



# **ASSESSMENT OF WOMEN'S RIGHTS AND ACCESS TO JUSTICE IN TANZANIA**

MAY 2023

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# ASSESSMENT OF WOMEN'S RIGHTS AND ACCESS TO JUSTICE IN TANZANIA

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## **Researcher and Report Writer:**

Dr. Geoffrey Chambua (Phd)  
GESAKA Consulting Company

## **Editorial Team:**

Christina Kamili Ruhinda  
Fransisca G. Silayo  
Mchereli M. Machumbana

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### **ABOUT TANLAP**

Tanzania Network of Legal Aid Providers (TANLAP) is an umbrella national network working in the legal sector. It is a membership network comprising Non-Governmental Organizations (NGOs), Community-Based Organisations (CBOs), Faith Based Organisations (FBOs) and other institutions providing legal aid in Tanzania. It was founded in 2006 to work and link up with other Civil Society Organizations to provide quality legal aid and advocate for access to justice among Tanzania's indigent community. TANLAP is registered under the NGO Act, 2002 and granted certificate No. 00NGO/R1/00990. TANLAP membership is open to any organisation/institution providing legal aid services in Tanzania and to any Network Organization whose members provide legal aid services in Tanzania. TANLAP members operate in all regions of Tanzania Mainland.

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### List of Abbreviations

EAC	East African Community
FGM	female genital mutilation
GBV	Gender-Based Violence
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Information and Communications Technology
ILO	International Labour Organization
LCA	Law of the Child Act
LHRC	Legal and Human Rights Centre
CEDAW	Convention on the Elimination of all Forms of Discrimination
CAP	Chapter
CDO	Community Development Officer
CHRAGG	Commission for Human Rights and Good Governance
CSOs	Civil Society Organizations
LMA	Law of Marriage Act
LSF	Legal Services Facility
NGOs	Non-Governmental Organizations

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NPA-VAWC	National Plan of Action to End Violence Against Women and Children
NSGD	National Strategy for Gender Development
SDGEA	Solemn Declaration on Gender Equality in Africa
SDGs	Sustainable Development Goals
SWO	Social Welfare Officer
TAMWA	Tanzania Media Women Association
TANLAP	Tanzania Network of Legal Aid Providers
TAWLA	Tanzania Women Lawyers Association
THRDC	Tanzania Human Rights Defenders Coalition
UNGA	United Nations General Assembly
UNODC	United Nations Office on Drugs and Crime
WiLDAF	Women in Law and Development in Africa
WLAC	Women's Legal Aid Centre

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## Executive Summary

### 1. Introduction

Tanzania is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and, as such, is obligated to ensure women enjoy their fundamental human rights free from any form of discrimination. It is also a party to various other human rights and women's rights conventions, including the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003. This report examines the situation of women's rights and access to justice in line with these conventions, focusing on both legal and practical aspects of enjoyment of women's rights and access to justice.

### 2. Methodology

The assessment was informed by both primary and secondary sources of data. Primary data were obtained through consultations with key stakeholders and TANLAP's programme reports. Secondary data were obtained from reports touching on women's rights and





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access to justice produced by local and international organizations; official statistical reports produced by the Government of the United Republic of Tanzania; speeches and statements by government and non-government actors; and decisions and report of various regional and international human rights mechanisms. A total of 170 stakeholders conversant with women's rights and access to justice were engaged (47% female, 53% male).

### 3. **Key Findings**

Tanzania has made significant progress in advancing women's rights, taking various measures, including legislative and policy measures, to ensure women enjoy and realize their fundamental human rights. Tanzania is among the countries in Africa and other countries in different parts of the world which have ratified most human rights and women's rights conventions. It has also taken measures to domesticate provisions of these conventions through amendment and enactment of various pieces of legislation.

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### **Issues affecting women's rights**

However, despite the progress made in promoting and protecting women's rights in Tanzania, the assessment has found that several key issues continue to affect women's rights, hindering them from effectively realizing them. These issues include:

- ☞ Gender based violence;
- ☞ Access to justice;
- ☞ Property and inheritance rights violations;
- ☞ Low legal awareness;
- ☞ Low human and women's rights awareness;
- ☞ Discriminatory customs and traditions;
- ☞ Harmful cultural practices;
- ☞ Limited participation in politics, leadership, and decision-making;
- ☞ Personal safety and security; and
- ☞ Unemployment and underemployment.

Other issues affecting women in Tanzania include access to quality health services, older women being accused and attacked over witchcraft allegations, limited access to education, and human trafficking.

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### **Women's access to justice and key barriers**

Regarding access to justice, key barriers to for women in access justice, were identified through document review and stakeholder consultation. These barriers include lack of awareness; poverty and costs of legal representation; availability, accessibility, and quality of legal aid services; discriminatory customs and traditions; illiteracy; corruption; cumbersome legal procedures; proximity of formal justice delivery institutions; and gaps in laws and policies. Other barriers to women's access to justice in Tanzania include gender practical issues such as lack of women-friendly services and victims not being taken seriously. Stakeholders also identified not knowing where to file a complaint as a key barrier to women's access to justice (66.7).

Majority of stakeholders who participated in this assessment (73.9%) claimed women's access to justice is somewhat better compared to previous years, followed by nearly a quarter (20.7%) who said it is much better. However, the 2022 Social Institutions and Gender Index (SIGI) report indicates that women's access to justice is still low in most regions. According to the index scores, Songwe region currently has the lowest level of discrimination against women in accessing justice, with the score of 13 out of 100, followed by Simiyu (21), Mara

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(21), Arusha (23), Njombe (23), and Mbeya (28). Women's access to justice was found to be most limited in Iringa (57), Mwanza (54), Singida (52), and Tabora (52).

The majority of consulted stakeholders, nearly two thirds (60.4%), also said women usually seek help or assistance from family and friends first, followed by village or ward office (57.7%), religious leaders (45.9%), and NGOs/legal aid providers (37.8%). Over a third of the respondents also indicated that women seek help or intervention of police and individual paralegals operating at grassroots level.

Stakeholders also identified various challenges that women face when attempting to access justice from the institutions mentioned above, including corruption and bureaucracy (including nepotism and sexual corruption); not being taken seriously; not being afforded adequate time to be heard; costs of dispute settlement; 'blaming the victim' culture and bias towards male party to a dispute; low legal awareness; family pressure to settle dispute internally (at family level); poor representation in decision-making positions; social acceptance of GBV (women encouraged to tolerate violence and see it as normal); and threats from perpetrators and fear of retaliation.



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### **Recommendations to improve protection of women's rights and access to justice**

Consulted stakeholders made various recommendations to improve promotion and protection of women's right and access to justice. These include:

- Enactment of Complaintive Law to address GBV
- Amendment of all laws touching on women's issues and rights to make them gender-sensitive, including electoral laws.
- Amendment of all laws which discriminate against women, including customary laws property rights and inheritance laws.
- NGOs to increase collaboration and work together to address key challenges affecting women's rights and create a bigger impact in the community. NGOs should work more as coalitions.
- Provision of women's rights training and seminars to justice actors.

### **Opportunities and best practices in advancing women's rights and access to justice**

Through document review and stakeholder consultation several opportunities and best practices were identified and suggested. Opportunities including having a female President who is pro-

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women's rights and gender equality; existence of the national human rights institution (Commission for Human Rights and Good Governance); the President's proposed nationwide legal aid campaign; and availability of NGOs/legal aid providers, ministry responsible for women's rights, police gender and children desk, and social welfare offices. Best practices include investing in women's legal knowledge; conducting awareness-raising on women's rights; strengthening women's economic empowerment; enhancing women's access to education; NGO collaboration and working in coalitions; and engaging informal justice systems.

### 4. **Key Recommendations**

- Full domestication of CEDAW provisions to ensure better protection of women's rights in Tanzania.
- Ratify key human rights conventions touching on women's rights, which are yet to be ratified.
- Enacting Anti- GBV Law
- Review and amend of laws that discriminate against women, including customary laws.
- Taking measures to remove barriers to women's access to justice.
- Increase representation of women in formal and informal justice institutions.

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- Effective enforcement of laws to safeguard women's rights.
- Undertake extensive sensitization of the public on women's rights.

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## CHAPTER ONE: INTRODUCTION

### 1.1. **Background and Objectives of the Assessment**

TANLAP commissioned this assignment to inform its one-year project on provision of legal aid services to strengthen access to justice for women and girls in Tanzania. The assessment seeks to provide current information on the situation of women's rights and access to justice in Tanzania. Assessment findings shall provide relevant evidence to support advocacy efforts and inform a shadow report on implementation of women's rights and access to justice obligations under the Convention on the Elimination of all Forms of Discrimination (CEDAW) of 1979.

Specific objectives of the assignment were:

- To conduct a situational analysis on the situation of women's rights and access to justice in Tanzania;
- To determine level of access to justice for women and girls in Tanzania; and
- To produce a shadow report on women and girls' rights and access to justice in Tanzania.

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The assessment focuses on both legal and practical aspects of enjoyment of women's rights and access to justice. This includes examining international, regional, sub-regional, and domestic legal and policy frameworks on women's rights and access to justice applicable to Tanzania and looking at the extent to which they have been implemented, as well as identifying gaps, suggesting good practices, and providing recommendations to improve women's rights and access to justice in Tanzania.

### 1.2. **Sources of Data**

The assessment was conducted using both primary and secondary sources of data. Primary data were obtained through consultations with key stakeholders and TANLAP's programme reports. Secondary data were obtained from reports touching on women's rights and access to justice produced by local and international organisations; official statistical reports produced by the Government of the United Republic of Tanzania; speeches and statements by government and non-government actors; and decisions and reports of various regional and international human rights mechanisms.

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## 1.3. **Assessment Methodology**

### 1.3.1. **Document Review**

The assessment was primarily conducted through a comprehensive review of various documents on women's rights and access to justice in Tanzania. These include regional and international human rights and women's rights instruments, reports by local and international organisations, journal articles, speeches and statements, TANLAP reports, and laws and policies relating to women's rights and access to justice in Tanzania.

### 1.3.2. **Stakeholder Consultations**

Consultations with various stakeholders also provided valuable data and information for this report, providing perceptions and expert analysis of key issues affecting women's rights and access to justice. Consultations were made with paralegals and other actors directly engaging with women at the grassroots level and women's rights and access justice experts. A questionnaire was developed for paralegals and other actors, while the experts were subjected to key informant interviews using an interview guide. A total of 170 stakeholders

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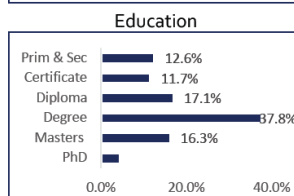
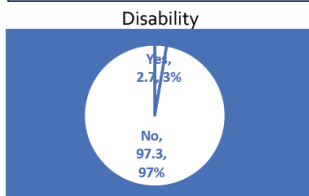
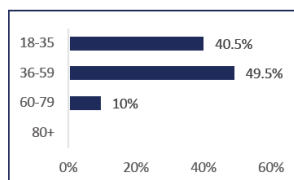
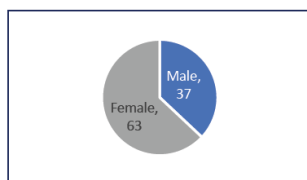
conversant with women's rights and access to justice were engaged (47% female, 53% male).

**Table 1: #Total stakeholders consulted during assessment**

Stakeholders consulted	Reach		
	Male	Female	Total
Paralegals & other actors at grassroots level	41	70	111
Women's rights & access to justice experts	49	10	59
<b>TOTAL</b>	<b>90</b>	<b>80</b>	<b>170</b>

### %Demographic Characteristics of Stakeholders Engaged (N=111)

Sex	Age
Disability	Education



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### 1.4. **Limitations**

Perceptions and inputs on critical issues affecting women's rights and access to justice provided in this report are limited to those of paralegals and other actors directly engaging with women at the grassroots level and women's rights and access justice experts. A quantitative survey directly engaging women and other community members and involving a larger sample size might be desirable in the future to give more weight to the key issues raised. Nevertheless, the data and information obtained through document review and stakeholder consultations were sufficient to critically assess the situation of women's rights and access to justice in Tanzania and develop a key data source for a shadow report to be submitted to CEDAW Committee.

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## **CHAPTER TWO:**

## **LEGAL AND POLICY FRAMEWORKS ON WOMEN'S RIGHTS AND ACCESS TO JUSTICE IN TANZANIA**

Women's rights, including access to justice right, are stipulated in various legal and policy documents available at international, regional, and domestic levels. These include treaties, declarations, general comments, resolutions, laws, regulations, and policies. These key instruments which promote women's rights and gender equality are briefly discussed below.

### **2.1 International Frameworks**

At the international level, States from different parts of the world, Tanzania inclusive, have made commitments to promote and protect women's rights under various instruments, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979); the Beijing Declaration and Platform for Action (1995); Declaration on the Elimination of Violence against Women (1993); and Optional Protocol to the Convention on the Elimination of Discrimination against Women (1999). These are the key women's right focused instruments at the international level.



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### 2.1.1 *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)*

CEDAW is often described as an international bill of rights for women, as it is the main international convention that comprehensively provides for women's rights. It was adopted in 1979 by the United Nations General Assembly (UNGA) and has since been ratified by over 90% of countries worldwide. CEDAW was adopted due to concerns of extensive discrimination against women, despite existence of various human rights instruments promoting equality of rights of men and women.

It considers discrimination against women to constitute a violation of the principles of equality of rights and respect for human dignity. It recognises it as an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, which in turn hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and humanity.

CEDAW prohibits discrimination against women in the enjoyment of various economic, social, civil, and political human rights, including the right to participate in

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governance, education, work, quality health services, and the right to equality before the law. It also calls for States Parties, including Tanzania, to take measures to guarantee women's enjoyment of fundamental rights and freedoms. Article 15 of CEDAW provides for women's right to equality before the law, which includes **access to justice**, the presumption of innocence, the right to legal representation, the right to a fair trial, and the right to an effective remedy.

Despite Tanzania's ratification of the CEDAW by the State party in 1986, it has not yet incorporated into Tanzanian domestic law as Tanzania is a dualist state. The CEDAW convention underlines that the signatory state party is under a legal obligation to comply with an international convention that it has ratified or acceded to and to give a full effect in its domestic legal order. Therefore there is a need to make positive steps to have this domestication achieved if indeed women's rights are to be fully protected for it seems whatsoever legislation may be there, it falls short of complete protection.

*States Parties shall accord to women equality with men before the law.*



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### 2.1.2 *Beijing Declaration and Platform for Action (1995)*

The Beijing Declaration and Platform of Action, adopted in Beijing – China, in 1995, is considered the most progressive blueprint ever for advancing women's rights.<sup>1</sup> Through this document, the International Community, inter alia, reaffirmed its commitment to the equal rights and human dignity of women and men and other purposes and principles enshrined in the Charter of the United Nations, to the Universal Declaration of Human Rights and other international human rights instruments, including the CEDAW.<sup>2</sup>

The Platform for Action covers 12 critical areas of concern that are as relevant today as 20 years ago: poverty; education and training; health; violence; armed conflict; economy; power and decision-making; institutional mechanisms; human rights; media; environment; and the girl child. For each critical area of concern, strategic objectives are identified, as well as a detailed catalogue of related actions to be taken by Governments and other

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1 See UN WOMEN, *Beijing Declaration and Platform for Action, Beijing +5 Political Declaration and Outcome*, at <https://www.unwomen.org/en/digital-library/publications/2015/01/beijing-declaration>.

2 UN Beijing Declaration and Platform for Action 1995, *Reprinted by UN Women in 2014*, at [https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/PFA\\_E\\_Final\\_WEB.pdf](https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/PFA_E_Final_WEB.pdf).

