



Addressing Discrimination against Women

Background Paper by the International Bar Association's Human Rights Institute

March 2021

This background paper addresses the current challenges presented by the many facets of discrimination against women. It also sets out the applicable international and regional framework. The purpose of this Background Paper is to explain the Resolution on the topic. The Resolution appeals for concrete action to identify and eradicate legal principles and practices which discriminate against women on national, regional and international levels.

Introduction

Almost 40 years have passed since the entry into force of the [Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW\)](#), the most widely ratified international treaty on the rights and freedoms of women. Nevertheless, across the world, women continue to be deprived of human rights and freedoms on an equal basis with men, relegating them a perpetual secondary status. Women are subjected to multiple forms of discrimination which overlap or intersect with discrimination on the basis of race, ethnicity, religion, gender identity, family status, sexual orientation, age, disability, immigration status, and whether they are indigenous or inhabitants of rural areas.

Discrimination against women inhibits the full realisation of their personhoods. Although international human rights law and many international laws guarantee equality between men and women and prohibit discrimination on the basis of sex and gender. However, up to today, millions of women remain excluded from participation of public life, from inheritance, and from access to justice mechanisms. They are also subject to sexual and gender-based violence on endemic levels, which further entrenches their secondary status in society.

Multiple international and regional instruments have been adopted with a view to eradicating, directly or indirectly, discrimination against women, beginning with the Universal Declaration of Human Rights in 1948. On the international level, the [Universal Declaration of Human Rights \(UDHR\)](#) was followed by the International Labour Organisation's [Equal Remuneration Convention, 1951 \(No. 100\)](#) and [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#), [International Covenant on Civil and Political Rights \(ICCPR\)](#) and the [International Covenant on Social Cultural and Economic Rights \(ICESCR\)](#) (1966), the aforementioned CEDAW (1979), the [Convention on the Rights of the Child \(CRC\)](#) (1989). Regionally, Organization of American States adopted the [Inter-American Convention on the Granting of Civil Rights to Women](#) (1948) and the [Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women](#) (Convention of Belém do Pará, 1994), the African Commission on Human and People's Rights adopted the [Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa \("Maputo Protocol"\)](#) and the [African Charter on the Rights and Welfare of the Child \(ACRWC\)](#) (1990), and the Council of Europe adopted the [European Convention on Human Rights](#) (1950) and the [Convention on Preventing and Combating Violence against Women and Domestic Violence \(Istanbul Convention\)](#) (2011).

In addition, extensive international case-law exists which addresses a wide range of women's rights and gender issues, and proves the human rights treaties to be living documents that must be interpreted and analysed in accordance with the present realities, and reflects human rights developments accordingly. Examples include:

1. [Opuz v Turkey Application no. 33401/02](#), in which the European Court of Human Rights (ECtHR) recognised the systemic nature of domestic violence against women, and that the passivity of male-dominated judicial and law enforcement institutions in responding to it is discriminatory against women and a human rights violation;¹
2. [Carvalho Pinto de Sousa Morais v Portugal Application no. 17484/15](#), which revealed how the entrenchment by legal institutions of gender-based discriminatory stereotypes, e.g. linking men's sexuality to self-esteem regardless of their age while women's sexuality is qualified only by child-bearing functions and age, have the capacity to reduce significantly women's quality of life;²
3. [Rantsev v Cyprus and Russia Application no. 25965/04](#), wherein the ECtHR established that human trafficking falls under the prohibition of slavery, servitude and forced labour in Article 4 of the ECHR. States therefore bear an obligation investigate trafficking offences, and to identify and punish offenders effectively;³
4. [Konstantin Markin v Russia Application no. 30078/06](#), in which the ECtHR held that gender-based differences in treatment cannot be justified by reference to traditional

¹ Application no. 33401/02, Council of Europe: European Court of Human Rights, 9 June 2009, paras. 128-201.

² Application no. 17484/15, Council of Europe: European Court of Human Rights, 25 July 2017, paras. 38-56.

³ Application no. 25965/04, Council of Europe: European Court of Human Rights, 7 January 2010, paras. 253-289.

norms prevailing in specific countries, and must not be maintained where it perpetuates gender stereotypes to the detriment of either men or women;⁴

5. [Coleman v Attridge Law & Stephen Law C-303/06](#), which involved the European Court of Justice establishing that the prohibition of discrimination on the basis of disability covers both discrimination against those with disabilities, but also those with whom the person with disabilities is associated, e.g. caregivers, and protects them against less favourable treatment and harassment in the workplace;
6. [Equality Now and Ethiopian Women Lawyers Association \(EWLA\) v Federal Republic of Ethiopia Communication 341/2007](#), where the African Commission on Human and People's Rights established that States must diligently adopt concrete measures to combat and eradicate harmful social or cultural practices which expose vulnerable people to human rights violations;⁵

In pursuit of gender justice, it is essential to identify not only the tradition, religious, customary and social practices which are discriminatory to women, but the norms entrenching these practices in national, regional and international law. Combatting gender-based discrimination requires a confrontation of legal norms and policies which do or have the potential to affect women disproportionately, even when they are *prima facie* neutral.

Applicable international law on discrimination against women

The concept of discrimination on the basis of gender pervades all instruments adopted internationally by the UN and regionally by the African, Inter-American and European human rights monitoring, judicial and enforcement bodies. It is also addressed in specific human rights instruments that purport to identify and eradicate discrimination against women. As a starting point, the concept of "discrimination" as it applies to women has a number of definitions. Article 1 CEDAW, which is the second most ratified UN human rights instrument with 189 States Parties out of 193 UN Member States, defines "discrimination" as:

"For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

Article 1(f) of the Maputo Protocol defines "discrimination against women" as:

⁴ Application no. 30078/06, Council of Europe: European Court of Human Rights, 22 March 2012, paras. 140-142.

⁵ Equality Now and Ethiopian Women Lawyers Association (EWLA) v Federal Republic of Ethiopia Communication 341/2007, African Commission on Human and People's Rights, 16 November 2015, para. 125.

