areas to depend on religious and traditional systems, which are typically patriarchal and reinforce discriminatory norms.

The formal court system is extremely expensive and inhibits women and girls to access the formal courts. This leaves many women and girls with limited options and highly on pro bono services that are inconsistent and insufficient or to approach the traditional mechanisms to settle disputes that are in most cases handled using customary patriarchal systems.

2.2.7 Backlash and Regression

Gender equality and women's rights are constantly under attack with growing regression and backlash against progressive women's human rights. Women's political participation is under renewed threat from a range of regressive trends and backlash⁷⁶ There are reports of declining women's representation in leadership and decision-making spaces, for example, in Tunisia, female parliamentary representation declined from 26.3% in 2019 to 16.2% in 2023 following the removal of gender parity provisions⁷⁷ Also, the continued tokenistic appointments of women in leadership deprives them of authority or decision-making power and impacts on the principles of inclusion.

Regression was also observed in Libya with the introduction of the morality police to curb women's rights.⁷⁸ The authorities imposed restrictive codes of public behaviour to control how women. Libya imposed strict regulations that require women and girls to wear a veil or hijab in public spaces.

The rise of anti-gender ideology was seen in Uganda where the government introduced a bill targeting LBTQI persons. The Anti-homosexuality bill in Uganda marked a regressive use of legal mechanisms as tools of repression targeting queer communities.⁷⁹

Backlash and regression of gender equality takes on different forms from shrinking civic space, legislative rollback, targeted criminalisation of women human rights defenders and introduction of restrictive executive measures that are targeting women.⁸⁰

At the regional level, the AU missed an opportunity to criminalize marital rape and address harmful practices such as FGM, child, early and forced marriage without recognising them as sites of violence and state obligations are weak in the AU Convention on ending violence against women and girls.

2.2.8 Environmental and Climate Justice

Climate crisis and environmental harm disproportionately impact women and girls. Environmental shocks create specific barriers for women and girls in accessing justice. The barriers include loss of legal identity, land, livelihoods and homes. Closing the gaps that women face requires a deliberate effort by States to develop justice outcomes in climate affected contexts. Gender Snapshot report indicates that 158 million more women globally will be pushed into poverty as a result of the climate crisis⁸¹ Climate displacements destroy livelihoods which further excludes women from engaging in public life. For instance, in Malawi “60 people were killed as a result of cyclone Idai and 672 people injured while 869,900 people were affected with 76,831 people displaced.”⁸² 59% of the people displaced were women and the cyclone affected their livelihoods. The justice agenda must include broader areas such as environmental justice, extractives and climate crisis. As women and girls are disproportionately impacted by climate and environmental shocks and harms.

Women human rights defenders and especially land and environmental defenders continue to face rising threats to their lives when seeking justice. There is an increase in attacks of land defenders in Africa. In South Africa, a women's human rights defender was shot and murdered outside her home as she was set to testify in a court case⁸³

3. OUR CALL TO ACTION AND ACTIONABLE RECOMMENDATIONS

Access to justice is not just the availability of courts, but about transforming justice systems to be inclusive, affordable, accessible and just for all. Governments, donors, legal practitioners and civil society actors must jointly invest in equitable, community-led and evidence-driven legal systems that respond to the realities of all women and girls, especially those in vulnerable and marginalized contexts.

Specifically, we urge all AU Member States and their departments, ministries and agencies, the African Union Organs, the UN Agencies and other development stakeholders to **PRIORITIZE** the following: -

1. REAL LEGISLATIVE POWER IS IN THE ENFORCEMENT & REFORM OF LAWS

1.1 Harmonize national laws to align with obligations in regional and international human rights instruments such as the AU Maputo Protocol and CEDAW, while repealing existing discriminatory constitutional clauses. The reforms must include prohibiting child marriage, all forms of GBV and harmful practices like FGM. Governments should institute and defend quotas for women's political participation and legislate against political violence and TFGBV that targets women and particularly young women leaders. Survivor-centered approaches must be embedded in law and practice, ensuring privacy, security and psychosocial support. Regular review mechanisms are necessary to be responsive to the needs of the diverse population. States should collaborate with legal practitioners, women's rights and CSOs to strengthen enforcement of existing laws and accountability measures.

1.2 Ensure equitable and inclusive access to justice and legal aid. Governments, donors and legal practitioners should work together to guarantee affordable, inclusive and survivor-centred legal aid that prioritize marginalized groups such as girls, young women, elderly women, women with disabilities, widows, and survivors of GBV. Equitable and free access should be guaranteed through state-funded legal aid, while alternative dispute resolution mechanisms should be expanded to complement formal courts and provide timely and culturally appropriate solutions.

1.3 Facilitate capacity development, education and training. Laws should be simplified, translated into local languages, integrated into schools and community outreach programs and made available and fully accessible in formats such as braille, text-to-speech software, sign language, voice recognition and other assistive technologies. Continuous training for legal professionals (including judges, lawyers, police, paralegals, prosecutors) on justice-based approaches and fundamental human rights is critical. Legal literacy programs should include local communities who then lead in challenging harmful gender norms and practices like child, early and forced marriage and create awareness on legal recourse. Member States should collaborate with women's rights and CSOs to facilitate women's and young women's representation in decision-making spaces and organize leadership academies to strengthen their capacities in politics and law. Governments should fund survivor-centered services such as shelters and safe spaces, support multi-sector collaboration among justice actors and scale up national legal aid programs and mobile courts to reach vulnerable communities.