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stakeholders, at national, regional and international levels.<sup>3</sup>

In the area of **violence**, key strategic objectives included taking integrated measures to prevent and eliminate violence against women (VAW), studying the causes and consequences of VAW and the effectiveness of preventive measures, and eliminating trafficking in women and assisting victims of violence due to prostitution and trafficking. To this end, governments are required to take various actions, including:

- ☞ Condemn VAW and refrain from invoking custom, tradition, or religious consideration to avoid their obligations with respect to its elimination as set out in the Declaration on the Elimination of Violence against Women.
- ☞ Enact and/or reinforce penal, civil, labour, and administrative sanctions in domestic legislation to punish and redress the wrongs done to women and girls who are subjected to any form of violence, whether in the home, the workplace, the Community, or society.
- ☞ Enact and enforce legislation against perpetrators of practices and acts of VAW, such as female

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genital mutilation, female infanticide, prenatal sex selection and dowry-related violence, and give vigorous support to the efforts of non-governmental and Community organisations to eliminate such practices.

In **human rights**, key strategic objectives include promoting and protecting women's human rights through the full implementation of all human rights instruments, especially the CEDAW; ensuring equality and non-discrimination under law and in practice; and achieving legal literacy.

To this end, governments are required to take various actions, including:

- ☞ Provide constitutional guarantees and/or enact appropriate legislation to prohibit discrimination based on sex, especially for all women and girls and assure women of all ages equal rights and their full enjoyment.
- ☞ Review national laws, including customary laws and legal practices in areas of family, civil, penal, labour and commercial law to ensure the implementation of the principles and procedures of

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all relevant international human rights instruments through national legislation, revoke any remaining laws that discriminate based on sex and remove gender bias in the administration of justice.

- ☞ Review and amend criminal laws and procedures, as necessary, to eliminate any discrimination against women.
- ☞ Take urgent action to combat and eliminate VAWC, a human rights violation resulting from harmful traditional or customary practices, cultural prejudices, and extremism.
- ☞ Translate, whenever possible, into local and indigenous languages and alternative formats appropriate for persons with disabilities and persons at lower levels of literacy, publicise and disseminate laws and information relating to equal status and human rights of all women.

In the area of **economy**, one of the actions governments are required to take is reforming laws or enacting national policies that support the establishment of labour laws to ensure the protection of all women workers, including safe work practices, the right to organise and access to justice.

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### 2.1.3 *Declaration on the Elimination of Violence against Women (1993)*

The 1993 Declaration on the Elimination of Violence against Women was the first international instrument explicitly addressing violence against women, providing a framework for national and international action.<sup>4</sup> It was developed and adopted due to the need for a clear and comprehensive definition of violence against women, a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms, a commitment by States in respect of their responsibilities, and a commitment by the international community at large to the elimination of violence against women.<sup>5</sup> It has not talk about issues of women rights to inheritance ( widows) and issues of digital space to women.

According to the declaration, women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social,

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4 UN WOMEN, *Global norms and standards: Ending violence against women*, at <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/global-norms-and-standards#:~:text=The%201993%20Declaration%20on%20the,for%20national%20and%20international%20action.>

5 UN General Assembly, *Declaration on the Elimination of Violence against Women*, 20 December 1993, A/RES/48/104, available at: <https://www.refworld.org/docid/3b00f25d2c.html> [accessed 25 March 2023].

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cultural, civil or any other field, including the right to life; the right to equality, the right to liberty and security of person; the right to equal protection under the law; and the right to be free from all forms of discrimination.<sup>6</sup> States are also required to condemn VAW and not invoke any custom, tradition or religious consideration to avoid their obligations for its elimination.<sup>7</sup>

### 2.1.4 *Optional Protocol to the Convention on the Elimination of Discrimination against Women (1999)*

Adopted by the UNGA in 1999,<sup>8</sup> the Optional Protocol of the Convention on the Elimination of All Forms of Discrimination against Women imposes an obligation on States Parties to recognise the competence of the Committee on the Elimination of Discrimination against Women to receive and consider complaints expressed by individuals or organised groups of civil society.<sup>9</sup> It provides victims of women's rights violations with access to remedy, enhancing their access to justice in case

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6 Article 3 f the Declaration on the Elimination of Violence against Women, 1993.

7 Ibid, Article 4.

8 UN General Assembly, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*, 6 October 1999, United Nations, Treaty Series, vol. 2131, p. 83, available at: <https://www.refworld.org/docid/3ae6b3a7c.html> [accessed 25 March 2023].

9 Articles 2 & 3.

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the decision of domestic human rights mechanisms aggrieves them.

### 2.1.5 *Transforming our world: the 2030 Agenda for Sustainable Development, UNGA Resolution A/RES/70/1 (2015)*

In 2015, the international community, through the U.N., adopted the 2030 Agenda for Sustainable Development, which introduced 17 Sustainable Development Goals (SDGs),<sup>10</sup> replacing Millennium Development Goals (MDGs). U.N. members, including Tanzania, committed themselves to achieve the 17 SDGs and their 169 targets, seeking to build on the MDGs. The SDGs seek to realise human rights for all, achieve gender equality and the empowerment of all women and girls.<sup>11</sup> The Agenda is guided by the purposes and principles of the UN Charter, grounded, inter alia, in the Universal Declaration of Human Rights and informed by other instruments such as the Declaration on the Right to Development.<sup>12</sup>

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10 UN General Assembly, *Transforming our world : the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1, available at: <https://www.refworld.org/docid/57b6e3e44.html> [accessed 25 March 2023].

11 UN Department of Economic and Social Affairs, *Transforming our world: the 2030 Agenda for Sustainable Development*, at <https://sdgs.un.org/2030agenda>.

12 Ibid.

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Among the SDGs are: SDG 3 (Ensure healthy lives and promote well-being for all at all ages); SDG 4 (Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all); SDG 5 (Achieve gender equality and empower all women and girls); SDG 8 (Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent for all); and SDG 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable, and inclusive institutions at all levels). Among key targets of SDG 16, essential in the promotion and protection of women's rights and access to justice, include:<sup>13</sup>

- Significantly reduce all forms of violence and related death rates everywhere.
- End abuse, exploitation, trafficking, and all forms of violence against and torture of children.
- Promote the rule of law at the national and international levels and ensure equal access to justice for all.

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13 UN Department of Economic and Social Affairs, *Sustainable Development Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels*, at <https://sdgs.un.org/goals/goal16>.



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- Ensure responsive, inclusive, participatory, and representative decision-making at all levels.
- Ensure public access to information and protect fundamental freedoms per national legislation and international agreements.
- Promote and enforce non-discriminatory laws and policies for sustainable development.

SDG 17 is also important in terms of advancing women's rights in terms of strengthening coordination in promotion and protection of their rights and collaborative efforts in addressing obstacles to the enjoyment of such rights. Multi-stakeholder partnerships in mobilizing and sharing knowledge, expertise, technology and financial resources are essential in achieving SDGs relating to women's rights.

### 2.1.6 *Other relevant international instruments*

Other relevant standards when it comes to women's rights include: the Universal Declaration of Human Rights (1966); the Convention of the Rights of the Child (CRC) (1989); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); Protocol to Prevent,

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Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000); and International Labour Organization (ILO) conventions. Fundamental ILO conventions in this regard include the ILO Convention No. 100 on equal remuneration<sup>14</sup> and ILO Convention No.111 on discrimination in employment and occupation.<sup>15</sup> These instruments contain provisions which promote and guarantee women's and girls' human rights and impose obligations to promote and protect such rights, including protection from different forms of violence and discrimination. For instance, CRC is essential in protecting a girl child from harmful traditional practices such as FGM and child marriage, while ILO conventions protect women's rights in employment, including the right to non-discrimination and freedom from violence. ICCPR and ICESCR prohibit discrimination of any kind and require men and women to have equal rights to enjoy the rights guaranteed in them.<sup>16</sup>

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14 C100 - Equal Remuneration Convention, 1951 (No. 100).

15 C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

16 Article 2 & 3 of ICCPR & ICESCR.

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## 2.2 Regional Frameworks

At the regional level, key human rights instruments governing women's rights, including the right to access to justice, include the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ("The Maputo Protocol") of 2003, the SADC Protocol on Gender and Development of 2008, the Solemn Declaration on Gender Equality in Africa of 2004, and the East African Community Gender Policy of 2018.

### 2.2.1 *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ("The Maputo Protocol") (2003)*

Adopted by Heads of State and Government in Maputo, Mozambique, on 11 July 2003, the Maputo Protocol<sup>17</sup> has been hailed as one the world's most comprehensive and progressive women's human rights instruments.<sup>18</sup>

17 See PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA, at <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/Protocolon-theRightsofWomen.pdf>.

18 Equality Now, *THE MAPUTO PROTOCOL: PROTECTING AFRICAN WOMEN'S RIGHTS*, [https://www.equalitynow.org/promoting\\_african\\_womens\\_rights/#:~:text=The%20Maputo%20Protocol%20Advances%20African,Roles%20in%20political%20processes](https://www.equalitynow.org/promoting_african_womens_rights/#:~:text=The%20Maputo%20Protocol%20Advances%20African,Roles%20in%20political%20processes).

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It guarantees extensive rights to African women and girls and includes progressive provisions on harmful traditional practices, such as child marriage and female genital mutilation (FGM); reproductive health and rights; roles in political processes; economic empowerment; and ending violence against women.<sup>19</sup> It challenges the old stereotypes about the role of women in society and places women as full, effective and equal partners with men in the development of their communities.<sup>20</sup> It has also influenced domestic laws promoting and protecting women's rights in various African countries.<sup>21</sup>

The Maputo Protocol requires African States, including Tanzania, to combat discrimination against women through appropriate legislative, institutional, and other measures.<sup>22</sup> The measures include: enacting and enforcing laws to prohibit all forms of violence against women;<sup>23</sup> preventing and condemning trafficking in

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19 Ibid.

20 See Maputo Protocol on Women's Rights: A Living Document for Women's Human Rights in Africa, *Submitted by the Women, Gender and Development Directorate (WGDD) of the African Union Commission*, at [https://au.int/sites/default/files/documents/31520-doc-maputo\\_protocol\\_on\\_womens\\_rights\\_a\\_living\\_document\\_for\\_womens\\_human\\_rights\\_in\\_africa\\_submitted\\_by\\_the\\_women\\_gender\\_and\\_development\\_directorate\\_wgdd\\_of\\_the\\_african\\_union\\_commission.pdf](https://au.int/sites/default/files/documents/31520-doc-maputo_protocol_on_womens_rights_a_living_document_for_womens_human_rights_in_africa_submitted_by_the_women_gender_and_development_directorate_wgdd_of_the_african_union_commission.pdf).

21 Ibid.

22 Article 2(1) of the Maputo Protocol.

23 Ibid, Article 4(2)(a).

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women and protecting women most at risk;<sup>24</sup> prohibiting and condemning all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards;<sup>25</sup> and enacting appropriate national legislative measures to guarantee that the minimum age of marriage for women is 18 years.<sup>26</sup> States are also required to take measures to ensure special protection for widows, elderly women, and women with disabilities.<sup>27</sup>

The Maputo Protocol also recognises various women's rights, including the right to dignity (Article 3); rights to life, integrity, and security of the person (Article 4); the right to access to justice and equal protection before the law (Article 8); right to participation in the political and decision-making process (Article 9); right to peace (Article 10); right to education and training (Article 12); right to equal opportunities in work and career advancement (Article 13); right to health, including sexual and reproductive health (Article 14); Right to an adequate standard of living (Articles 15 and 16); and right to inheritance (Article 21).

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24 Article 4(2)(g).

25 Article 5.

26 Article 6(b).

27 Articles 21, 22, & 23 of the Maputo Protocol.

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### **Article 8 of the Maputo Protocol**

States Parties shall take all appropriate measures to ensure:

- a. Effective access by women to **judicial and legal services**, including **legal aid**;
- b. Support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid;
- c. The establishment of adequate educational and other appropriate structures with particular attention to women and to sensitise everyone to the rights of women;
- d. That law enforcement organs at all levels are equipped to interpret and enforce gender equality rights effectively;
- e. That **women are represented equally in the judiciary and law enforcement organs**;
- f. **Reform of existing discriminatory laws and practices** to promote and protect women's rights.

### 2.2.2 SADC Protocol on Gender and Development (2008)

The SADC Protocol on Gender and Development was adopted in August 2008, aimed at empowering women to eliminate discrimination and achieve gender equality by encouraging and harmonising the development and implementation of gender responsive legislation, policies, programmes, and projects.

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It provides for various rights guaranteed under the Maputo Protocol, including the right to equality in accessing justice.

Regarding access to justice, States are required to take various measures to ensure the practice of realisation of equality for women, including:

- Ensuring **equality in the treatment of women in judicial and quasi-judicial proceedings** or similar proceedings, including customary and traditional courts and national reconciliation processes;
- Ensuring **equal legal status and capacity in civil and customary law**, including, amongst other things, full contractual rights, the right to acquire and hold rights in a property, and the right to equal inheritance and the right to security credit;
- Ensuring that **women have equitable representation** on and participation in all courts, including traditional courts, alternative dispute resolution mechanisms and local community courts; and
- Ensuring **accessible and affordable legal services for women**.

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### *2.2.3 Solemn Declaration on Gender Equality in Africa (SDGEA) (2004)*

Adopted by the A.U. Assembly in 2004, SDGEA seeks to promote gender equality and reaffirm its commitment to promote and protect women's rights in Africa. The Declaration, among other things, seeks to ensure sustained public campaigns against gender-based violence and trafficking in women and girls; expand and promote the gender parity principle; ensure the active promotion and protection of women's and girls' human rights; and actively promote the implementation of legislation to guarantee women's land, property and inheritance rights including their rights to housing.

### *2.2.4 East African Community Gender Policy (2018)*

The East African Community (EAC) Gender Policy was launched and officially adopted by the EAC Secretariat on 17<sup>th</sup> September 2018, representing a key milestone in the promotion of gender equality and guaranteeing equal rights and opportunities for men and women. The policy is anchored in Article 6(d) of the Treaty for the Establishment of the East African Community, where Partner States committed



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to adhering to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as recognition, promotion and protection of human and people's rights.

Among the objectives of the policy are:

- Promote the development, coordination, harmonisation and reporting on gender equality commitments by the Community.
- Strengthen the **mainstreaming of gender concerns** in all sectors of the planning and budgetary processes of the EAC Organs and Institutions and Partner States.
- Promote **women's participation in politics and decision-making** at all levels.
- Strengthen measures that **prevent and respond to Gender-based violence** and other harmful cultural practices.

### 2.2.5 Other Relevant Instruments

Other African instruments relevant to women's rights and their access to justice include the African Charter on Human and Peoples' Rights ("Banjul Charter") (1981); the Agenda 2063: The Africa We Want; and Treaty for

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the Establishment of the East African Community (1999). For instance, the Banjul Charter requires States Parties, Tanzania inclusive, to ensure 'the elimination of every discrimination against women and ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.'

It also provides that 'Every individual shall be equal before the law' and 'Every individual shall be entitled to equal protection of the law.'

The Agenda 2063 is Africa's blueprint and strategic framework to deliver its inclusive and sustainable development goal. It encapsulates various aspirations to be manifested by the year 2063. Aspirations relevant to women's rights and access to justice include ASPIRATION 1. A prosperous Africa based on inclusive growth and sustainable development; ASPIRATION 3. An Africa of good governance, democracy, respect for human rights, justice, and the rule of law; ASPIRATION 4. A peaceful and secure Africa; ASPIRATION 6: An Africa whose development is people-driven, relying on the potential of African people, especially its women and youth, and caring for children; and ASPIRATION 7: Africa as a strong, united, resilient and influential global player and partner.



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The EAC Treaty was signed in November 1999 and entered into in July 2000 following its ratification by the Original 3 Partner States: Kenya, Uganda and Tanzania.