“... any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life...”

Although both definitions of discrimination explicitly mention sex, it is important to note that discrimination against women occurs on the basis of gender, as a social construct which purports to establish and reinforce specific roles to people on the basis of their sex characteristics. It is on the basis of gender that women across the world are subject to a multiplicity of differentiations, exclusions or restrictions which impair or nullify the exercise or enjoyment of the fundamental rights and freedoms to which they are entitled by virtue of being human.

The Istanbul Convention is the first international document to define the term “gender” as “the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for women and men”, and as such becomes the first to illustrate the link between the existing social constructs and the prevalence of the discriminatory practices and behaviours.

Equal enjoyment of human rights and freedoms

As the first international instrument issued by the United Nations, the UDHR is now a standard against which modern human rights standards and obligations are measured. Regardless of its initially non-binding nature, the UDHR now constitutes customary international law, binding on all States. It is therefore an ideal starting point in elucidating the current milieu of human rights norms applicable to discrimination against women. The fifth paragraph of the UDHR Preamble states:

“Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom...”

Alongside the UDHR are the ICCPR and the ICESCR, which have 113 and 110 States Parties, respectively. Both the ICCPR and ICESCR require States Parties to ensure the equal enjoyment by men and women of fundamental rights and freedoms:

“The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”

– Article 2 ICCPR

“The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”

– Article 3 ICESCR

Article 26 of the ICCPR enshrines the right to equality before the law and the right to equal protection of the law, which requires that national laws prohibit discrimination and guarantee equal and effective protection against discrimination on grounds including race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status. The Inter-American Convention on the Granting of Civil Rights to Women, an instrument with two articles, concisely states that “American States agree to grant to women the same civil rights that men enjoy”.

Political participation

Article 7 of the CEDAW requires States Parties to “take all appropriate measures to eliminate discrimination in the political and public life of the country”. This right includes ensuring an equal right to vote, to participate in the formulation and implementation of government policy, to hold public office and perform public functions at all levels of government, and participate in non-governmental organisations (NGOs) and associations concerned with public and political life.

Article 9(1) of the Maputo Protocol requires States Parties to take positive action, including affirmative action and legislative measures to “promote participative governance and the equal participation of women in the political life of their countries”. The measures adopted must ensure that women participate equally in elections without discrimination, are represented equally at all levels in all election processes, and are equal partners at all levels of development and implantation of State policies and development programmes. Article 9(2) dictates that States shall “ensure increased and effective representation and participation of women at all levels of decision-making”.

Beyond peace times, UN Security Council Resolution 1325 emphasises the important role that women play in conflict prevention, peace-building and post-conflict situations. Given the disproportionate effect of armed conflict on women and girls, the Resolution stresses the importance of their full and equal participation in decision-making processes designed to maintain and promote peace and security. Inter alia, Article 1 urges Member States to increase representation of women in national, regional and international institutions and

mechanisms which exist for the prevention, management and resolution of conflict. Article 3 urges the Secretary-General to appoint more women as special representatives and envoys and for Member States to provide the Secretary-General with candidates.⁶

Employment

Article 11(1) of the CEDAW requires States Parties to “take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality with men and women, the same rights”, including the right to work, the right to the same employment opportunities, the right to free choice of profession, the right to equal remuneration, the right to social security, and the right to protection of health and safety. Article 11(2) also requires States Parties to prohibit dismissals on the basis of pregnancy or maternity leave and discrimination in dismissals on the basis of marital status, to introduce maternity leave, to provide necessary supporting social services for parents in order for them to balance work, family obligations and participation in public life, and to protect pregnant women from work that is harmful to them.

The Equal Remuneration Convention, 1951 (No. 100) of the International Labour Organisation (ILO) requires Member States to ensure equal remuneration for all men and women workers for work of equal value through measures established to determine rates of remuneration and cooperation with employers’ and workers organisations. Article 3 calls on Members to promote objective job appraisals in pursuit of the Convention, and to establish different rates of work that are not determined by sex.

The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) of the ILO calls on Member States to adopt policies promoting the elimination of discrimination on grounds including sex, and equality of opportunity and treatment in respect of employment in pursuit of ending such discrimination. Article 3 requires States to cooperate with employers’ and workers’ organisations, enact legislation, promote education programmes, repeal statutory provisions or modify administrative instructions, pursue and implement policies, and report to the ILO on the methods taken to eradicate discrimination in employment.

The [Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, 1981 \(No. 156\)](#) of the ILO cites the preceding conventions as instruments intended to secure equality of opportunity and treatment between men and women. The Convention also acknowledged the necessity of changing gender roles to advance women’s rights, which was recognised in UN human rights instruments like the CEDAW, and some of which had taken place since the ILO adopted the Employment (Women with Family Responsibilities) Recommendation in 1965. To that end, Convention No. 156 supplements labour rights by specifically addressing the challenges faced by workers with family responsibilities who are thus hindered in their preparations for, forays

⁶ Security Council Resolution 1325 (<http://www.peacewomen.org/SCR-1325>).

into, and participation and advancement in economic activities. The Convention dictates that family responsibilities shall not constitute valid reasons for job terminations.⁷ Article 3 requires Member States to adopt national policies which enable people with family responsibilities to engage in employment activities without discrimination or conflicts between work responsibilities and family responsibilities. According to Article 4, measures must also enable such workers to choose employment freely and have their needs accommodated as far as terms and conditions of employment and social security are concerned. Under Article 5, community planning must accommodate the needs of workers with family responsibilities, and public or private community services, including childcare and family services and facilities, must be developed or promoted. Article 6 requires State authorities to promote public understanding of equality of opportunity and treatment between men and women and of the problems faced by workers with family responsibilities. Under Article 7, measures must allow workers with family responsibilities to join, remain in and re-enter the labour force.