2. GENDER DISAGGREGATED DATA POWERS ACTION AND TRANSFORMS LIVES

2.1 States must invest in robust gender-disaggregated data systems to continuously monitor enforcement of laws and adherence to international obligations, while systematically collecting and evaluating judicial outcomes. Member States should ensure that gender data is actionable to move beyond collection to analysis, dissemination, policy translation that feeds into decision making and transforming lives. Collaboration with civil society, particularly women's rights organizations, is critical to strengthen data collection, data analysis, transparency and accountability through parallel reporting mechanisms around regional and international frameworks such as CEDAW and AU Maputo Protocol, e.g. through policy briefs, shadow reports and participatory research. Consistent and comprehensive documentation of legal achievements and failures should inform future programming and accountability.

2.2. Collective Coordination and Advocacy: Sustaining effective advocacy requires stronger linkages between state actors, civil society and feminist legal professionals to ensure the domestication, implementation and effective reporting of legal instruments such as the CEDAW, AU Maputo Protocol and the AU Convention on ending violence against women and girls. Justice must be brought closer to communities by decentralizing justice services through local courts, mobile clinics and grassroots paralegal systems. AU Member States should work in collaboration with CSOs to use innovative community data-gathering methods such as participatory data mining and video storytelling.

3. STATE-INVESTMENTS IN ACCESS TO JUSTICE IS NON-NEGOTIABLE

3.1 Funding Access to Justice: Sustainable funding is fundamental to advancing access to justice. Governments must allocate dedicated gender-responsive budgets to ministries of justice, gender and women's affairs and local governments to strengthen legal reforms, provide legal aid services and sustain inclusive justice systems and infrastructure. Justice institutions including courts and police stations should be accessible for all women and girls in Africa. Targeted legal interventions should address the diverse needs and priorities of women in rural areas, women with disabilities, widows, adolescent girls, elderly women, gender nonconforming persons, survivors of GBV. Sustained investments are critical for building and maintaining shelters and safe houses, witness protection programs and supporting economic reintegration initiatives that support the dignity and security of survivors of GBV as they pursue justice.

3.2 Economic barriers directly impede women's access to legal recourse. Member States should adopt a twin-track approach (i) collectively call for the cancellation of debt and restructuring of the global economic systems and (ii) at the national level, governments should strengthen fiscal and social policies that ensure redistribution of resources and reduce the dependence on foreign aid. Governments should adopt principles of reparative justice, autonomy and intersectional gender equality, and prioritize investments in the care economy. This will facilitate decent work conditions, social protection for care workers and ensure unpaid and domestic work is recognized in national policies and budgets.

3.3 Meaningful and inclusive women's representation demands that Member States move beyond tokenism by sustainably financing initiatives that contribute to dismantling systemic barriers that have hindered women's full participation in leadership and decision-making. This includes reforming electoral laws and actually funding institutions that facilitate the full and meaningful participation of women in decision-making spaces, including young women, indigenous women and women with disabilities. Affirmative action and quotas are proven measures for facilitating women's leadership in judicial and political spaces.

3.4 Sustaining Justice Through Grassroots Feminist Movement Leadership

Community-rooted leadership and interventions are essential in creating and sustaining justice systems that are more inclusive, equitable and accessible for women and girls in all their diversity. Grassroots and national level initiatives and efforts by women's rights and civil society organizations and movements are complementary and should therefore be fully supported by the Member States and development partners. It is worth noting that during the FEMNET and NGO/CSW Africa consultations, it was reiterated that despite chronic underfunding, **feminist and gender justice institutions across Africa have continued to bridge the justice gap** by providing legal support, advocacy, and pushing for systemic reforms that strengthen access to justice for all, especially for those in vulnerable and marginalized contexts. These institutions have been providing direct litigation support, legal counselling, and advocacy services to women and girls facing issues such as GBV, divorce, child custody, and discrimination. By offering both practical assistance and policy advocacy, they not only support individual women in claiming their rights but also contribute to systemic reforms that promote gender justice within the legal system, raising awareness, training legal and para-legal professionals, and influencing legislative frameworks to ensure that women's and girls' rights are recognized and protected.

4. SUSTAINED PEACE & GENDER-RESPONSIVE CLIMATE ACTION

4.1 Peace, Security and Conflict Prevention. Member States should enact and enforce laws that guarantee women's meaningful participation and leadership in conflict prevention, resolution and post-conflict recovery processes by expanding legal aid services and psychosocial support for survivors of conflict-related violence, strengthening community-based mechanisms for early warning and dispute resolution and prioritizing access to justice for marginalized and vulnerable persons.

4.2 Gender-Responsive Climate Policies and Financing. Member States should integrate gender-responsive climate justice principles into existing implementation frameworks. Climate finance mechanisms must prioritize and meaningfully resource women-led adaptation initiatives, while ensuring equitable access to loss and damage funds for grassroots communities and communities in the front-line of the climate crisis. Climate justice negotiators and policymakers must also ensure and prioritize women's and girls' full and effective participation in natural resource governance, climate and environmental justice decision-making and advocacy spaces at national, regional and global levels.