It aims to deepen cooperation among the Partner States in, among others, political, economic and social fields for their mutual benefit.

Under Article 6(d) of the EAC Treaty, the EAC States have committed to adhere to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as recognition, promotion and protection of human and people's rights.

### **2.3 Domestic Frameworks**

Domestically, various laws and policies touch on women's rights and access to justice, including the Constitution of the United Republic of Tanzania of 1977.

#### *2.3.1 Constitution of the United Republic of Tanzania, 1977*

The Constitution of the United Republic of Tanzania, 1977 contains a bill of rights (Articles 12 to 24), providing for various rights to be enjoyed by men and women in Tanzania. These rights are domesticated from various international human rights instruments highlighted

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above. Article 13 of the Constitution specifically provides for the right to equality before the law, which also guarantees access to justice. It states, 'All persons are equal before the law and are entitled, **without any discrimination**, to protection and equality before the law.'

The Constitution also requires enacted laws to be non-discriminatory, either in itself or in its effect. It guarantees that no person should be discriminated against by any person or authority acting under any law or in the discharge of the functions or business of any state office. The Constitution has no provision of independent candidate especially for women. It is not necessary to be political party affiliated so it should allow independent candidate for women. Also the Constitution lack of emphasis the component of women and men trainings to enter into politics and take part on political and leadership positions. The Constitution to add economic and political rights of women.

Further, the Constitution also provides for fair hearings, independent and impartial courts and tribunals, and the right to legal assistance for the accused person. It also provides access to courts of law to determine rights.

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Chapter Five of the Constitution establishes the higher courts of law, namely the High Court and the Court of Appeal of Tanzania.

### 2.3.2 *Law of Marriage Act, 1971*

The Law of Marriage Act (LMA), enacted in 1971, provides marriage and personal property rights between husband and wife. It covers critical issues such as separation, divorce, and other matrimonial reliefs. LMA also provides for the principle of presumption of marriage (Section 160) to protect women's rights in cohabiting with men. The Law also provide for the duty to maintain children (Section 129); division of matrimonial assets (Section 114); right to acquire separate property (Section 58); presumptions as to property acquired during marriage (Section 60); presumption of wife's authority to pledge her husband's credit (Section 64); and prohibition of a spouse to inflict corporal punishment (Section 66). These essential provisions within LMA protect and promote married women's rights. The Law of Marriage Act still has a bad provision which allows a child of 14 and 15 years to get married. So, the law needs to set the correct age of marriage either 21 or 18 as the girl will have been reached the age of majority and know herself.

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### 2.3.3 *Land Act, 1999 and Village Land Act, 1999*

The enactment of two land laws in 1999, the Land Act and the Village Land Act, was a milestone in protecting women's property rights. For instance, the Land Act recognises the right of every woman to acquire, hold, use, and deal with land to the same restrictions subject to man's rights. The Village Land Act also provides for 'The right of every adult woman to acquire, hold, use, deal with and transmit by or obtain land through the operation of a will, shall be to the same extent and subject to the same restrictions as the right of any adult man.'

These laws have been hailed as progressive in upholding women's equal rights to land. The Law also under Section 154 put the requirement of consent of a wife when mortgaging a Matrimonial Land or home.

### 2.3.4 *Penal Code, Cap. 16*

The Penal Code protects women's rights by, inter alia, prohibiting and criminalising various acts of gender-based violence and VAW under Chapter XV.

Chapter XVI provides for offences relating to marriage and domestic obligations, which protect women and children in the family. The Penal Code also protects

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girls by prohibiting FGM against them. Section 155-156 specified the issue of unnatural offences. The Penal Code does not provide for economic violence to women and political gender-based violence, example those who are denied to enter into politics, or the women in politics who are being named bad names like COVID 19 among other names as well as remedies to the victim of gender based violence. The Penal Code to provide exactly limitation for handling gender-based violence cases. Penal Code to talk about those who use customs and traditions to lure women and girls to stop prosecuting the perpetrators. Penal Code should put economic gender-based violence crimes to women as well as sextortion cases.

### 2.3.5 *Law of the Child Act, 2009*

The Law of the Child Act (LCA) was enacted in 2009 and domesticated the U.N. Convention on the Rights of the Child of 1989 and the African Charter on the Rights and Welfare of the Child of 1990. The Child Act includes the principles of the best interests of the child. It brought together child specific provisions from

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a range of national laws and defines a child as anyone below the age of 18 years. LCA provides for various rights of children, including the girl child. These rights include the right to non-discrimination (Section 5); the right to access to juvenile justice (Part IX); the right to be protected from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression; and the right to parental property (Section 10). The law does not talk about remedies /Compensation to child victims of violence. The Law has failed to set punishment for those who desert children,

### 2.3.6 *Legal Aid Act, 2017*

The enactment of the Legal Aid Act in 2017 was a crucial milestone in enhancing access to justice in Tanzania, including for women and girls. The goal was to enhance access to justice for indigent persons by legally recognising paralegals. The law recognises the right to legal aid in both civil and criminal proceedings, provides for legal aid principles, and prohibits discrimination.

In 2018, the Government introduced the Legal Aid Regulations to elaborate provisions and application of



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the Legal Aid Act. Legal aid funding has not be explained in the law. Also the law should be amended to include the waiver of fees for paralegals to register for legal aid provision as it was announced by the Minister and now the practice. Legal Aid providers also seek the waiver of fees for legal aid providers (NGOs) as they do their work voluntarily.

*Subject to the provisions of this Act, no legal aid provider, advocate, lawyer or paralegal shall provide legal aid on the basis of discriminating aided person on his gender, religion, race, tribe or political affiliation.- Section 44(1) of the Legal Aid Act, 2017.*

### 2.3.7 Anti-Trafficking in Persons Act, 2008

In 2008, the Government enacted the Anti-Trafficking in Persons Act to combat the problem of human trafficking in Tanzania. This is an important law in promoting and protecting women's rights because women and children constitute the majority of human trafficking victims in Tanzania, trafficked for different purposes, including labour and sexual exploitation. Enactment of this law constitutes compliance with human rights obligations stipulated in various international and regional women's

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rights instruments discussed above, including CEDAW and Maputo Protocol, which require States to take various legislative measures to protect women and girls from human trafficking.

### 2.3.8 *Prevention and Combating of Corruption Act [CAP. 329 R.E. 2022]*

The Prevention and Combating of Corruption Act [CAP. 329 R.E. 2022] is also instrumental in protecting women's rights. It prohibits and criminalises all forms of corruption, including sexual corruption. According to this law, "Any person being in a position of power or authority, who in the exercise of his authority, demands or imposes sexual favours or any other favour on any person as a condition for giving employment, a promotion, a right, a privilege or any preferential treatment, commits an offence and shall be liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or to both." The law also generally prohibits and criminalizes corrupt transactions, including in contracts, procurement, auctions, and employment.

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### 2.3.9 *Women and Gender Development Policy (2000) & National Strategy for Gender Development (2005)*

The Women and Gender Development Policy was adopted in 2000 to emphasise the Women in Development Policy of 1992 in line with the Beijing Platform for Action. This policy ensures that the gender perspective is mainstreamed into all policies, programmes, and strategies. To ensure the effective implementation of the Women and Gender Development Policy, a National Strategy for Gender Development (NSGD) to promote gender equality and equity has been prepared. The NSGD aims to consolidate and speed up the implementation of the Women and Gender Development Policy, which strives to redress gender gaps and inequalities between men and women. It also aims to guide implementers to incorporate gender concerns into their policies, plans, strategies and programmes to implement international, regional and national commitments.

NSGD identifies 20 major areas of gender policy concerns, including legal and human rights, education, economic empowerment, gender mainstreaming, employment, and social security. National Plan of Action to End Violence against Women

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and Children (NPA-VAWC)

The Five-year National Plan of Action to End Violence Against Women and Children (NPA-VAWC 2017/18 – 2021/22) was developed by consolidating eight different action plans addressing violence against women and children to create a single comprehensive National Plan of Action to eradicate violence against women and children in the country.

It is another evidence of commitment by the Government of Tanzania to fulfil key human rights obligations under CEDAW and Maputo Protocol, which require States Parties to develop plans and strategies to combat violence against women and children, among other things. Development of a new, another five-year action plan is underway.

### *Political Parties Act*

Article 7 of the CEDAW should be included in the political parties Act to explain the ways on how political parties can get leaders. There should be a provisions which forces the political parties to give positions to women to participate/ contest to be leaders. Also, the law to emphasise the application / enforcement of the term for

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women political leaders to serve as special seats. Five years should be enough.

### *2.3.10 Other laws and policies*

Other relevant laws and policies include the Employment and Labour Relations Act of 2004, which, among other things, prohibits discrimination in the workplace; the Persons with Disabilities Act of 2010, which among other things, provides for rights of women and girls with disabilities; the Criminal Procedure Act. [CAP. 20 R.E. 2022], which guarantees access to criminal justice; the National Economic Empowerment Policy of 2004, whose primary objective is to ensure that most Tanzanians, including women, have access to opportunities to participate effectively in economic activities in all sectors of the economy. There are also customary laws which mainly discriminate against women in terms of enjoying equal rights with men, contradicting the Constitution, other laws and international human rights standards. These laws and how they hinder the effective realisation of women's rights are discussed in Chapter Three below.

## **CHAPTER THREE:**

### **ASSESSMENT FINDINGS AND ANALYSIS**

This chapter provides key assessment findings on women's rights and access to justice. The first part examines women's rights in Tanzania, the government's actions, some key issues, challenges, gaps, opportunities and best practices. The second part focuses on women's access to justice, examining government action, barriers to women's access to justice, and opportunities and best practices.

#### **3.1 The Situation of Women's Rights in Tanzania**

##### *3.1.1 Government Efforts to Promote and Protect Women's Rights*

In line with international human rights obligations and commitments, the Government of the United Republic of Tanzania has taken various measures to promote and protect women's rights in Tanzania. These include:

- Ratification of key international and regional women's rights instruments, including CEDAW, Maputo Protocol, and SADC Protocol on Gender and Development.
- Adoption of the Women and Gender Development Policy of 2000 and National Strategy for Gender Development of 2005.

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- Recognition of women's right to acquire and own land in the Land Act of 1999 and Village Land Act of 1999.
- Affirmative action to introduce women's special seats to boost their representation in leadership positions, including in Parliament. Constitutional amendments have increased women's representation and participation in the National Assembly.
- Appointment of more women leaders to boost women's representation in politics and decision-making positions.
- Introduction of police gender and children's desks.
- Introduction and implementation of women's economic empowerment programmes, including the 4%LGA loans for women and the women development fund programme implemented by the Ministry of Community Development, Gender, Women and Special Groups.
- The Amendment of the Penal Code, Cap. 16, to criminalise acts of GBV.
- The Introduction of Women and Children Protection Committees.

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### 3.1.2 Stakeholder Views on Legal Protection of Women's Rights

Stakeholders engaged in assessing the state of women's rights and access to justice were asked about the legal protection of women's rights. Specifically, they were asked how satisfied they felt the protection of women's rights in domestic legal and policy frameworks is. Nearly half of them (45.1%) said they feel the protection of women's rights is moderately satisfactory, followed by a third (33.3%) who said it is satisfactory. Only 1.8% said it is very satisfactory, while 19.8% said it is unsatisfactory and very unsatisfactory.



**Figure 1: %Stakeholder responses on the satisfaction of protection of women's rights in domestic legal and policy frameworks (N=111)**

Source: Assessment data, 2023



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As shown in Figure 1 above, only a third of stakeholders perceive the protection of women's rights in domestic and legal frameworks to be adequate. This means many gaps in laws and policies hinder the effective enjoyment and realisation of women's rights, as discussed further below.

### 3.1.3 Key Issues Affecting Women's Rights: Document Review Findings

A review of various documents touching on women's rights in Tanzania revealed that key issues affecting women's rights include:<sup>28</sup>

- ☞ Gender-based violence;
- ☞ Access to justice;

28 See LHRC (2021), Tanzania Human Rights Report 2020, at <https://human-rights.or.tz/en/resources-center>; LHRC (2022), Tanzania Human Rights Report 2021, at <https://humanrights.or.tz/en/resources-center>; NBS, 2021. "SIGI Tanzania Survey Report", Dodoma, Tanzania, at [https://www.nbs.go.tz/nbs/takwimu/SIGI/SIGI\\_Tanzania\\_Survey\\_Report.pdf](https://www.nbs.go.tz/nbs/takwimu/SIGI/SIGI_Tanzania_Survey_Report.pdf); OECD (2022), SIGI Country Report for Tanzania, Social Institutions and Gender Index, OECD Publishing, Paris, at [https://www.oecd-ilibrary.org/sites/06621e57-en/1/3/2/index.html?itemId=/content/publication/06621e57-en&csp\\_=903a35be2f9d2578e5790476db2b214b&itemIGO=oecd&itemContentType=book#section-d1e546](https://www.oecd-ilibrary.org/sites/06621e57-en/1/3/2/index.html?itemId=/content/publication/06621e57-en&csp_=903a35be2f9d2578e5790476db2b214b&itemIGO=oecd&itemContentType=book#section-d1e546).; WiDAF (2017), Tanzania Women's Rights Situation 2016, at <https://wildaftanzania.or.tz/wp-content/uploads/2020/04/TANZANIA-WOMENS-RIGHT-SITUATION-2016.pdf>; Tume ya Haki za Binadamu na Utawala Bora, Taarifa ya Miaka Ishirini ya Tume ya Haki za Binadamu na Utawala Bora 2001-2021, at <https://www.chragg.go.tz/uploads/documents/sw-1665407606-MIAKA%2020%20FINAL.pdf>.

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- ☞ Property and inheritance rights violations;
- ☞ Low legal awareness;
- ☞ Low human and women's rights awareness;
- ☞ Discriminatory customs and traditions;
- ☞ Harmful cultural practices;
- ☞ Limited participation in politics, leadership, and decision-making;
- ☞ Personal safety and security; and
- ☞ Unemployment and underemployment.

These issues are briefly discussed below.

### 3.1.3.1. *Gender-Based Violence*

Gender-based violence (GBV) refers to harmful acts directed at an individual based on sex.<sup>29</sup> According to the Legal and Human Rights Centre (LHRC), GBV is a significant threat to women's and girls' rights in Tanzania.<sup>30</sup> In 2020, Police crime statistics showed that 42,414 GBV incidents were reported, equivalent to a 7.7% increase compared to the previous year of 2019, in which 39,365 incidents were reported.<sup>31</sup> The statistics

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29 See United Republic of Tanzania, NATIONAL PLAN OF ACTION TO END VIOLENCE AGAINST WOMEN AND CHILDREN IN TANZANIA 2017/18 – 2021/22, December 2016, p. vi.

30 Tanzania Human Rights Report 2021 (supra).

31 Ibid.

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further show that GBV incidents decreased further decreased to 29,373 in 2021, a decrease of 30.8%. However, the number is still significant, with an average of over 35,000 incidents reported in 2020 and 2021.