In early 2020, the ILO welcomed State commitments to ratify the [Convention on violence and harassment, 2019 \(No. 190\)](#). The Convention purports to protect workers, regardless of their contractual status, persons in training, including interns and apprentices, people whose employment has been terminated, volunteers, jobseekers and job applicants from violence and harassment in the workplace. In order to prevent and eliminate violence and harassment, Article 5 requires Member States to respect, promote and realise the four fundamental principles and rights at work, namely, “freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation, as well as promote decent work”. Article 6 requires the adoption of laws, regulations and policies ensuring the right to equality and non-discrimination for women workers and other workers belonging to vulnerable groups or in vulnerable situations, who are disproportionately affected by violence and harassment in the workplace. From Articles 7 to 11, the Convention makes provision for protection against violence and harassment in the informal economy, for protection and prevention mechanisms, for enforcement mechanisms and remedies, and for guidance, training and awareness-raising for employers and workers organisations and relevant authorities.

Inheritance and land rights

Of the UN international instruments, neither the UDHR, ICCPR, ICESCR, CRC nor CEDAW specifically mention inheritance rights. Nevertheless, the Committee on the Elimination of Discrimination against Women has read inheritance rights into the non-discrimination

⁷ Article 8.

provisions of the CEDAW on the basis that inequality in families, which are characterised by the UDHR as the basic units of society, “underlies all other aspects of discrimination against women”.⁸

Article 21 of the Maputo Protocol entrenches women’s right to inheritance. Under Article 21(1), widows are entitled to “an equitable share” in the property of their deceased husbands. They are also entitled to continue living in the matrimonial home; a right which is retained even if she remarries. Article 21(2) establishes the right of men and women to inheritance of parental property on an equal level with each other.

Sexual and gender-based violence (SGBV)

The CEDAW does not include explicit references to violence against women. Invoking 1991 resolution from the Economic and Social Council, the General Assembly adopted the [Declaration on the Elimination of Violence Against Women](#) in 1993 in order to supplement the CEDAW by providing a definition of the concept of violence against women and the human rights and freedoms violated by its perpetration.⁹ The Declaration’s Preamble cites the UDHR, ICCPR, ICESCR, and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) alongside the CEDAW as enshrining principles critical to women’s rights. It also recognises the many facets of violence against women as “an obstacle to the achievement of equality, development and peace”, an impairment to women’s enjoyment of their rights and freedoms, “a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women”, and as “one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”.

Article 1 of the 1993 Declaration defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”. Article 2 elaborates on the types of violence to which international human rights law applies, including, “(a) physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (b) physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c)

⁸ UN Committee on the Elimination of Discrimination Against Women (CEDAW), [CEDAW General Recommendation No. 16: Economic consequences of marriage, family relations and their dissolution, 2013](#), paras. 2, 53.

⁹ Resolution 48/104, 20 December 1993.

physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs”.

According to Article 3, the rights implicated by violence against women include the right to life, right to equality, right to liberty and security of the person, right to equal protection under the law, right to be free from all forms of discrimination, right to the highest attainable standard of health; right to just and favourable conditions of work, and the right to not be subjected to torture, or other cruel, inhuman or degrading treatment or punishment. Article 4 sets out what States ought to do in order to eliminate violence against women, including proper investigation and punishment of violence against women, providing proper access to justice for victims, adopting national plans of action which promote the protection of women and prevent revictimisation, providing services such as rehabilitation, assistance in child care, health services and counselling to victims of violence, adopt appropriate measures for public education which work towards altering cultural and social ideas of the inferiority of women or superiority of men, and support and cooperate with women’s rights NGOs on local, national and regional levels.

Within the treaty body system, the Committee on the Elimination of Discrimination against Woman has issued multiple General Recommendations on violence against women, beginning with General Recommendation No. 12 in 1989. These General Recommendations have incorporated violence against women into the provisions of the CEDAW in the following ways:

1. In General Recommendation No. 12, in order to call on States Parties to include in their periodic reports legislative or other measures they have adopted to combat violence against women, provide support for victims and statistical data on the prevalence of violence against women and the demographics of victims, the Committee established that Articles 2, 5, 11, 12 and 16 of the Convention “require States parties to act to protect women against violence of any kind occurring within the family, at the workplace or in any other area of social life”;¹⁰
2. In General Recommendation No. 19, the Committee included violence against women in the definition of “discrimination” in Article 1 of the CEDAW. The Committee went on to define “violence against women” as “violence that is directed against a woman because she is a woman or that affects women disproportionately. **It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty**”. The Recommendation did state that gender-based violence may breach CEDAW provisions, irrespective of whether those provisions mention violence expressly.¹¹ It must be emphasised that non-consensual sexual acts produced by fear, fraud, coercion, or other means are included within this definition.

¹⁰ UN Committee on the Elimination of Discrimination Against Women (CEDAW), [CEDAW General Recommendation No. 12: Violence against women, 1989](#).

¹¹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), [CEDAW General Recommendation No. 19: Violence against women, 1992](#), para. 6.

3. In General Recommendation No. 35, the Committee stated that General Recommendation No. 19 played a significant role in the prohibition of gender-based violence against women becoming customary international law.¹²

The Belém do Pará Convention was the first international instrument explicitly to recognise violence against women as a human rights violation which violates human dignity and impairs the enjoyment of human rights and freedoms. Article 1 of the Convention defines violence against women as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere”. Again, it must be emphasised that non-consensual sexual acts are included. There needs not be actual violence to constitute a violation. In its Preamble, it acknowledges the pervasiveness of violence against women and the necessity its eradication for the individual and social development of women and their “full and equal participation in all walks of life”. The Convention separates violence against women into three categories: (1) violence occurring within a family, domestic unit or interpersonal relationship, whether or not the perpetrator shares a residence with the woman; (2) violence occurring in the community, perpetrated by any person, including sexual harassment in the workplace or violence in health facilities; and (3) violence perpetrated or condoned by the State or State agents, regardless of where it occurs.

According to Articles 3 and 6, women have the right to be free from violence in the private and public spheres. This right includes freedom from discrimination and the right “to be valued and educated free of stereotyped patterns of behaviour and social and cultural practices based on concepts of inferiority or subordination”. As per Article 4, other rights to which women are entitled under the Convention include the right to life; the right to physical, mental and moral integrity; the right to personal liberty and security; freedom from torture; the right to respect for their inherent dignity and their families; the right to equal protection before and of the law; the right to simple and prompt recourse to justice through competent courts; freedom of association; freedom to profess their religion and belief within the law; and the right to equal access to the public service and to participate in the conduct of public affairs, including decision-making. Article 7 sets out State obligations, including due diligence to prevent, investigate and punish violence against women and the adoption of measures to “modify legal or customary practices which sustain the persistence and tolerance of violence against women”. Article 8 sets out other State obligations for progressive realisation, including the promotion of awareness and observance of the right of women to be free from violence and their right to be protected, and the provision of specialised services for women subjected to violence, including shelters and counselling. Article 9 promotes an intersection approach to assessing the vulnerability of women.

¹² UN Committee on the Elimination of Discrimination Against Women (CEDAW), [*CEDAW General Recommendation No. 35: Gender-based violence against women, updating general recommendation No. 19, 2017*](#), para. 3.

To date, the Belém do Pará Convention and the Istanbul Convention are the only legally binding human rights treaties which address the specific issue of violence against women.¹³ Article 3 of the Istanbul Convention defines “gender-based violence against women” as “violence that is directed against a woman because she is a woman or that affects women disproportionately”, and “domestic violence” as “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”. Article 5 of the Convention requires States Parties to refrain from perpetrating violence against women, and exercise due diligence in preventing, investigating, punishing and providing reparations for acts of violence against women. The Convention also requires States Parties to adopt gender-sensitive policies, allocate adequate financial resources, and support and cooperate with NGOs and civil society in challenging violence against women.¹⁴ Chapter III of the Convention addresses measures to prevent violence against women, including awareness-raising, education and preventative intervention and treatment programmes. Chapter IV addresses obligations pertaining to protection and support, and covers shelters, support services, reporting mechanisms. Chapter V addresses substantive law, addressing acts of SGBV like sexual violence, forced marriage, stalking, forced abortion and sterilisation, and “honour” killings. Chapter VI addresses procedural elements like investigation and prosecution, Chapter VII covers migration and asylum, Chapter VIII addresses international co-operation and Chapter IX deals with monitoring mechanisms.

The Mechanism to Follow Up on the Implementation of the Convention on the Prevention, Punishment and Eradication of Violence against Women (MESECVI) was established in 2004 to evaluate and oversee the implantation of the Belém do Pará Convention. Multiple bodies in the MESECVI, including the Conference of States Parties, the Committee of Experts, the Technical Secretariat and Civil Society, collaborate to report on State implementation of the Convention.¹⁵

The African Commission on Human and People’s Rights has established that rape is a violation of human rights and describes rape as “one of the most repugnant affronts to human dignity and the range of dignity-related rights, such as security of the person and integrity of the person”. Actual violence is not an essential element of the offence. Absence of consent through fear or inability to consent constitutes a violation of human dignity. All of these rights are guaranteed under Articles 4, 5 and 6 of the African Charter on Human and People’s Rights

¹³ London School of Economics Centre for Women, Peace and Security “Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention)” (<https://blogs.lse.ac.uk/vaw/regional/the-americas/convention-belem-do-para/>).

¹⁴ Istanbul Convention, Articles 6-9.

¹⁵ London School of Economics Centre for Women, Peace and Security “Mechanism to Follow Up on the Implementation of the Convention on the Prevention, Punishment and Eradication of Violence against Women (MESECVI)” (<https://blogs.lse.ac.uk/vaw/regional/the-americas/mesecvi/>).

(ACHPR).¹⁶ States must not only give effect to rights and freedoms under human rights instruments, but also protect those rights and freedoms from violation by private actors and provide adequate redress to victims when violation does occur. The African Commission has held that States fail to meet their human rights obligations if their institutions create or foster environments in which violations of human rights and freedoms are perpetrated with impunity. As the African Commission stated, States Parties must “adopt and diligently implement customised measures of protection that would avert the impending violations or indeed curb or eliminate altogether the prevailing violations”.¹⁷

Article 6 of the CEDAW requires States Parties to take appropriate measures to suppress all forms of trafficking in women and exploitation of prostitution of women. An interpretive guide from the CEDAW’s own treaty body is yet to be adopted. A General Recommendation on “trafficking of women and girls in the context of global migration” is still in the drafting stage. Nevertheless, there are other authoritative instruments relevant to the issue of trafficking of women and girls.

The [Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children](#) (2000), which supplements the [Convention Against Transnational Organised Crime \(UNCATOC\)](#), was established to combat trafficking, and protect and assist victims and punish perpetrators of trafficking in States of origin, transit and destination in circumstances where the trafficking of persons is perpetrated transnationally by organised criminal groups. As a Protocol to a binding international treaty, the provisions and offences set out in the UNCATOC apply to the Protocol. The Protocol also calls on States Parties to criminalise any and all of the conduct established as constituting trafficking in persons in its Article 3, namely, “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”. The exploitation may include sexual exploitation, including prostitution, forced labour, slavery or slavery-like practices, servitude or organ harvesting. Article 3(b) states that the consent of a victim of trafficking is irrelevant where any of the means used to relocate them transnationally are included in the definition of “trafficking of persons”.

UN Security Council Resolution 1325 calls on UN Member States and all parties to armed conflicts to respect the international law applicable to the rights of women and girls. It calls on Member States to protect women and girls from SGBV and other forms of violence during

¹⁶ [Equality Now and Ethiopian Women Lawyers Association \(EWLA\) v Federal Republic of Ethiopia Communication 341/2007](#), African Commission on Human and People’s Rights, 16 November 2015, paras. 120-121.