Demographic and health survey findings for 2015/16 show that 4 in 10 women have experienced physical violence since age 15, and 2 in 10 have experienced such violence in the past year. 17% of women have ever experienced sexual violence, and 9% have experienced such violence in the past year. 42% of ever-married women have experienced spousal violence, whether physical or sexual, while 3 in 10 have experienced such violence within the past year.<sup>32</sup> The common acts of violence against women and girls include rape, sodomy, beatings, child and family neglect, marital sodomy, sexual harassment, and sextortion.<sup>33</sup> According to the National Bureau of Statistics (NBS), a total of 37,061 rape incidents were recorded by police from 2017

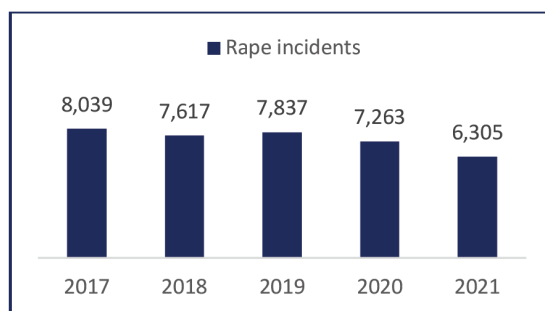
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32 Ministry of Health, Community Development, Gender, Elderly and Children (MoHCDGEC), [Tanzania Mainland], Ministry of Health (MoH) [Zanzibar], National Bureau of Statistics (NBS), Office of the Chief Government Statistician (OCGS) and ICF.2016. 2015-16 TDHS-MIS Key Findings: Rockville, Maryland, USA: MoHCDGEC, MoH, NBS, OCGS, and ICF.

33 Tanzania Human Rights Report 2021 (supra).

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to 2021 alone,<sup>34</sup> equivalent to an average of 7,412 incidents each year, 617 incidents each month, and 20 incidents each day.



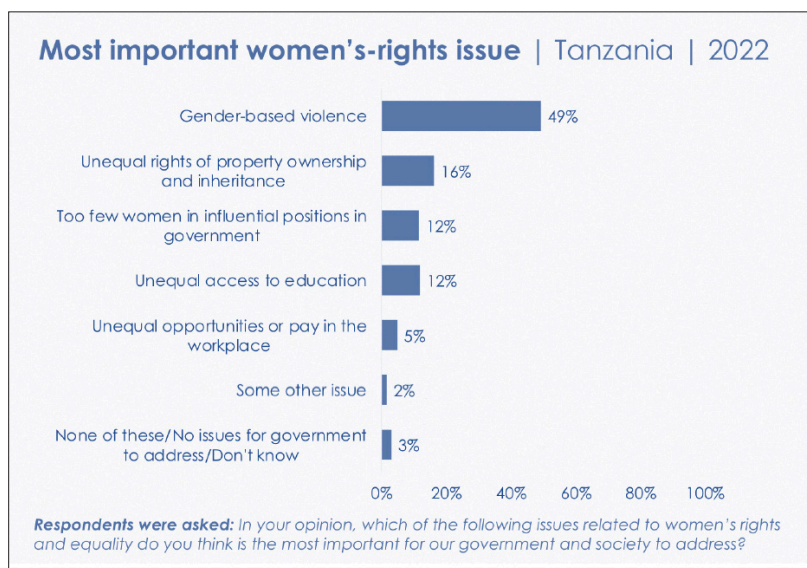
**Figure 2: Rape incidents recorded by police in Tanzania – 2017 to 2021**

Source: NBS, Tanzania in Figures 2021

The recent study conducted by Afro Barometer in 2022 and reported in 2023 indicate the respondents perception on issues which required an attention of the Government to address on social justice as depicted in the figure below;

34 See United Republic of Tanzania, National Bureau of Statistics (NBS), 2021 Tanzania in Figures, June 2022, at [https://www.nbs.go.tz/nbs/tak-wimu/references/2021\\_Tanzania\\_in\\_Figure\\_English.pdf](https://www.nbs.go.tz/nbs/tak-wimu/references/2021_Tanzania_in_Figure_English.pdf).

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**Figure 3: Afro Barometer Study in 2022 on most important women rights issues**

49% of the surveyed respondents were of the view that GBV is the most important women right issue which need the government and the society to address. In this study also, more than eight in 10 Tanzanians (83%) of the survey respondents said that it is “never justified” for a man to physically discipline his wife.

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The Surveyed Respondents for this study had also these views;

### Box 3.1.1: Need for anti-GBV law

To effectively address GBV and be in line with international human rights obligations under CEDAW and Maputo Protocol, Tanzania needs to enact a specific anti-GBV law. According to LHRC, some countries in different parts of the world, including African countries such as South Africa, Namibia, and Sierra Leone, have in place domestic violence laws.<sup>35</sup>

The Southern African Development Community (SADC), to which Tanzania is a member, has developed a model law on GBV, called the SADC Model Law on Gender Based Violence. This model provides a good starting point in enacting anti-GBV law in Tanzania. Among other things, the model law contains provisions on extra-territorial jurisdiction of national laws; human rights based approach and policy direction; access to justice and procedural protections; prohibition of all forms of GBV and attend procedures; early and effective response mechanisms and referral systems; prevention, protection, support, and intervention measures for victims; access to data and information, capacity building, public awareness, monitoring and evaluation; and enforcement and compliance.

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35 Ibid.

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### 3.1.3.2. Access to justice

#### Overview

Access to justice is a fundamental human right and a basic principle of the rule of law.<sup>36</sup> Ensuring people can have their voices heard, exercise and enjoy their rights, challenge discrimination and hold duty-bearers accountable is essential.<sup>37</sup> Access to justice is the ability of people, including women, to seek and obtain a remedy through formal or informal justice institutions for grievances in compliance with human rights standards.<sup>38</sup>

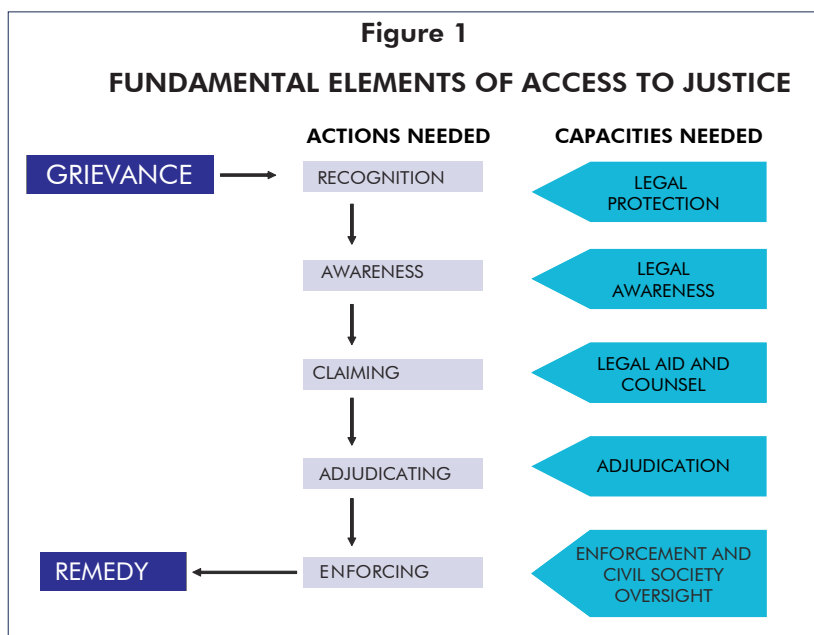
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36 See United Nations and the Rule of Law, *Access to Justice*, at <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>.

37 Tanzania Human Rights Report 2021 (supra); Tanzania Human Rights Report 2022 (supra).

38 See UNDP Regional Centre for Europe and the CIS (2013), *Strengthening Judicial Integrity through Enhanced Access to Justice: Analysis of the national studies on the capacities of the judicial institutions to address the needs/demands of persons with disabilities, minorities and women*, at <https://www.undp.org/sites/g/files/zskgke326/files/migration/eurasia/Access-to-justice.pdf>.

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**Picture 1: Fundamental Elements of Access to Justice**

Source: UNDP<sup>39</sup>

<sup>39</sup> [https://www.undp.org/sites/g/files/zskgke326/files/publications/Justice\\_PN\\_En.pdf](https://www.undp.org/sites/g/files/zskgke326/files/publications/Justice_PN_En.pdf).



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### Box 3.1.2: Conditions for access to justice

According to UNDP, access to justice exists where:<sup>40</sup>

- o Citizens, especially marginalised groups, do not fear the justice system.
- o The Justice system is financially accessible.
- o Citizens have lawyers.
- o Citizens have information or knowledge of rights.
- o There is a strong justice system.
- o There is access to legal aid.
- o There is civil society oversight.

### **Access to justice concerns for women in Tanzania**

While equality between women and men is guaranteed in various legal and human rights instruments discussed above, including the CEDAW, the Maputo Protocol, and the Constitution of the United Republic of Tanzania of 1977, in reality, there are various factors and barriers which hinder women's equal access to justice and protection of the law. These include gaps in domestic laws and policies, poverty, discrimination, and trust and confidence in justice delivery institutions. These barriers to women's access to justice are further discussed below.

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40 Ibid.

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Consequently, women are less likely to access justice than men.

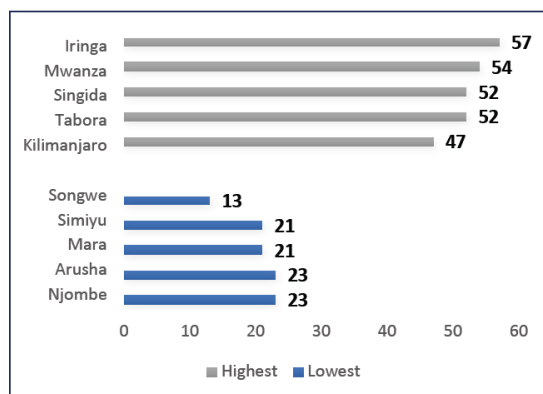
According to the 2022 Social Institutions and Gender Index (SIGI) report, women's access to justice is low in most regions.<sup>41</sup> One of the key indicators of the index is 'access to justice' – which measures discrimination against women in terms of their access to justice, looking at women's ability to access the justice system and community attitudes towards women's ability to go to court or police freely. According to the index scores, Songwe region currently has the lowest level of discrimination against women in accessing justice, with a score of 13 out of 100, followed by Simiyu (21), Mara (21), Arusha (23), Njombe (23), and Mbeya (28). Women's access to justice was found to be most limited in Iringa (57), Mwanza (54), Singida (52), and Tabora (52).<sup>42</sup>

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41 OECD (2022), *SIGI Country Report for Tanzania*, Social Institutions and Gender Index, OECD Publishing, Paris, <https://doi.org/10.1787/06621e57-en>.

42 Ibid.

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**Figure 4: Top 5 regions with highest and lowest levels of discrimination against women in accessing justice**

Source: SIGI Report 2022

The SIGI report shows that women's ability and willingness to resort to courts and police are limited, primarily contributed by discriminatory social norms.<sup>43</sup> Two-thirds of women (66%) prefer turning to family and friends rather than the police or court in cases of conflict, and there is little variation in this regard when comparing those who hold this perception in rural (66%)

43 SIGI Country Report for Tanzania(supra).

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and urban (65%) areas.<sup>44</sup> The report findings also show that while a large majority of the population believes that men and women should have equal opportunity to file a complaint at a police station, more than three-quarters hold the opinion that a woman needs her husband's or partner's permission to contact the police (77%) or a court (83%).<sup>45</sup>

The Afro Barometer Report has revealed further that:

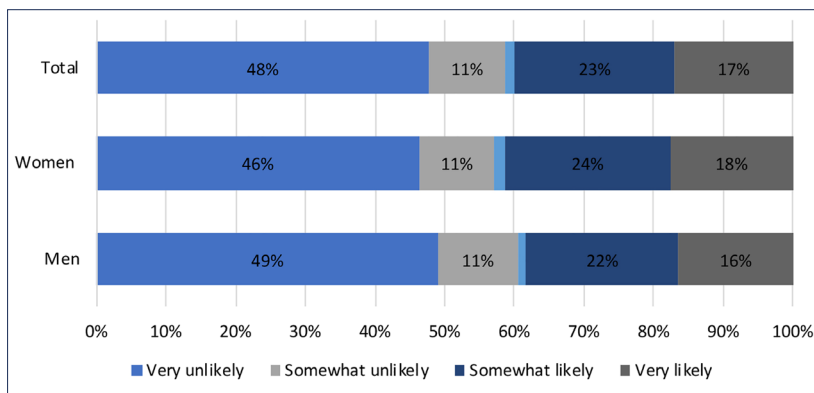
1. Four in 10 Tanzanians consider it "somewhat likely" (23%) or "very likely" (17%) that a woman will be criticized or harassed if she reports gender-based violence to the authorities.
2. But citizens overwhelmingly (92%) believe that the police are likely to take cases of GBV seriously.
3. Almost two-thirds (64%) of Tanzanians say domestic violence is a criminal matter that requires the involvement of law enforcement. Only a third (33%) see domestic violence as a private matter to be resolved within the family.

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44 Ibid.

45 Ibid.

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**Figure 5: Perceptions on the likelihood after reporting to Police on GBV incidents**

From the figure above depicted from Afro-Barometer study, **Respondents were asked:** If a woman in your community goes to the police to report being a victim of gender-based violence, for example, to report a rape or report being physically abused by her husband, how likely or unlikely is it that the following things might occur: She will be criticized, harassed, or shamed by others in the community?<sup>46</sup>

The Tanzania Human Rights Reports of 2021 and 2022<sup>47</sup> also show that women in conflict with the law face

<sup>46</sup> Afrobarometer study report, 2023

<sup>47</sup> Tanzania Human Rights Report 2021 (*supra*); LHRC & ZAFAYCO (2023), *Tanzania Human Rights Report 2022*, at <https://humanrights.or.tz/en/post/resources-center/TZHumanRightsReport2022>.

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various hurdles in the criminal justice system, noting that female prisoners and detainees suffer disproportionately from the injustices of the criminal justice system.<sup>48</sup> The 2022 edition of the report also shows that women are disproportionately affected by various access to justice barriers such as corruption, frequent adjournment of cases, delays in disposal of cases, and court proximity.<sup>49</sup>

### 3.1.3.3. *Property and inheritance rights violations*

Violations of property and inheritance rights are issues of primary concern for women in Tanzania, especially those residing in rural areas. These violations are mainly fuelled by discriminatory customary laws and practices, which deny or limit women's and girls' opportunities to acquire or inherit property,<sup>50</sup> especially land. Customs that say the land belongs to men shape inheritance practices by favouring sons over daughters and other male family members over widows.<sup>51</sup> Discriminatory social norms undermine women's inheritance rights and limit their ownership of agricultural land.<sup>52</sup>

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48 Ibid.

49 Tanzania Human Rights Report 2022(supra).

50 SIGI Country Report for Tanzania(supra).

51 Ibid.

52 Ibid.

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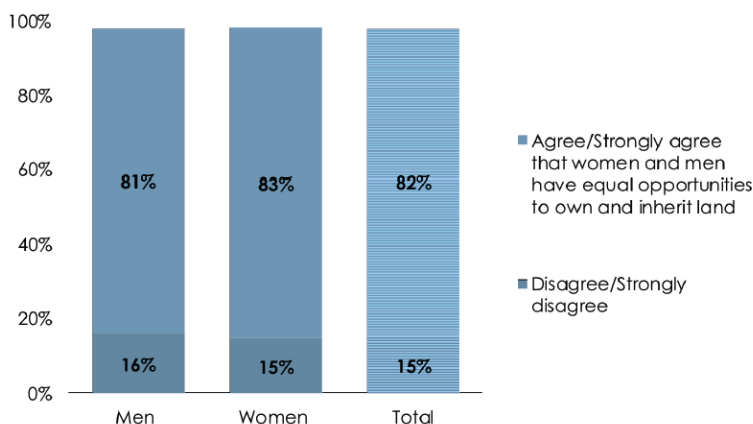
Property and inheritance rights violations, including widows, are common in Tanzania. Over three-quarters of community members (77%) who participated in LHRC's human rights survey in 2021 indicated that denial of inheritance for women and girls is either a serious problem (37%) or a moderate problem (40%) in the Community.<sup>53</sup> In some communities, it is also common for women and widows to be evicted from marital properties.<sup>54</sup>

### Box 3.1.3: Enforcement of land laws and review of inheritance laws

The Land Act and Village Land Act of 1999 guarantee equal access to and ownership of land among men and women. However, women's access to and control over land is limited, and customary laws and practices present a big challenge. A Review of inheritance laws is therefore desirable to safeguard women's and girls' inheritance rights.