¹⁷ *Ibid*, paras. 124-125.

armed conflicts, and to end impunity for those who violate international criminal law, including those who perpetrate crimes involving SGBV against women and girls.¹⁸

Laws on civil and criminal defence

To date, there are no international or regional human rights instruments specifically addressing women as litigants in civil trials, accused persons in criminal trials or as witnesses or jurors in either. With regards to their rights as accused persons in criminal trials, women's interests are subsumed under the same fair trial rights laws as men. While this adheres to formal equality, there are many legal principles relevant to trials which disproportionately affect women in a negative manner notwithstanding the non-gendered nature of the presentation of these principles in the abstract. Some of the issues surrounding the application of these legal principles will be addressed in the next section on concrete problems facing gender justice today.

Intimate relationships, including marriage

Article 16 of the UDHR covers marriage and family:

“(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

As a binding legal instrument, Article 23(2) the ICCPR recognises “the right of men and women of marriageable age to marry and to found a family” and Article 23(3) dictates that marriages will not be entered into without the “free and full consent of the intending spouses”. Invariably, the question arises of what “marriageable age” means and when a person can be said to have reached it. Article 1 of the CRC and Article 2 of the ACRWC both establish the age of majority as 18 unless a younger age is stipulated in relation to laws applicable to children. Article 16(2) CEDAW invalidates child betrothals and marriages, and requires State Parties to specify minimum ages for marriage. Both the CRC and ACRWC establish the primacy of the best interests of the child,¹⁹ with the Committee on the Rights of the Child identifying it as a core principle for the interpretation and implementation of children's rights, which

¹⁸ UN Security Council Resolution 1325, Articles 9-11 (<http://www.peacewomen.org/SCR-1325>).

¹⁹ Article 3(1) CRC; Article 4(1) ACRWC.

necessitates considerations of children’s care, protection and safety, degrees of vulnerability, and their right to health.²⁰

Article 6(b) of the Maputo Protocol dictates that the minimum age for marriage be 18 years old. Article 24(3) of the CRC requires States Parties to “take all effective measures with a view to abolishing traditional practices prejudicial to the health of children”. Article 21 of the ACRWC requires States Parties to eliminate all social and cultural practices which affect the welfare, dignity, normal growth and development of the child. Article 21(2) requires the prohibition of child marriage or betrothal of girls and boys, and that State Parties take effective action, including legislative action, to establish 18 years as the minimum age of marriage.

Concrete problems that need to be addressed

Political participation

According to the Inter-Parliamentary Union, as of February 2019, only 24.3% of national parliamentarians were women. Only 3 States had women parliamentarians represented at rates of 50% or higher: Rwanda at 61.3%; Cuba at 53.2%; and Bolivia at 53.1%.²¹ Regionally, the highest percentage representation in single or lower houses was in Nordic States, which had 42.5% women. The lowest percentage representation was in the Pacific, with women making up 16.3% of parliamentarians in single or lower houses.²² There were 27 States where women made up less than 10% of parliamentarians. As of June 2019, 11 women had served as Heads of State and 12 women had served as Heads of Government.²³ As of January 2019, 20.7% of women were government ministers, most of whom headed ministries responsible for social affairs or the interests of families/children/the youth/the elderly/persons with disabilities, the environment/natural resources/energy, employment/labour/vocation training, or trade/industry.²⁴

Outside of professional political participation, women are underrepresented in election processes. Factors such as reduced or restricted mobility, lower levels of education and poverty hinder women’s involvement as members of the voting public.²⁵ Women also face pressure from their families or communities to vote in specific ways, or are forced to engage

²⁰ UN Committee on the Rights of the Child (CRC), *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, CRC/C/GC/14, paras. 71-78.

²¹ Inter-Parliamentary Union “Women in National Parliaments – situation as of 1st February 2019” (<http://archive.ipu.org/wmn-e/arc/world010219.htm>).

²² Ibid.

²³ UN Women “Facts and figures: Leadership and political participation” (<https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures>).

²⁴ Ibid.

²⁵ Womankind “Participation and leadership” (<https://www.womankind.org.uk/policy-and-campaigns/women's-rights/participation-and-leadership>).

in “proxy voting”, whereby male family members vote on their behalf, thus excluding them from the process.²⁶

Violence against women is a deterrent to women’s participation in politics. It is perpetuated by structural inequalities and institutional shortcomings in protection and support. Discriminatory laws and policies may prohibit women from professional involvement in politics, and those women in leadership positions may be targeted because the challenges they present to traditional gender roles.²⁷ A 2016 survey by the Inter-Parliamentary Union of 55 women MPs in 39 States revealed that, while serving terms of office, 44% of them had received threats of death, abduction, or physical or sexual assault (including threats of abduction or death against their children), 20% had experienced physical attacks, and 20% had experienced sexual harassment.²⁸ A 2018 study of 123 women parliamentarians and parliamentary staff members in 45 European States further disclosed the extent of SGBV against women professionally involved in politics. 46.9% of women MPs reportedly received threats of death, or physical or sexual violence, 58.2% reported experiencing humiliating or sexual online attacks, 24.7% reported experiencing sexual harassment (mostly from male colleagues) and 11.1% reported experiencing acts of physical violence.²⁹

Creating opportunities for women in politics benefits women as a collective, as they are more likely to champion causes pertaining to gender justice in areas like marriage, divorce, and employment.³⁰

Employment

Although women contribute to two thirds of the world’s working hours, they earn 10% of the world’s income, own 1% of the world’s property and make up the majority of the world’s poorest people.³¹ The feminisation of poverty is attributable to multiple factors, including conservatively implemented laws on land ownership, fewer employment opportunities and differences in rates of remuneration.³² Women also disproportionately bear the responsibility of rearing children, taking care of families and maintaining households, which makes them

²⁶ Ibid.

²⁷ Ibid.

²⁸ Inter-Parliamentary Union “IPU study reveals widespread sexism, harassment and violence against women MPs, 26 October 2016 (<https://www.ipu.org/news/press-releases/2016-10/ipu-study-reveals-widespread-sexism-harassment-and-violence-against-women-mps>).

²⁹ Inter-Parliamentary Union “Sexism, harassment and violence against women in parliaments in Europe”, October 2018 (<https://www.ipu.org/resources/publications/issue-briefs/2018-10/sexism-harassment-and-violence-against-women-in-parliaments-in-europe>).

³⁰ Womankind “Participation and leadership” (<https://www.womankind.org.uk/policy-and-campaigns/women's-rights/participation-and-leadership>).

³¹ UNOHCHR “Human Rights Day 2009: Combating discrimination against women” (<https://www.ohchr.org/EN/AboutUs/Pages/DiscriminationAgainstWomen.aspx>).

³² Olufunmilayo I. Fawole “Economic violence to women and girls: Is it receiving the necessary attention?” *Trauma, Violence & Abuse* (2008), Vol. 9, Issue 3, p. 169.

more economically vulnerable than men as they have fewer opportunities to engage in income-generating work.³³

While in the workplace, women face a variety of challenges associated with childcare, advancement, remuneration and harassment. For example, in 2017, the Pew Research Center reported on a study of 4,914 adults, conducted between 11 July and 10 August 2017, which found that 42% of women in the United States had experienced gender-based discrimination while working. All in all, they were twice as likely as men to report experiencing issues like being treated as if they were not competent enough because of their gender, being passed over for important assignments, being denied promotions, or being turned down for jobs.³⁴ One in four women claimed they earned less than a male peer as compared to one in twenty men.³⁵

In 2020, the Equality and Human Rights Commission published a study on sexual harassment in the workplace. Three quarters of respondents to the study, almost all of them women, reported experiencing sexual harassment at work. The results were said to demonstrate the inequality that women face at work as workplace harassment largely stems from and reflects power imbalances.³⁶ Half of the respondents did not report the harassment because of barriers including fears of not being taken seriously, the belief that alleged harassers, especially if they are senior staff members, would be protected, fears of victimisation, and the absence of appropriate reporting procedures.³⁷ It was also found that one in five mothers had experienced harassment involving negative comments about their pregnancies or flexible working arrangements.³⁸

Inheritance and land rights

As of 2019, 116 States out of 180 did not have laws that guaranteed women equal inheritance rights.³⁹ The Committee on the Elimination of Discrimination Against Women has expressed concern over the fact that certain States exclude personal status laws (which include marriage, divorce, property distribution, inheritance, guardianship and adoption) from the application of constitutional provisions prohibiting discrimination, or relegate such matters

³³ SOFA Team and Cheryl Doss “The role of women in agriculture – ESA Working Paper No. 11-02” (March 2011), 16 (<http://www.fao.org/3/am307e/am307e00.pdf>).

³⁴ Pew Research Center “Gender discrimination comes in many forms for today’s working women”, 14 December 2017 (<https://www.pewresearch.org/fact-tank/2017/12/14/gender-discrimination-comes-in-many-forms-for-todays-working-women/>).

³⁵ Ibid.

³⁶ [Equality and Human Rights Commission “Sexual harassment and harassment at work” \(2020\)](#), p. 5.

³⁷ Ibid, p. 6.

³⁸ Ibid, p. 7.

³⁹ Violence Against Women & Girls Resource Guide (VAWG) Land sector brief (July 2019), p. 2 (https://www.vawgresourceguide.org/sites/vawg/files/briefs/vawg_resource_land_guide-_final.pdf).

to customary or religious laws.⁴⁰ Libya, New Zealand, Tunisia and the United Arab Emirates all lodged reservations to Articles 2 and 16(1)(g) and (h) of the CEDAW on the basis that the provisions conflicted with national rules of inheritance, which were cited as sharia law by the governments of Libya and the UAE. New Zealand lodged a reservation to the CEDAW on the basis that Articles 2(f) and 5(a) were inconsistent with rules governing inheritance to chieftainship on certain Cook Islands.⁴¹ The Committee on the Elimination of Discrimination Against Women has expressed concern about reservations of the nature to Articles 2 and 16 of the CEDAW, and has called on States Parties to withdraw such reservations on the basis that they are invalid because they conflict with the object and purpose of the CEDAW.⁴²

Other States have laws which prohibit testators from concluding wills which attempt to override discriminatory inheritance laws.⁴³ Legal provisions and customary practices of this nature leave widows economically and legally vulnerable.⁴⁴ The General Recommendation goes on to state that States Parties are under an obligation to comply with the CEDAW by treating surviving men and women equally, repeal laws which only facilitate inheritance by widows if they marry the siblings of their deceased husbands or other people, prohibit the disinheritance of surviving spouses, and criminalise property dispossession.⁴⁵

Women own less than 20% of the world's land. As of 2019, 127 States out of 180 had national laws that discriminated against women in their access to land.⁴⁶ Due to their vulnerability with regards to inheritance, widows often have unstable claims to land upon the deaths of their husbands. They have to contend with laws which restrict their access to leased land and land of adequate quality and size.⁴⁷

Sexual and gender-based violence (SGBV)

⁴⁰ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 16: Economic consequences of marriage, family relations and their dissolution, 2013*, para. 10.

⁴¹ *Declarations, reservations, objections and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women, 2006*.

⁴² UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 16: Economic consequences of marriage, family relations and their dissolution, 2013*, para. 3.

⁴³ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 16: Economic consequences of marriage, family relations and their dissolution, 2013*, para. 52.

⁴⁴ *Ibid*, para. 49.

⁴⁵ *Ibid*, para. 53.

⁴⁶ Violence Against Women & Girls Resource Guide (VAWG) Land sector brief (July 2019), p. 2 (https://www.vawgresourceguide.org/sites/vawg/files/briefs/vawg_resource_land_guide-_final.pdf).