In the Afro-barometer study report, **Respondents were asked:** *For each of the following statements, please tell me whether you disagree or agree: In our country today, women and men have equal opportunities to own and inherit land, the feedback was as shown below;*

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**Figure 6: Do women and men have equal opportunities to own/inherit land?**

The views of men were slightly similar to those of women in the sense that they strongly agree that they both should have equal; access to own and inherit land<sup>55</sup>.

### 3.1.3.4. Low legal and rights awareness

As highlighted above, knowledge of laws and rights is one of the pillars of access to justice. Low or little awareness about laws and rights is also a challenge for most women in Tanzania, especially in rural areas. This is contributed by their limited access to information, which is known to be lower in rural areas compared to

55 Ibid



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urban areas. The poor and other disadvantaged people cannot seek remedies for injustice when they do not know their rights and entitlements are under the law.<sup>56</sup> Women in the business sector are also faced with low awareness about their labour laws and rights.<sup>57</sup>

### Box 3.1.4: Need to intensify efforts to promote legal and rights awareness

Through the Ministry of Constitutional Affairs and the Commission for Human Rights and Good Governance, the Government should intensify efforts to promote public legal and rights awareness in line with its international human rights obligations. CSOs, including TANLAP, should play a supporting and complementary role.

### 3.1.3.5. *Discriminatory customs and traditions*

Some customs and traditions in Tanzania, most of which are patriarchal, deny women equal enjoyment of human rights,<sup>58</sup> contrary to the Constitution of the United Republic of Tanzania of 1977 and international and

56 See UNDP, *Access to Justice: Practice Note*, March 2004, at [https://www.undp.org/sites/g/files/zskgke326/files/publications/Justice\\_PN\\_En.pdf](https://www.undp.org/sites/g/files/zskgke326/files/publications/Justice_PN_En.pdf).

57 See LHRC (2022), *Human Rights and Business Report 2021/22*, at [https://humanrights.or.tz/en/post/resources-center/HRBReport21\\_22](https://humanrights.or.tz/en/post/resources-center/HRBReport21_22).

58 Msuya, NH. (2019). Challenges Surrounding the Adjudication of Women's Rights in Relation to Customary Law and Practices in Tanzania. *Potchefstroom Electronic Law Journal (PELJ)*, 22(1), 1-29. <https://dx.doi.org/10.17159/1727-3781/2019/v22i0a5012>.

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regional women's rights standards such as CEDAW and Maputo Protocol. As discussed above, such customs and traditions include those which deny women property and inheritance rights. There are also traditional practices which prohibit or discourage women from contesting in leadership positions or participate in decision-making. Consequently, they present significant barriers to the realisation of gender equality and perpetuating GBV.<sup>59</sup>

Discriminatory customary laws have also been used by courts of law to deny women their property and inheritance rights. For instance, in *Rubuka Nteme v Bi Jalia Hassan and Another*<sup>60</sup> the Court of Appeal overturned the High Court's decision, which had decided that a female member of the clan could not sell clan land to a stranger, which is prohibited under Haya customary law.<sup>61</sup> In the case of *Maagwi Kinito v Gibeno Warema*, the Court of Appeal cautioned that customary laws of the country have the same status as any other

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59 Tanzania Human Rights Report 2021 (supra).

60 *Rubuka Nteme v Bi Jalia Hassan* (Court of Appeal of Tanzania at Mwanza) (unreported) Civil Case number 19/1986 cited in Msuya, NH. (2019). Challenges Surrounding the Adjudication of Women's Rights in Relation to Customary Law and Practices in Tanzania. *Potchefstroom Electronic Law Journal (PELJ)*, 22(1), 1-29. <https://dx.doi.org/10.17159/1727-3781/2019/v22i0a5012>.

61 Ibid.

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law but are subject to the Constitution and any other statutory law that may provide to the contrary.<sup>62</sup>

### Box 3.1.5: Review of customary laws that discriminate against women and engagement of the Judiciary

To protect women's rights, there is a need for the Government to review customary laws which contain gender-discriminatory rules. Among them is the Customary Law (Declaration) Order No 436 of 1963.

There is also a need to engage the Judiciary to ensure that Judges and Magistrates do not blindly apply customary laws in adjudication. Courts of law should also be encouraged to interpret domestic laws, including customary laws, in line with international human rights standards.

### 3.1.3.6. Harmful Cultural Practices

The Maputo Protocol recognises various cultural practices as harmful<sup>63</sup> to women and girls, including female genital mutilation (FGM) and child marriage.<sup>64</sup> It also requires African states to play a proactive role in eliminating these harmful cultural practices by prohibiting

62 See *Maagwi Kimito vs Gibeno Werema* () [1985] TZCA 1 (01 January 1985), 1985 TLR 132 (TZCA), at <https://tanzlii.org/tz/judgment/court-appeal-tanzania/1985/1>.

63 Maputo Protocol defines "Harmful Practices" as all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity. [Article 1(g)].

64 Article 5 & 6(b) of Maputo Protocol.

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and condemning all forms of such practices which negatively affect women's human rights and are contrary to recognised international standards, taking legislative and other measures.<sup>65</sup> Maputo Protocol clearly states that the minimum age of marriage for women should be 18 years, which should be reflected in marriage laws.<sup>66</sup>

However, some harmful cultural practices persist in Tanzania, including child marriage and FGM. The Law of Marriage Act, 1971 allows girls aged 14 and 15 years to marry, contrary to the Maputo Protocol and SADC Protocol on Gender and Development, while the Penal Code, CAP 16, only prohibits and criminalise FGM practice when it comes to children.

### Box 3.1.6: Amendment of laws to abolish harmful cultural practices

The Law of Marriage Act of 1971 must be amended to abolish child marriage in line with the High Court and Court of Appeal judgements in the *Rebecca Gyumi* case, the Maputo Protocol, and CEDAW. In 2016, the High Court of Tanzania delivered its judgement on the case, declaring provisions within the Law of Marriage Act allowing girls at 14 and 15 years to be married unconstitutional and calling for the amendment of LMA to set 18 years as the minimum age for marriage. In 2019, following the Government appeal, the Court of Appeal upheld the decision of the High Court, calling for the amendment of

65 Ibid, Article 5.

66 Article 6(b) of the Maputo Protocol.

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LMA to outlaw child marriage by setting 18 years as the minimum age for marriage. However, the law is yet to be amended. Abolishing child marriage is crucial because it has serious consequences on girls, including cutting short their education and putting them at greater risk of physical and sexual violence, hence perpetuating gender inequality. It hinders a girlchild's physical, emotional, and psychological development. The Government therefore needs to abolish child marriage, and the Southern African Development Community (SADC) Model Law on Child Marriage which sets a pathway for governments to end child marriage,<sup>67</sup> can provide guidance in this regard. It shows leaders how to develop legislation, policies and programmes that will help them address the problem of child marriage in their country, and in doing so, free girls and women from harm.<sup>68</sup>

The Penal Code should also be amended to prohibit FGM altogether, not just against girls. However, ideally, FGM and other GBV-related offences could be covered in a separate anti-GBV law that Tanzania is required to enact under CEDAW and Maputo Protocol. In Regions such as Mara and Manyara, FGM is also a key driver of child marriage.<sup>69</sup> Many girls run away from their homes to escape FGM. For instance, in 2020, it was reported that more than 700 girls from Serengeti, Butiama, and Tarime Districts in Mara Region escaped FGM and fled into safe houses/centres.<sup>70</sup>

67 See GIRLSNOTBRIDES, Making change happen: a SADC Model Law on Child Marriage, at <https://www.girlsnotbrides.org/documents/898/SADC-Model-Law.pdf>.

68 Ibid.

69 Tanzania Human Rights Report 2021 (supra).

70 Ibid.

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### 3.1.3.7. *Limited Participation in Politics, Leadership, and Decision-Making*

CEDAW requires States Parties, including Tanzania, to take all appropriate measures to eliminate discrimination against women in the political and public life of the country on equal terms with men.<sup>71</sup> Women's right to political participation is also reaffirmed in various other international and regional human and women's rights instruments, including the Beijing Declaration and Platform for Action of 1995, the Maputo Protocol, and SADC Protocol on Gender and Development, and Solemn Declaration on Gender Equality in Africa of 2004. For instance, the Beijing Declaration requires States to ensure women's access to and full participation in power structures and decision-making, encourage political parties to integrate gender equality and parity and review electoral systems to ensure the system used is gender sensitive.<sup>72</sup>

Domestically, women's right to participate in politics, leadership, and decision-making is guaranteed under the Constitution of the United Republic of Tanzania of

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71 Article 7 of CEDAW, 1979.

72 Beijing Declaration (supra).

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1977.<sup>73</sup> The right to participate in governance, including voting and standing in elections, is also recognised in electoral laws such as the Political Parties Act, Cap. 258 [R.E 2019] and the National Elections Act, Cap. 343 [R.E 2015].

### Box 3.1.7: Government Efforts to promote women's political participation in Tanzania

Over the years, the Government of the United Republic of Tanzania has taken various measures to promote women's political participation:<sup>74</sup>

Ratification of key international and regional human and women's rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) of 1966; CEDAW; Banjul Charter; Maputo Protocol; and SADC Protocol on Gender and Development.

Incorporation of the Bill of Rights into the Constitution of the United Republic of Tanzania, 1977 in 1984, including the right to participate in governance.

The constitutional amendment that introduced a 30% threshold of women quota in Parliament was an affirmative action.

Development and adoption of various policies touching women's rights, including political participation. Among them are the Women and Gender Development Policy (2000) and the National Strategy for Gender Development (2005).

73 Articles 12 and 13 of the Constitution of the United Republic of Tanzania, 1977.

74 Tanzania Human Rights Report 2021 (*supra*); Anjellah Kairuki. The Role of Women in Politics in Tanzania. ARGUMENTE UND MATERIALIEN ZUM ZEITGESCHEHEN 90., at [https://www.hss.de/download/publications/AMZ\\_90\\_Frauen\\_05.pdf](https://www.hss.de/download/publications/AMZ_90_Frauen_05.pdf).

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Despite various efforts taken to promote and enhance women's political participation, it has been observed that the progress has been slow and uneven for countries in Sub-Saharan Africa, including Tanzania.<sup>75</sup> For instance, despite introducing a 30% quota, this still falls short of the 50% threshold recommended in the SADC Gender Protocol. The slow progress in attaining key targets, including those set under the Beijing Declaration, is attributed mainly to several persistent barriers. These barriers can be cultural, structural, legal, or even self-imposed, including:<sup>76</sup>

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75 UN WOMEN (2015), THE BEIJING DECLARATION AND PLATFORM FOR ACTION TURNS 20: SUMMARY REPORT, <https://sustainabledevelopment.un.org/content/documents/1776The%20Beijing%20Declaration%20and%20Platform%20for%20Action%20turns%2020.pdf>.

76 Tanzania Human Rights Report 2021 (supra); Victoria Lihiru, A Gender Analysis of Political Parties Policy Documents in Tanzania, Women in Law and Development in Africa, October 2020, at <https://wildaftanzania.or.tz/wp-content/uploads/2021/03/political-agender.pdf>; TANZANIA WOMEN CROSS-PARTY PLATFORM, VIOLENCE AGAINST WOMEN IN ELECTIONS: VAWE EVIDENCE FROM 2015 TANZANIA GENERAL ELECTIONS, at [http://mlkrook.org/pdf/TWCP\\_VAWE.pdf](http://mlkrook.org/pdf/TWCP_VAWE.pdf); Genderlinks, Women's Political Participation Africa Barometer 2021, <https://genderlinks.org.za/wp-content/uploads/2021/03/3WPP-Africa-FOREWORD-EXEC-SUMM.pdf>.



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- ☞ Gender gaps in electoral law such as the Constitution of Tanzania, do not contain a specific provision on gender equality. Such gender gaps also exist in electoral laws such as the Political Parties Act, Cap. 358 Revised Edition 2019 and the National Elections Act, Cap. 343.
- ☞ Gender gaps in policy documents of political parties such as constitutions and manifestos.
- ☞ Violence against women in politics (VAWP), including sextortion.
- ☞ Persons with disabilities (PWDs), including women with disabilities, are excluded.
- ☞ Discriminatory customs, traditions, and gender stereotypes fuel negative attitudes towards women within communities.
- ☞ Inadequate and/or negative portrayal of female political candidates.
- ☞ Lack of adequate support from political parties and exclusion from decision-making party structures

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### Box 3.1.8: Measures needed to be taken to enhance women's political participation

- Legal and policy reforms: Laws governing political participation, such as the Constitution, the Political Parties Act, and the National Elections Act, should be amended to address gender gaps by incorporating gender equality and VAWP provisions.
- Political parties should incorporate precise gender equality and VAWP provisions into constitutions and manifestos.
- Public awareness-raising programmes and campaigns to address negative attitudes and perceptions of female leaders and women's participation in decision-making.
- CSOs to engage in sustained advocacy on gender equality.
- Ensuring political parties increase transparency in candidate nominations.
- Establishing the mandatory women's quota in intra-party politics and leadership.
- Criminalizing VAWP and imposing strict sanctions on individual party members and parties.

#### 3.1.3.8. *Personal safety and security*

For women in Tanzania, GBV is a big safety and security concern. As highlighted above, the rate of GBV is high, with reported incidents exceeding 30,000 in recent years, including in 2021. According to the 2022 Social Institutions and Gender Index (SIGI) for Tanzania, more women than men fear walking alone at night in their

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neighbourhoods because they fear violence specifically.

<sup>77</sup> Nearly half (45%) of women cited fears of physical assault, being robbed, kidnapping, rape, being sexually harassed, verbal assault and obscene words, and exhibitionism.<sup>78</sup> These issues affect women's enjoyment of their human rights.

### 3.1.3.9. *Unemployment and underemployment*

Unemployment is a key issue affecting women's rights in Tanzania, where women's unemployment rates are higher than men's. Women face different forms of discrimination and violence in formal employment; most are employed in the informal and agricultural sectors.<sup>79</sup> According to the SIGI report, discriminatory social norms are responsible for women's limited access to the labour market, affecting their job status and positions.<sup>80</sup> According to LHRC's Human Rights and Business Report 2021/22, women in the business sector encountered various forms of discrimination and violence, including being subjected to lower-paying jobs and maternity discrimination.<sup>81</sup> Sexual corruption and sextortion in the

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77 SIGI Country Report for Tanzania(supra).

78 Ibid.

79 SIGI Country Report for Tanzania(supra).

80 Ibid.

81 Human Rights and Business Report (supra).

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job market are challenges for young women seeking jobs, whereby employers and human resources officers are accused of demanding sex bribes as a condition for employment.<sup>82</sup>

Because of unemployment and underemployment, women cannot effectively enjoy their human rights, including the right to an adequate standard of living. Women's right to equality before the law, including access to justice, also becomes compromised as they cannot afford good legal representation.

### 3.1.3.10. *Other issues*

Other issues affecting women in Tanzania include access to quality health services, older women being accused and attacked over witchcraft allegations, limited access to education, and human trafficking.

### 3.1.4. *Key Issues Affecting Women's Rights: Stakeholders' Views*

Stakeholders engaged in this assessment, who responded to a questionnaire, gave their views on key issues currently affecting women based on their experiences and operations within the Community. Gender-based

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82 Tanzania Human Rights Report 2021 (supra).

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violence (GBV) was identified as the biggest issue affecting women's rights in the Community (74.8%), followed by low legal awareness (68.5%), property and inheritance rights violations (59.5%), low human and women's rights awareness (57.7%), and discriminatory customs and traditions (51.4%).