⁴⁷ UN Food and Agriculture Organisation *Women in Agriculture: Closing the Gender Gap for Development* (2011), p. 23 (<http://www.fao.org/3/i2050e/i2050e03.pdf>).

SGBV reinforces women’s social, economic, political subordination to men, and is often perpetrated with impunity.⁴⁸ The Committee for the Elimination of Discrimination Against Women has identified gender-based violence as “a critical obstacle to the achievement of substantive equality between women and men and to the enjoyment by women of their human rights and fundamental freedoms”.⁴⁹ In *Opuz v Turkey* case, the European Court of Human Rights for the first time has held that gender-based violence is a form of discrimination under the European Convention.

Globally, up to 38% of murders committed against women are perpetrated by male intimate partners.⁵⁰ 1 in 3 women have experienced physical and/or sexual violence from intimate partners or sexual violence from non-partners in their lifetimes.⁵¹ It must be recognised in the law that rape can take place in a marriage. SGBV affects women not only in the home, but in the workplace and in public life, in person and in online spaces, within national boundaries and across them.⁵² It is exacerbated in situations of conflict, post-conflict or displacement.⁵³ Rape as a weapon of war is now accepted in the prosecutions for crimes against humanity. Prosecutors in cases of violation of women in a situation of conflict should be highly trained and sensitive to the cultural shame that can be imposed on women and the reluctance of women to speak to male investigators, or at all. Better investigation is needed. SGBV can have long-lasting physical and psychological effects, including abdominal and back pain, gastrointestinal complications, disability, depression, anxiety, and PTSD.⁵⁴

SGBV is often excused and perpetuated through religious, cultural or social justifications, such as notions surrounding the “rightful” authority of men over women, the necessity of husbands disciplining their wives, holding women responsible for experiencing sexual violence, and general concerns surrounding the maintenance or recovery of a family’s honour or social reputation.⁵⁵ In a number of societies, it is a common practice to procure wives by abducting, raping and forcing women and girls into marriage.⁵⁶

⁴⁸ UN Committee on the Elimination of Discrimination Against Women (CEDAW), [CEDAW General Recommendation No. 35: Gender-based violence against women, updating general recommendation No. 19, 2017](#), paras. 6, 10.

⁴⁹ *Ibid.*, para. 10.

⁵⁰ UN Women “Violence Against Women” (<https://www.who.int/news-room/fact-sheets/detail/violence-against-women>).

⁵¹ World Health Organization “Violence against women”, 29 November 2017 (<https://www.who.int/news-room/fact-sheets/detail/violence-against-women>).

⁵² UN Committee on the Elimination of Discrimination Against Women (CEDAW), [CEDAW General Recommendation No. 35: Gender-based violence against women, updating general recommendation No. 19, 2017](#), para. 6.

⁵³ UN Women “Violence Against Women” (<https://www.who.int/news-room/fact-sheets/detail/violence-against-women>).

⁵⁴ *Ibid.*

⁵⁵ Perrin, N., Marsh, M., Clough, A. *et al.* “Social norms and beliefs about gender based violence scale: a measure for use with gender based violence prevention programs in low-resource and humanitarian settings” *Conflict and Health* 13, 6 (2019) (<https://doi.org/10.1186/s13031-019-0189-x>).

⁵⁶ *Equality Now and Ethiopian Women Lawyers Association (EWLA) v Federal Republic of Ethiopia* Communication 341/2007, African Commission on Human and People’s Rights, 16 November 2015, para. 109.

While many States have laws and policies to combat SGBV, many do not. Moreover, even when laws on SGBV do exist, they are not always enforced adequately.

Laws on civil and criminal defence

Combatting discrimination against women necessitates an examination of the extent to which patriarchal norms influence the law and its application or interpretation in legal institutions. There are understandings of gender, and other grounds with which it intersects, which are based on harmful gender stereotypes and others which purport to be gender-neutral but disproportionately affect women negatively in their implementation. All such legal principles and norms must be reassessed for the purposes. For example, in relation to the former, there is an established history of feminist theorists challenging paternalistic characterisations in criminology of women offenders as “unfeminine” or as being motivated by unstable personalities rather than by rational thought. These characterisations could result in them being treated more harshly by actors in the criminal justice system. As an example of the latter, it has been posited that the practice of making bail may prove more difficult for women than men because, depending on geographic location, women are may be more likely to be unemployed or to occupy lower socioeconomic echelons.⁵⁷ Even when legal norms and principles are presented as gender neutral, they are, in fact, male-oriented, because their origins can be traced to bygone ages characterised by state-sanctioned exclusions of anyone other than cisgender, heterosexual men from positions of power, who developed laws and principles with other men in mind.⁵⁸

The experiences of women in the civil and criminal justice systems are largely influenced by institutional perceptions of traditional gender roles.⁵⁹ It cannot be ignored that male-dominated institutions court rooms may alienate women accused of crimes to the detriment of their trials.⁶⁰ While there have been, over the decades, purportedly gender-conscious developments in institutional frameworks and in the application of legal norms principles, e.g. official pronouncements to the effect that male pronouns or references to men in legislation encompass other genders and the shift in terminology from the “reasonable man” test to the “reasonable person” test in tort law,⁶¹ these developments have not gone far enough in addressing the discriminatory effects of legal norms and principles.

As a first step, in applying legal principles, legal institutions ought not to view women and girls as deviations from the norm. This is not to say that the specific circumstances and interests

⁵⁷ Stephanie S. Covington and Barbara E. Bloom “Gendered Justice: Women in the Criminal Justice System” in Barbara E. Bloom (ed) *Gendered Justice: Addressing Female Offenders* (2003) Carolina Academic Press, p. 5.

⁵⁸ Stephanie S. Covington and Barbara E. Bloom “Gendered Justice: Women in the Criminal Justice System” in Barbara E. Bloom (ed) *Gendered Justice: Addressing Female Offenders* (2003) Carolina Academic Press, p. 3.

⁵⁹ Tapiwa B. Zimudzi “African Women, Violent Crime and the Criminal Law in Colonial Zimbabwe, 1900-1952”, *Journal of Southern African Studies* (2004) Vol. 30, No. 3, pp. 499-517 at 501.

⁶⁰ Helena Kennedy, *Eve was Framed*, pp. 12-13.

⁶¹ See Ann C. McGinley “Reasonable Men?” (2012) *Connecticut Law Review*, Vol. 45, Issue 1, p. 23-24.

of women and girls must not be taken into consideration by legal institutions. Rather, it is merely to say that instead of viewing women and girls as exceptions to a rule, they ought to be viewed as a rule unto themselves. In doing so, simple contrasts of elements of women's identities with those of men in essentialist exercises must be avoided. Such approaches may ultimately undermine the variegated and multi-faceted lived experiences of women and girls. Care must also be taken to avoid overly paternalistic tendencies in purportedly gender-conscious applications of law, some of which involve women and girls being viewed solely as victims or, when they have indeed been victimised, viewing them as having been traumatised to the point of being utterly incapable of reason.⁶² Cisgender, heterosexual able-bodied men can no longer be considered the "everyman" who represents the condition and interests of every person.⁶³ Circumstances of birth and upbringing, especially given the fact that human beings are raised and reach adulthood in environments where specific social constructs at the foundations of their lives will invariably affect how they perceive and are perceived by the world. The law, and the institutions interpreting and enforcing it, must evolve to accommodate the differences in our lived realities to reconstruct a more equitable system.⁶⁴

Intimate relationships, including marriage

Child marriage affects both boys and girls, but girls are affected to a far greater extent.⁶⁵ Every year, 12 million girls are married before the age of 18.⁶⁶ South Asia, West and Central Africa, and East and Southern Africa have the highest rates of child marriage. In South Asia, of women aged between 20 and 49, 56% were married or in unions before the age of 18. In West and Central Africa, the figure was 46%. In East and Southern Africa, the percentage of women married before the age of 18 was 38%.⁶⁷

Many countries in the world have discriminatory laws which establish different minimum ages for marriage for boys and girls, e.g. setting the minimum age for boys at 18 years and setting the minimum age for girls at 15 or 16. Child marriage usually occurs because a girl's parents or other relatives have pressured her into it. This vitiates the full and voluntary consent that is included as a mandatory requirement for marriage under international law. Other reasons for child marriage include lack of education (possibly because a boy child's education has been prioritised over that of a girl child in a family or because of limited job opportunities), poverty,

⁶² See, for example, in relation to the reasonable woman standard in sexual harassment cases, Betsy Shoenfelt, Allison Maue & Nelson, Joanne "Reasonable Person versus Reasonable Woman: Does It Matter?" *American University Journal of Gender, Social Policy and Law* 10, no. 3 (2002): 633-67.

⁶³ Stephanie S. Covington and Barbara E. Bloom "Gendered Justice: Women in the Criminal Justice System" in Barbara E. Bloom (ed) *Gendered Justice: Addressing Female Offenders* (2003) Carolina Academic Press, p. 2.

⁶⁴ *Ibid.*

⁶⁵ UNICEF "Ending child marriage: progress and prospects" (2014) (https://www.unicef.org/media/files/Child_Marriage_Report_7_17_LR..pdf).

⁶⁶ Girls Not Brides (<https://www.girlsnotbrides.org/about-child-marriage/>).

⁶⁷ UNICEF "Ending child marriage: progress and prospects" (2014) (https://www.unicef.org/media/files/Child_Marriage_Report_7_17_LR..pdf).

and lack of alternatives.⁶⁸ These causes are also effects, as child brides are often deprived of further education and employment opportunities. They must also endure sexual and other forms of violence from their partners, having little decision-making power in their relationships, and the health complications that attend pregnancy and child birth at a young age.⁶⁹ It must be established in the law that rape can take place in a marriage.

On a larger scale, child marriage hinders efforts to combat poverty and carries a high cost for national economies. According to the World Bank, the eradication of child marriage would:⁷⁰

1. Result in lower rates of population growth, which, in turn, result in more gains for existing populations estimated at US\$500 billion per year;
2. Save US\$90 billion globally from lower under-five mortality and malnutrition given the fact that children born to very young mothers are more likely to die before they reach the age of 5 and are susceptible to delayed physical development, ending child marriage;
3. Increase the expected earnings of women, as child marriage is likely to reduce the future earnings of child brides by 9%.

Concluding remarks

The global legal profession has reached a stage where gender-blind approaches to law and justice can no longer continue. Gender-based discrimination is not exclusively a women's issue, but one that affects everyone. There is a well-established link between the advancement of women's rights and social development, which means that it is in every nation's vested interest to respect, protect and fulfil the rights of women for the betterment of society and the facilitation of peace and security.

States have an obligation to protect every citizen from a widespread violence. As domestic violence disproportionately affects women, States have a positive obligation to take measures and actions to tackle this specific crime and protect every woman and girl. Otherwise, general and discriminatory institutional (judicial, legislative, executive) passivity creates a climate that is conducive to the crime, and the gender-based discriminatory practices in general.

The legal profession has been and will continue to be at the forefront of human rights-based legal development. It has a crucial role to play in facilitating the creation of legal systems which are responsive, implement measures in line with their international obligations to respect, protect and fulfil human rights, and bring perpetrators of violence against women and other violators of women's rights to account. In general, an environment must be created which demonstrates a commitment by States to combat gender-based discrimination. To this

⁶⁸ World Bank "Educating Girls, Ending Child Marriage", 24 August 2017, (<https://www.worldbank.org/en/news/immersive-story/2017/08/22/educating-girls-ending-child-marriage>).

⁶⁹ Ibid.

⁷⁰ Ibid.

end, legal professionals, while working in local contexts, must draw from international, regional and comparative law to advance women's rights and pursue gender justice.