**Figure 7: %Responses of stakeholders on key issues affecting women's rights in the Community**

Source: Assessment data, 2023

Stakeholders who are experts in women's rights and access to justice (key informants) also identified similar issues affecting women's rights in the community.

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They identified discriminatory customs and traditions, including negative attitudes towards women and denial of property and inheritance rights, as the biggest issues. Other key issues mentioned include poverty, patriarchy, low legal and human rights awareness, GBV (including sexual corruption), access to quality social services, and ineffective enforcement of laws.

### **3.2. Women's Access to Justice in Tanzania**

#### *3.2.1. Government Efforts to Enhance Women's Access to Justice*

As discussed above, domestic laws in Tanzania, including the Constitution of the United Republic of Tanzania of 1977, guarantee women equal protection in law with men, including equal access to justice. The Government has taken various measures to enhance women's access to justice in Tanzania, which are summarised in the box below.

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### Box 3.2.1. Government Efforts to Enhance Women's Access to Justice

Efforts to enhance women's access to justice include:<sup>83</sup>

- Introduction of police gender and children desks,<sup>84</sup> to address barriers to justice for women and children and enhance access to justice for victims of GBV and VAC.
- Enactment of the Legal Aid Act of 2017, which enhances access to justice to indigent persons, including women.
- Establishment of integrated justice centres: Establishment of integrated justice centres is one of the key measures taken by the Judiciary to enhance access to justice in Tanzania. These centres have been established in regions such as Dar es Salaam, Dodoma, Arusha, Morogoro, and Mwanza.
- The introduction of women's economic empowerment programmes put them in a better position to access justice.
- Construction of courts: The Government has been constructing new courts in different parts of Tanzania to bring formal justice closer to the people.

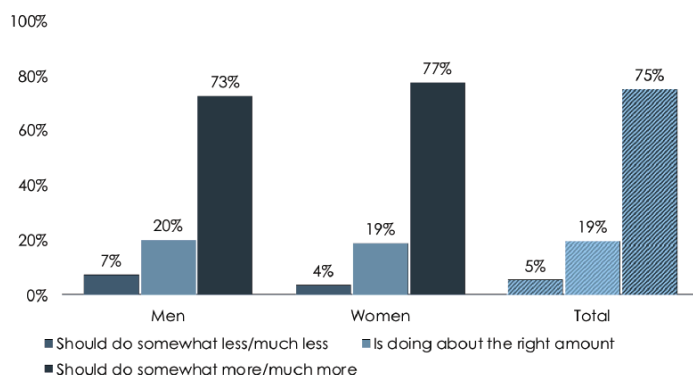
83 Ibid; Tanzania Women Lawyers Association (TAWLA), *Review of Laws and Policies related to gender based violence of Tanzania Mainland*, September, 2014, at <https://www.svri.org/sites/default/files/attachments/2016-07-05/Tanzanian%20review%20GBV%20report%202014%20by%20TAWLA%20AMWA%20CRC%20TGNP%20ZAFELA.pdf>; UNDP, *Access to Justice: Practice Notes*, 9/3/2004, at [https://www.undp.org/sites/g/files/zskgke326/files/publications/Justice\\_PN\\_En.pdf](https://www.undp.org/sites/g/files/zskgke326/files/publications/Justice_PN_En.pdf).

84 There are over 400 such desks established at police stations across Mainland Tanzania.

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- Introduction of mobile courts to bring judicial services closer to people, including women.
- Provision of legal aid services to marginalised groups, including women.
- Legal and policy reforms to fast-track cases of violence against women and children.
- Translation of laws into Swahili Language and use of Swahili language in courts of law, especially lower courts – which are more easily accessible to most community members, including women.
- National Strategy for Growth and Reduction of Poverty (NSGRP/MKUKUTA), provides an intrinsic link between poverty, access to justice and the persistence of GBV in Tanzania.

However, Respondents during Afro-barometer study recommended as follows;



**Figure 8; Recommendation on Government's milestone on addressing women's rights**



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**Respondents were asked:** *In your opinion, should government and elected officials be doing more than they are doing now to advance the rights and equality of women, or should they be doing less, or are they doing about the right amount?* Both Men (73%) and women (72) were of the views that a lot more should be done by the government.

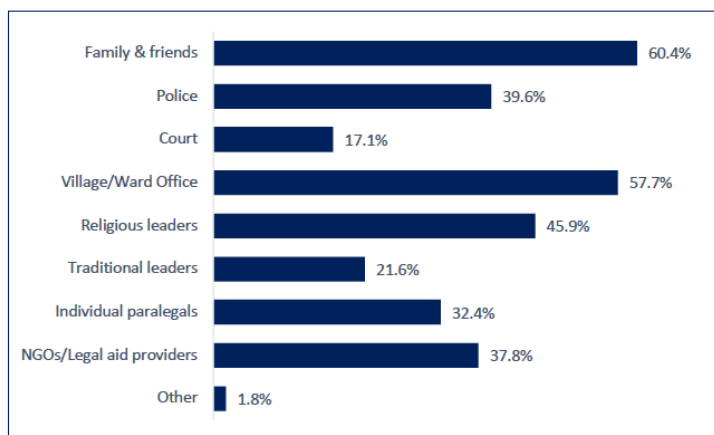
### 3.2.2. Stakeholder Views on the State of Women's Access to Justice

Stakeholders who participated in this assessment also gave their views on women's access to justice state in Tanzania.

Stakeholders were also asked about justice and dispute settlement institutions women prefer or usually engage. The findings are somewhat similar to those of the document review, especially regarding family and friends preferences. The majority of them, nearly two-thirds (60.4%), said women usually seek help or assistance from family and friends first, followed by village or ward offices (57.7%), religious leaders (45.9%), and NGOs/legal aid providers (37.8%). Over a third of the respondents also indicated that women seek help

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or intervention from police and individual paralegals operating at the grassroots level.



**Figure 9: %Stakeholder responses on justice and dispute settlement institutions women usually engage**

Source: Assessment data, 2023

Key informant interviews revealed similar findings. However, stakeholders added that some women also engage social welfare officers and police gender and children's desks. They also pointed out that most women usually go to local government offices first, where they are directed to seek further assistance from legal aid providers available in the Community.

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*"Most women first start with families when they feel aggrieved, others go to paralegals, local government chairpersons, and few go to the police."*

Stakeholder-Dar es Salaam

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Stakeholders also identified various challenges women face when attempting to access justice from the institutions mentioned above. Key challenges identified were corruption and bureaucracy (including nepotism and sexual corruption); not being taken seriously; inadequate time to be heard; costs of dispute settlement; 'blaming the victim' culture and bias towards male party to a dispute; low legal awareness; family pressure to settle dispute internally (at family level); poor representation in decision-making positions; social acceptance of GBV (women encouraged to tolerate violence and see it as normal); and threats from perpetrators and fear of retaliation. Some of the interviewed stakeholders stated that some women find it difficult to follow up on their cases, especially in court, due to economic hardships and proximity of the particular justice institution.

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*"Most women are unable to access formal justice institutions because of poverty or lack of income, but others are discouraged because they may not be taken seriously."*

Stakeholder – Mwanza

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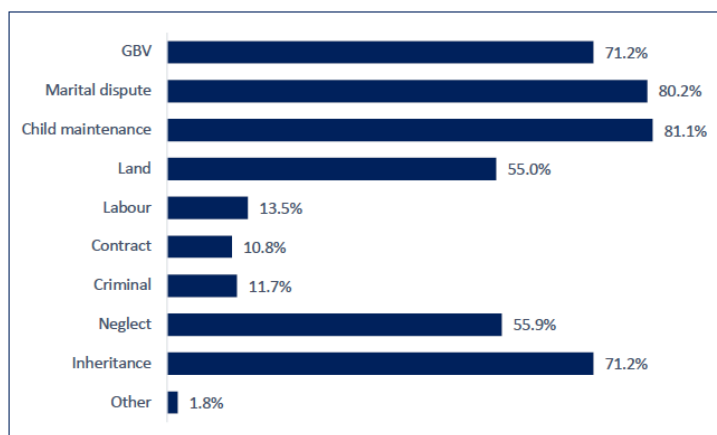
*"Justice institutions are dominated by male members and decision-makers, which may affect the outcome of the case for women."*

Stakeholder – Singida

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The assessment of women's rights and access to justice also probed the common issues women seeking legal aid. The top three issues identified were child maintenance (81.1%), marital dispute (80.2%), GBV (71.2%), and inheritance (71.2%). Other key issues include neglect (55.9%) and land (55%).

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**Figure 10: %Stakeholder responses on common issues women seek legal aid for**

Source: Assessment data, 2023

*"Most women seek justice on issues of inheritance and GBV."*

Lawyer – Dar es Salaam

### 3.2.3. Barriers to Women's Access to Justice: Document Review Findings

Despite the various measures taken to enhance access to justice for women, several obstacles hinder the effective enjoyment of women's right to access justice. These barriers include lack of awareness; discriminatory customs

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and traditions; illiteracy; corruption; cumbersome legal procedures; the proximity of formal justice delivery institutions; and gaps in laws and policies. These barriers are briefly discussed below.

At Policy Level: There is conflicting laws for instance Customary Laws are highly considered than Law of Marriage Act. So there should be consensus and civil laws to be a standing law over customary law.

### 3.2.3.1. *Lack of awareness*

Lack of awareness about laws and rights is a big concern for women in Tanzania, especially in rural areas. To access justice effectively, people need to know about their rights and available remedies when the violation of those rights occurs.<sup>85</sup> They also need to understand the justice system and enable them to navigate it.<sup>86</sup> Lack of awareness is compounded by low literacy and education

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85 See International Criminal Court, *Promoting access to justice*, at <https://www.icc-cpi.int/get-involved/access-to-justice>.

86 See UNODC, Topic one - Gender-based discrimination and women in conflict with the law, E4J University Module Series: Crime Prevention and Criminal Justice, at <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-9/key-issues/1--gender-based-discrimination-and-women-in-conflict-with-the-law.html>.

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levels among women,<sup>87</sup> especially those in rural areas. Even among educated women, understanding some legal terminologies and technical phrases may be difficult.

### Box 3.2.2: Women's Legal Empowerment

To enhance access to justice for women, especially those in rural areas, stakeholders, including CSOs, must intensify efforts to create legal awareness. Legal aid providers should focus on legal assistance provisions and legal education provisions so that women can be empowered.

### 3.2.3.2. *Poverty and costs of legal representation*

According to the United Nations (U.N.), one of the major obstacles to accessing justice is the cost of legal advice and representation.<sup>88</sup> Women under police custody may also find it challenging to meet bail and financial requirements of sureties due to poverty, and the chances of being considered for bail become even

87 Anna Knox, Aslihan Kes & Noni Milici, *Organizational Approaches for Women's Property Rights: Mending the Gap between Law and Practice*, International Center for Research on Women (ICRW), at <https://www.icrw.org/wp-content/uploads/2016/10/Mending-the-Gap-Between-Law-and-Practice-Organizational-Approaches-for-Womens-Property-Rights.pdf>.

88 See United Nations and the Rule of Law, Access to Justice, at <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>.

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more limited when they have no legal representation. Costs of legal representation and other costs associated with accessing justice through formal justice institutions drive most women to the informal or customary justice system, which they can also easily access,<sup>89</sup> where they are disadvantaged because of the application of discriminatory customary laws.

Most Tanzanians are poor, and poverty rates are even higher among women, especially in rural areas. This makes it difficult for them to afford quality legal representation due to the lack of available and affordable legal representation. Other costs associated with the formal justice system add challenges for women, especially in rural and semi-urban areas, to seek justice through formal justice institutions.

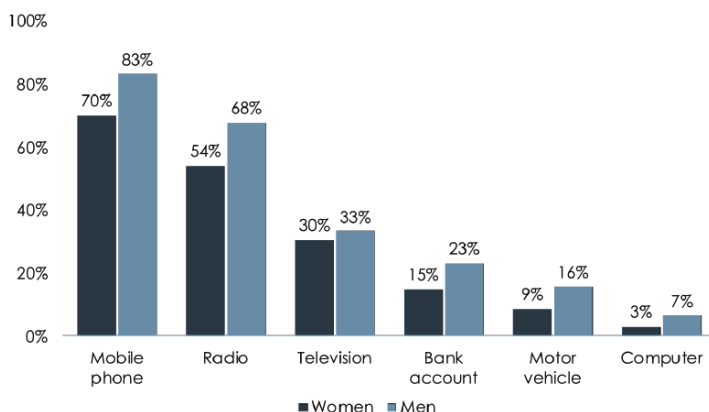
The afro barometer study assessed the extent of ownership of potential and personal resources by men and women as shown below;

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89 IDLO, MODELS, STRATEGIES AND BEST PRACTICES ON WMEN'S EMPOWERMENT: EXECUTIVE SUMMARY, at [https://www.idlo.int/sites/default/files/Womens\\_Access\\_to\\_Justice\\_Report\\_Summary.pdf](https://www.idlo.int/sites/default/files/Womens_Access_to_Justice_Report_Summary.pdf).



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**Figure 11: Ownership of Personal Property by Men and Women**

The figure suggests that lack of ownership of personal properties is higher among women than men in all categories. This might have an adverse effect in terms of access to justice as well particularly among women.

### Box 3.2.3: Legal aid provision to address lack of affordable legal representation

The Lack of available and affordable legal representation for indigent citizens, especially women, underlines the need to expand legal aid provision, as legal aid programmes have become a central component of strategies to enhance justice and safeguard the right to legal aid, especially in criminal justice.<sup>90</sup>

90 Ibid.

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### 3.2.3.3. *Availability, accessibility, and quality of legal aid services*

The Tanzania Human Rights Report 2021 raises concerns over the availability and accessibility of legal aid services in Mainland Tanzania, especially for women and inmates in prisons.<sup>91</sup>

The report indicates a shortage of paralegals in some parts of Tanzania's Mainland, thus, limited access to legal aid in some regions like Kagera and Coastal.<sup>92</sup> Also, some paralegal centres have budgetary constraints, which hinder their ability to effectively provide legal aid services and reach some remote areas, especially in rural areas. Quality of legal aid services is also a concern in some areas, contributed by lack of regular refresher training(s).<sup>93</sup> Most legal aid providers are also concentrated in urban and semi-urban areas, making it difficult for people residing in rural areas to access legal aid easily.<sup>94</sup> There is also a concern about the gender balance of paralegals, as the legal aid provision is male-dominated, therefore sometimes presenting a

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91 Tanzania Human Rights Report 2021 (supra).

92 Ibid.

93 Tanzania Human Rights Report 2021 (supra).

94 Ibid.

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challenge for women in some communities to readily and comfortably confide in male legal aid providers, especially for victims of GBV.

### 3.2.3.4. *Discriminatory customs and traditions*

Discriminatory customs and traditions in Tanzania create an unfavourable environment for women's rights, including the right to access justice. As discussed above, the formal justice system is not easily accessible to most women, especially those in rural areas and poor women. Consequently, they can easily access the traditional or informal justice system, which male elders dominate. Beliefs based on discriminatory customs and traditions impede women's access to justice. For instance, the most recent SIGI survey conducted in 2021 revealed that 77% and 78% of the respondents believe that women need permission from their husbands or partners to go to the police and court, respectively.<sup>95</sup> 29% said a husband could be justified in hitting or beating his wife if she goes out without telling him.<sup>96</sup>

Under the Tanzania Citizenship Act, No. 6 of 1995 and its Regulations of 1997, a woman married to a citizen of

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95 SIGI Country Report for Tanzania(supra).

96 Ibid.

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the United Republic shall at any time during the life time of the husband be entitled upon making an application in a prescribed form, to be naturalized as a citizen of the United Republic. This does not apply to a man married to a Tanzanian woman. What measures is the state taking to eliminate gender barriers.

### Box 3.2.4: Traditional justice systems and Women's Access to Justice

Traditional justice systems must evolve and embrace international human rights standards in justice delivery, which means respecting and refraining from infringing women's internationally guaranteed human rights, including the right to non-discrimination. This means discriminatory customary laws must be amended to adhere to international human rights standards.

#### 3.2.3.5. *Harmful cultural practices*

Harmful traditional practices include female genital mutilation (FGM); forced feeding of women; early marriage; the various taboos or practices which prevent women from controlling their fertility; nutritional taboos and traditional birth practices; son preference and its implications for the status of the girl child; female infanticide; early pregnancy; and dowry price.

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<sup>97</sup> Women subjected to these practices develop an inferiority complex, are disadvantaged in access to education, and consequently are less likely to pursue justice. Harmful cultural norms create a situation whereby one group (usually women) is exploited by another group (usually men), which is superior.<sup>98</sup> This hinders women from effectively enforcing their rights, including access to justice. Some traditional cultural practices, including the culture of secrecy and forgiveness, also prevent women from accessing justice. For instance, in the Chagga tribe, there is a culture of forgiveness called 'Sale' (a leaf), whereby if a woman is wronged, they have to forgive the perpetrator of violence against them when they bring them the leaf as a symbol of apology. Along with the leaf, the perpetrator and their family also usually bring gifts.

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<sup>97</sup> See OHCHR, *Fact Sheet No.23, Harmful Traditional Practices Affecting the Health of Women and Children*, CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (art. 5 (a)), adopted by General Assembly resolution 34/180 of 18 December 1979, at <https://www.ohchr.org/sites/default/files/Documents/Publications/Fact-Sheet23en.pdf>.

<sup>98</sup> WiLDAF (2017), *Tanzania Women's Rights Situation 2016*, at <https://wildaftanzania.or.tz/wp-content/uploads/2020/04/TANZANIA-WOMENS-RIGHT-SITUATION-2016.pdf>.

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### 3.2.3.6. Education and literacy

Access to education is essential in creating literacy among the population, including women. The more literate women are, the more likely they will seek justice through formal justice systems. According to the UN, illiterate women are also more susceptible to coercion and, under such situations, the risk of signing statements with profound legal implications.<sup>99</sup> Low education and literacy levels among women make them unable to access and navigate their way through formal legal institutions.<sup>100</sup>

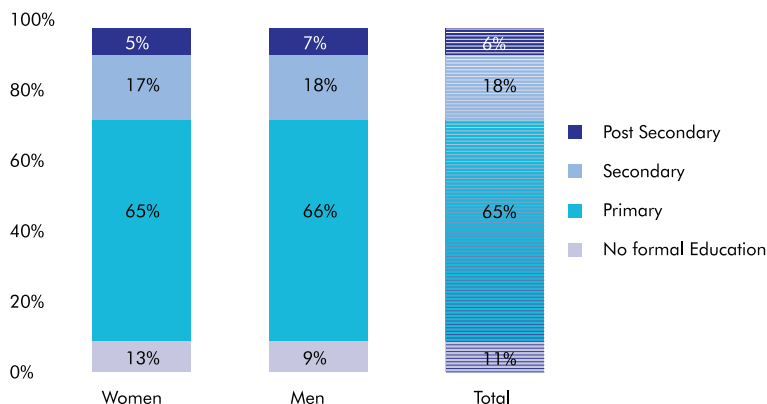
In the study conducted by Afrobarometer, Respondents were asked their highest level of education and the response was as shown below;

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99 See OHCHR, UN WOMEN, UNDP, & UNODC, *MODULE 4: Women in Conflict with the Law, A Practitioner's Toolkit on Women's Access to Justice Programming*, at [https://www.ohchr.org/sites/default/files/WA2J\\_Module4.pdf](https://www.ohchr.org/sites/default/files/WA2J_Module4.pdf).

100 IDLO, *MODELS, STRATEGIES AND BEST PRACTICES ON WMEN'S EMPOWERMENT: EXECUTIVE SUMMARY*, at [https://www.idlo.int/sites/default/files/Womens\\_Access\\_to\\_Justice\\_Report\\_Summary.pdf](https://www.idlo.int/sites/default/files/Womens_Access_to_Justice_Report_Summary.pdf).

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**Figure 12: Highest level of Education by women and men**

The figure above suggest that women are about as likely as men to have primary, secondary, and post-secondary education. Women are slightly more likely than men to lack formal schooling (13% vs. 9%)<sup>101</sup>.

- School level factors - despite there being legal structures that promote right to education and other provisions there is inadequate resources on good sanitation for female students mainly in the public schools in the primary schools and self-boarding schools particularly to rural schools

101 Afro Barometer study report 2023 Tanzania

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in Tanzania. inadequate sanitation facilities in schools massively affect girls' dropout because this inadequacy indicates that schools are not safe for girls.

- There is need of the government to work on the sanitation issue in the public schools to enable girls have equal access to education. What is being done about this?
- School distance is an important determinant of school dropout for female students. Young girls tend to drop out more due to for the vulnerability to sexual harassment. Long distance from home to school contributes to rape and early pregnancy. Teenage pregnancy is a significant cause of school dropout for girls. What is being done about this?
- Cultural factors- In rural areas girls 'dropout rate became higher because parents consider girls' schooling as of no benefit when they leave their own family after getting married. Child marriage is the foremost cause of early school dropout of girls in regions where child marriage is rampant such as Shinyanga and Mara. Why the URT has not harmonized all laws on the minimum age for marriage, at 18 years for both girls and boys, in



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line with internationally acceptable standards?<sup>102</sup>

### 3.2.3.7. Corruption

According to the United Nations Office on Drugs and Crime (UNODC), corruption decreases public trust in justice and weakens the capacity of judicial systems to guarantee the protection of human rights. It affects the tasks and duties of judges, prosecutors, lawyers, and other legal professionals.<sup>103</sup> When the judicial system is tainted with corruption, the basic principle of equality before the law is broken, and the right to a fair trial is compromised.<sup>104</sup> Money and influence can be used by perpetrators to get cases dismissed, compromising impartiality and leaving victims without justice.<sup>105</sup>

102 SHADOW REPORT 2016 TANZANIA

103 See UNODC, *Corruption, Human Rights, and Judicial Independence*, at <https://www.unodc.org/dohadeclaration/en/news/2018/04/corruption--human-rights--and-judicial-independence.html#:~:text=Corruption%20decreases%20public%20trust%20in,lawyers%2C%20and%20other%20legal%20professionals>.

104 See Transparency International, *JUDICIARY AND LAW ENFORCEMENT*, at <https://www.transparency.org/en/our-priorities/judiciary-and-law-enforcement>.

105 Anna Knox, Aslihan Kes & Noni Milici, *Organizational Approaches for Women's Property Rights: Mending the Gap between Law and Practice*, International Center for Research on Women (ICRW), at <https://www.icrw.org/wp-content/uploads/2016/10/Mending-the-Gap-Between-Law-and-Practice-Organizational-Approaches-for-Womens-Property-Rights.pdf>.

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Corruption is one of the biggest barriers to access to justice in Tanzania, where women are disproportionately affected by corruption, given their disadvantage and poverty. According to LHRC, community members perceive corruption to be the most significant barrier to access to justice (66%), followed by duration or length of proceedings/cases in courts of law (47%), low awareness of laws among citizens (28%), and legal representation costs (21%).<sup>106</sup> Corruption is more prevalent in lower courts, especially Primary Courts, which are easily accessible to the majority of citizens, including women in rural areas.

### 3.2.3.8. *Legal language and cumbersome legal procedures*

Technical legal language and cumbersome legal procedures create a wall between normal citizens and justice mechanisms. In many countries around the world, the legal system is text-based and has peculiar terminology, complex procedures, and complicated forms.<sup>107</sup> The poor and marginalized groups, including

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106 Tanzania Human Rights Report 2021 (supra).

107 See "Plain language – essential for real access to justice" Provincial Court of British Columbia, 18 July 2017, at <https://www.provincialcourt.bc.ca/enews/enews-18-07-2017>; Abregú, M., 2001 'Barricades or

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women, struggle to understand laws and navigate the cumbersome legal procedures. They usually find themselves confused by obscure language, while plain language would help them better understand their rights and options.<sup>108</sup> This creates a situation of unequal access to justice,<sup>109</sup> disproportionately affecting marginalized groups, including women.

In Tanzania, the legal language used in various laws is technical, making it difficult for an ordinary citizen to understand.<sup>110</sup> However, on a positive note, the government has embarked on translating all laws into Swahili, and in April 2022, it was disclosed that 214 laws had been translated into Swahili in the form of the first draft in the period of July 2021 to March 2022.<sup>111</sup>

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Obstacles: The Challenges of Access to Justice', in Puymbroeck, R. V. (ed.) *Comprehensive Legal and Judicial Development: Toward an Agenda for a Just and Equitable Society in the 21st Century*, The World Bank, Washington, D.C., pp. 53-69.

108 Ibid.

109 María Torrez (2020), Plain Language as a Requisite for an Effective Access to Justice, at [https://www.academia.edu/45539750/Plain\\_Language\\_as\\_a\\_Requisite\\_for\\_an\\_Effective\\_Access\\_to\\_Justice](https://www.academia.edu/45539750/Plain_Language_as_a_Requisite_for_an_Effective_Access_to_Justice)

110 Tanzania Human Rights Report 2021 (*supra*).

111 See HOTUBA YA WAZIRI WA KATIBA NA SHERIA, MHESHIWIWA DKT. DAMAS DANIEL NDUMBARO (MB), WAKATI AKIWASILISHA BUNGENI MAKADIRO YA MAPATO NA MATUMIZI YA WIZARA KWA MWAKA WA FEDHA 2022/2023, at [https://www.sheria.go.tz/uploads/speeches/docs/sw1652253918-HOTUBA%20YA%20BAJETI%20YA%20WIZARA%20YA%20KATIBA%20NA%20SHERIA%20KWA%20MWAKA%20WA%20FEDHA%202022%20-%202023%20\(2\).pdf](https://www.sheria.go.tz/uploads/speeches/docs/sw1652253918-HOTUBA%20YA%20BAJETI%20YA%20WIZARA%20YA%20KATIBA%20NA%20SHERIA%20KWA%20MWAKA%20WA%20FEDHA%202022%20-%202023%20(2).pdf).

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### 3.2.3.9. *Lengthy legal proceedings*

Length of proceedings in the formal justice system is also a challenge in Tanzania, contributed by frequent adjournment of cases and resulting in lengthy pre-trial detention in criminal justice. When justice takes too long, people, including women, may give up on it. For poor people, going back and forth to courts of law, which are usually located far in urban or semi-urban areas, is costly. For women in rural areas, who are burdened with domestic chores and farming activity, time to go to justice delivery mechanisms is also limited. Timely dispensation of cases or resolution of disputes is therefore crucial in enhancing women's access to justice.

### 3.2.3.10. *Proximity of police and court facilities*

One of the key indicators of access to justice is the number and proportion of court facilities, legal aid centres, and police stations.<sup>112</sup> In recent years, it has been reported that some wards in different parts of Tanzania lack police stations, which makes it difficult for community members to access police services.<sup>113</sup> Primary courts, which are

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112 See OHCHR, Article 13: List of illustrative indicators on access to justice, at <https://www.ohchr.org/sites/default/files/article-13-indicators-en.pdf>.

113 Tanzania Human Rights Report 2021 (supra).

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easily accessible by most women, are also not found or are far in some parts of Tanzania.<sup>114</sup> This presents a challenge for people in rural areas, including women, to get easy access to them, as they are more likely to be drawn away from police and courts located in distant district capitals.<sup>115</sup>

### 3.2.3.11. *Gaps in laws and policies*

According to the United Nations Office on Drugs and Crime (UNODC), national crime prevention policies usually do not consider the unique experiences of women, including victimization, and criminal laws may codify as crimes act that implicate only primarily women.<sup>116</sup> Prior emotional, physical, and/or sexual abuse largely contributes to women's criminal behaviour.<sup>117</sup> Most women in conflict with the law are low-level petty offenders driven to crimes due to a lack of equal access to

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114 Ibid.

115 IDLO, *MODELS, STRATEGIES AND BEST PRACTICES ON WMEN'S EMPOWERMENT: EXECUTIVE SUMMARY* (supra).

116 See UNODC, *Topic one - Gender-based discrimination and women in conflict with the law*, E4J University Module Series: Crime Prevention and Criminal Justice, at <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-9/key-issues/1--gender-based-discrimination-and-women-in-conflict-with-the-law.html>.

117 Penal Reform International, *Discrimination of women in criminal justice systems*, BRIEFING: ACCESS TO JUSTICE, January 2012, at <https://cdn.penalreform.org/wp-content/uploads/2013/08/BRIEFING-Discrimination-women-criminal-justice.pdf>.

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financial resources and the urgent need to support their families.<sup>118</sup> Therefore, these issues should be considered to ensure women's equal access to justice. However, in Tanzania, most laws, including criminal laws, were enacted by a male-dominated legislative assembly many years ago hence lacking a gender perspective.

The Legal Aid Act of 2017 reveals several gaps, key among them being the limited scope of stakeholders allowed to provide legal aid and Ordinary Level secondary education as a minimum qualification for a paralegal. The legal aid law prohibits a person from providing legal aid services unless they are an advocate, a lawyer or a paralegal attached to a legal aid provider.<sup>119</sup> However, in practice, more people provide legal aid, including legal education and information, legal advice, assistance, or legal representation to indigent persons.<sup>120</sup> This contradicts the United Nations Principles and Guidelines on Access to Legal Aid in the Criminal Justice Systems, which proposes a broader scope of legal aid service providers, including CBOs, FBOs, professional bodies, charitable organizations and academia.

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118 Ibid.

119 Section 24(2) of the Legal Aid Act, 2017.

120 Ibid, Section 3.

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<sup>121</sup> Requiring only those who have completed Ordinary Level secondary education to be eligible for legal aid services also excludes many potential candidates for paralegal work who might be willing to serve their communities.

### Box 3.2.5. Need for legal aid to be recognized as a human right, including in the Constitution

United Nations Principles and Guidelines on Access to Legal Aid in the Criminal Justice Systems provide that “ States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution.”<sup>122</sup> Reviewed legal aid documents of Tanzania do not explicitly provide that legal aid is a human right, which might be deemed a privilege. This needs to be rectified, and the Constitution of the United Republic of Tanzania of 1977 needs to guarantee the right to legal aid, which is currently not the case.

### 3.2.3.12. *Other barriers*

Other barriers to women's access to justice in Tanzania include gender practical issues such as the lack of women-friendly services and victims not being taken seriously. Underrepresentation of women in the justice

121 See Para 9 of the United Nations Principles and Guidelines on Access to Legal Aid in the Criminal Justice Systems, 2013, at [https://www.unodc.org/documents/justice-and-prison-reform/UN\\_principles\\_and\\_guidelines\\_on\\_access\\_to\\_legal\\_aid.pdf](https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf).

122 Ibid, Principle 1.

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delivery mechanisms, including courts of law, also challenges ensuring women's issues and challenges are seriously considered. This problem is compounded by a lack of or limited knowledge of human rights among justice actors, including magistrates. When justice actors are not well-trained in gender mainstreaming, women's access to justice may also be compromised. Women may also be drawn to informal or customary justice systems, as opposed to the formal justice systems, because of the convenience they provide in terms of limited costs of dispute settlement procedures, short duration of cases, knowledge of the local context among dispute settlers, and the more restorative nature of the process, including the provision of compensation. Complications and delays in the execution of court judgements and decrees may also discourage community members, especially women, from accessing formal justice systems and persist with informal justice systems, despite their challenges.

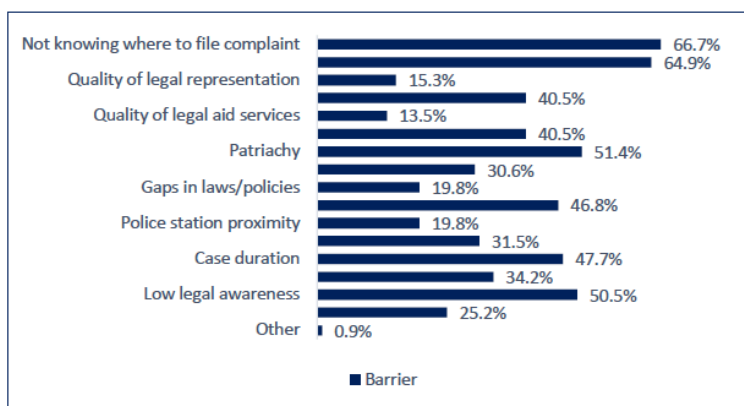
### 3.2.4. *Barriers to Women's Access to Justice: Stakeholders' Views*

Barriers to women's access to justice identified by stakeholders are similar to those above, identified



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through document review. According to stakeholders, the most significant barriers to women's access to justice include not knowing where to file a complaint (66.7%), poverty and costs of legal representation (64.9%), patriarchy (51.4%), low legal awareness (50.5%), case duration (47.7%), corruption (46.8%), discriminatory customs and traditions (40.5%), and access to legal aid services (40.5%). Corruption in the justice system was also identified as a serious problem 50.5%) and a problem (37.8%) by the majority of the stakeholders.



**Figure 13: %Stakeholder responses on key barriers to women's access to justice in the community**

In addition to the barriers shown in Figure 8 above, key informants mentioned other barriers such as conflict of

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laws, for instance, between the Law of Marriage Act, 1971 and the Law of the Child Act, 2009; gaps in the laws; and ineffective enforcement of laws to safeguard women's rights. They also mentioned that limited access to legal aid services is especially problematic in rural areas. Some women were also said to take to justice institutions people who are breadwinners in the family.

*"Some customs and traditions prohibit women from taking people, especially husbands and close relatives, to formal justice institutions when they are wronged. For instance, in Kilimanjaro, the 'sale' leaf culture is a big obstacle in accessing justice because it demands the victim to forgive the perpetrator and make peace."*

Stakeholder-Arusha

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*"There is a woman who decided against pursuing a GBV case because her husband, the perpetrator, is the only breadwinner in the family, and she was afraid he would be sent to jail."*

Stakeholder-Mwanza

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Stakeholders mentioned various laws which contain gender and other gaps, which negatively affect women's rights and access to justice. These laws include the Constitution of the United Republic of Tanzania, 1977; the Land Act of 1999, specifically section 4; the Law

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of Marriage Act of 1971, for allowing child marriage; customary laws which contain discriminatory provisions; and the Penal Code, CAP 16, specifically for not criminalizing marital rape. They also stated the need for a specific and comprehensive law against gender-based violence (GBV).

*"There are at least 10 laws which should be amended to safeguard women's rights, including the Law of Marriage Act of 1971."*

Stakeholder-Dar es Salaam

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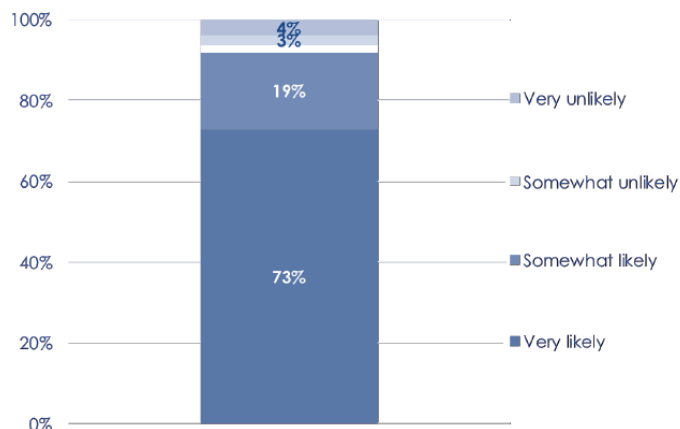
*"A standalone law on violence against women, children and men is needed...this law should be specific and touch on every aspect of abuse on women, children and male victims."*

Stakeholder-Dar es Salaam

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On the other hands, views from stakeholders' feedback from the Afro barometer report when asked to whether the police take issues seriously that suggested that as shown below

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**Figure 14: Whether Police Takes issue seriously.**

**Respondents were asked:** *If a woman in your community goes to the police to report being a victim of gender-based violence, for example, to report a rape or report being physically abused by her husband, how likely or unlikely is it that the following things might occur: Her case will be taken seriously by the police and 73% were of the view that its very likely for police to take issues seriously.*

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### 3.3. Stakeholder Recommendations on Advancing Women's Rights and Access to Justice

<b>What should be done to advance women's rights and access to justice?</b>
Government should provide grants to legal aid providers to reach and provide legal aid to more women.
Capacity building to the community members on laws and women access to justice at all levels
CSOs to work closely with traditional and religious leaders at each of their programs or activities so they can understand the women's rights advocacy issues in details and be in a good position to advocate for women's rights and conduct the reconciliations of cases in accordance with the laws
Form Number 3 which is a mandatory form to open a divorce case in the court of law to be distributed to the organizations which provide legal aid so it can be easy for the process/procedures of women who seeks divorce especially to people with Islamic faith. BAKWATA should adhere to the laws and provide those forms despite the petitioner being a woman.
LMA to be reviewed to include a provision which allows Form Number 3 to be in put to the LAPs
Gender desks at the police to be increased or added to hospital and health centres or schools (primary and Secondary Schools)
Special officers to be at ward levels to deal on issues of gender desks at ward levels

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Transparency on the 4% of loan for women empowerment should be put in place and NGOs should be included to help the process and make sure they return the money.
The Laws to be amended to include the number of days to handle GBV cases
To have inclusive child care centres for women who have given birth in prisons
Increase public-awareness programmes.
Conduct nationwide anti-GBV and women's rights campaigns.
To allocate the annual budget for legal aid provisions in Tanzania
To provide office space for paralegals at each village and ward office in the Country.
To enact comprehensive Anti-GBV law.
Amendment of the Law of Marriage Act, 1971, to abolish child marriage.
Amendment of all laws which discriminate against women, including customary laws, property rights and inheritance laws.
Provision of women's rights training and seminars to justice actors.
The Constitution should be reformed to strengthen the protection of women's rights.
Intensify the provision of legal education to community members, including women, especially in rural areas.
Men and traditional leaders should be engaged in advancing women's rights.

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Amendment of all laws touching on women's issues and rights to make them gender-sensitive, including electoral laws.
Access to information should be improved for all groups in the community, especially women.
Media engagement should be increased to sensitize the public about women's rights and access to justice.
Government should increase the number of social welfare officers and ensure they enjoy good working conditions.
NGOs should be motivated to help women to bring about change in the community rather than financial gains.
Increase involvement of citizens in the law-making process.
NGOs to increase collaboration and work together to address key challenges affecting women's rights and create a bigger impact in the community. NGOs should work more as coalitions.
Legal aid providers, including NGOs, should bring legal aid services closer to the people.
The Tanzania Police Force should ensure the police gender and children desk officers provide women-friendly services, including avoiding judging or blaming the victims.
Human and women's rights to be taught in educational institutions at all levels.
Increase the number of SWOs, improve their working conditions, and allocate more budget for the social welfare department.

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Social Welfare officers should be capacitated to work effectively and efficiently and according to their work ethics

*"The NGO sector in Tanzania should stop looking at this sector as a business opportunity. Instead, we should focus all our efforts in creating and sustaining change."*

Stakeholder-Dar es Salaam

*"We need legal and policy reforms to promote and protect women's rights. But we also need women's rights NGOs to join hands and work together, instead of working individually, go to remote areas yet to be reached to create a bigger societal impact."*

Stakeholder-Dar es Salaam

### **3.4. Opportunities and Best Practices in Advancing Women's Rights and Access to Justice**

#### **3.4.1. Opportunities**

There are various opportunities for advancing women's rights in Tanzania, the most significant opportunity being a woman at the helm of the Government who is pro-human rights and gender equality.



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### **Opportunity 1: H.E Samia Suluhu Hassan - First female President of the United Republic of Tanzania**

In 2021, H.E. Samia Suluhu Hassan made history by becoming the first female President of the United Republic of Tanzania, following the untimely passing of the late President John Pombe Magufuli. Since she came into power, the President has shown interest in promoting women's rights, especially the right to non-discrimination, gender equality, and improving access to justice and criminal justice in Tanzania. She has been vocal about critical challenges in criminal justice, including lengthy pre-trial detention, trumped-up charges, and delays in investigations, making repeated calls for criminal justice reform, including speeding up investigations to ensure timely justice delivery. She has also directed the Tanzania Police Force and other criminal justice institutions to make internal reforms and address accountability issues and clearly stated that prolonged remanding of accused persons constitutes a violation of their fundamental human rights.

The President has also taken several measures to enhance women's political participation, including entrusting key cabinet positions to women.

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For instance, in September 2021, she appointed Dr Stergomena Tax as the Minister of Defence and National Service, the first woman to hold such a position in Tanzania. Therefore, the current administration under H.E Samia Suluhu Hassan presents an excellent opportunity to push for increased representation of women in leadership and decision-making positions (50/50 gender representation) to enhance political participation and access to justice.

### **Opportunity 2: Existence of the National Human Rights Institution – Commission for Human Rights and Good Governance (CHRAGG)**

Now that there is a more supportive legal environment for pushing the human rights agenda, CSOs should increase collaboration with CHRAGG to advocate for women's rights and call for relevant reform of laws, policies, and practices affecting their rights.

### **Opportunity 3: New Constitution Movement**

The ongoing new constitution movement across the country can be an excellent opportunity to push for better protection of women's rights in the Constitution.

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### **Opportunity 4: Engaging Tanzanian Women's Parliamentary Group (TWPG)**

CSOs should increase engagement with TWPG, which should enjoy stronger support from the President, to push women's rights agenda, including legal and policy reforms to safeguard women's rights, including the right to education, inheritance, property, and access to justice rights.

### **Opportunity 5: Mama Samia nationwide legal aid campaign**

Recently, a nationwide legal aid campaign backed by H.E President Samia Suluhu Hassan and named after her (popularly Mama Samia legal aid campaign) is also a very good opportunity for TANLAP and other women's rights and access to justice stakeholders to increase advocacy on removing barriers to women's access to justice.

### **Opportunity 6: Availability of NGOs/legal aid providers, police gender and children desk, and social welfare offices**

Interviewed stakeholders identified the availability of NGOs/legal aid providers, including those specific to

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women's rights and paralegals at the grassroots level. However, they stressed the importance of NGOs working together in coalitions for maximum impact and avoiding duplication of efforts. The availability of police gender and children desk, and social welfare offices was also said to be a great opportunity. However, coordination has been a big challenge that must be improved, including conducting relevant women's rights campaigns and ensuring women's access to justice, especially in rural areas.

### **Opportunity 7: Use of ICT to enhance access to justice and access to information on women's rights**

Under the current situation where most GBV cases goes unreported and where women are restricted with mobility, the use of digital means of communication may support women on accessing justice in terms of reporting and also getting feedback confidentially and comfortably.

Some of the stakeholders also mentioned the availability of ICT facilities and tools as an opportunity to advance women's rights and access to justice. However, this would be more convenient for women in urban and semi-urban areas, who have better access to such facilities

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and tools. Deliberate efforts must therefore be made to enhance rural women's access to ICT facilities and tools.

### **Opportunity 8: Availability of a strong Law Reform Commission of Tanzania**

The Law Reform Commission of Tanzania (LRCT) is a key player in law reform in Tanzania, which has mandate to review laws and propose necessary reforms. Availability of such a body presents a good opportunity for CSOs, including TANLAP, to engage and push for relevant reforms to safeguard women's rights.

### **Opportunity 9: Ministry of Community Development Gender, Women and Special Groups**

Consulted stakeholders also identified availability the ministry responsible for women's issues, which is, among other things, tasked with advancing women's rights, as an excellent opportunity. This is the first-ever ministry that specifically addresses women's issues specific. TANLAP and other NGOs must increase engagement with this ministry to better protect and advance women's rights in Tanzania, including by addressing key issues and barriers that hinder effective enjoyment of such rights.

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**Opportunity 10: Having Women Issues Coalitions from CSOs, including the Legal Support Network on Family Law Issues( coordinated by TANLAP) and the Wanawake na Katiba Coalition (coordinated by the WFTT- Women Fund Trust Tanzania)**

Availability of coalitions and different forums that advocate for women's rights is also a good opportunity for collective advocacy initiatives, including advocacy on legal and policy reforms.

**Opportunity 11: Legal Aid Department under the MoCLA**

The Ministry of Constitutional and Legal Affairs is an important justice actor and women's rights stakeholder in Tanzania, responsible for coordinating all justice actors. Engaging and working closely with the legal aid department within the ministry is essential in enhancing access to justice at grassroots level, particularly through paralegals, who are more easily accessible to women.

**Opportunity 12: The SADC Model Law on Gender Based Violence**

As highlighted above, Tanzania is part of SADC, and this regional body has developed the SADC Model



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Law on Gender Based Violence, a very comprehensive document which provides guidance for SADC countries to easily enact anti-GBV law. This is a good opportunity for CSOs to popularize the model law among duty bearers and encourage the Government to finally enact anti-GBV law.

### 3.4.2. *Best Practices*

Document review and key stakeholder interviews have revealed various best practices in advancing women's rights and their access to justice, as briefly discussed below:

#### **Best practice 1: Investing in women's legal knowledge**

As discussed above, one of the key challenges women face in Tanzania regarding accessing justice is insufficient knowledge about laws. Legal empowerment of women is essential in creating a 'culture of justice' among them and ensuring gender mainstreaming. There are several ways this can be achieved, including through legal education, legal assistance, and training of paralegals. Providing women's friendly self-help kits covering various laws and legal procedures is also crucial. NGOs,

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including TANLAP, are best positioned to develop and disseminate self-help kits. Deliberate efforts should also be made to engage women in their economic groups, targeting them with self-help kits, fliers, and other Information, Education and Communication (IEC) materials.

### **Best practice 2: Awareness-raising on women's rights**

Awareness-raising in communities is essential in promoting women's rights. NGOs may collaborate with other stakeholders to continuously conduct awareness-raising campaigns on women's rights. The campaigns should be supported by publicity materials and characterized by solid media engagement.

### **Best practice 3: Strengthening women's economic empowerment**

Investing in women's economic empowerment has proven crucial in advancing women's rights in different parts of the world. According to UN WOMEN, investing in women's economic empowerment sets a direct path towards gender equality, poverty eradication and inclusive economic growth. Better results can be



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achieved by supplementing legal empowerment with economic empowerment. Increasing women's and girls' educational attainment contributes to women's economic empowerment and more inclusive economic growth.

### **Best practice 4: Enhancing women's access to education**

As pointed out above, low levels of education have a big negative impact on their legal awareness, including awareness about their rights. Illiterate women are less likely to be aware of their rights and be in a good position to access information to enhance legal knowledge and pursue justice. Investing in women's and girls' education is therefore essential in advancing women's rights and access to justice. Education empowers women to understand and insist on the enforcement of their rights.

### **Best practice 5: Introducing legal requirement of mandatory women's quota to enhance political participation.**

Political parties should be legally required to introduce mandatory women's quota so that more women can get a chance to be nominated as party candidates

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and be well represented in decision-making within party structures. However, this can be more effective if accompanied by sanctions for non-compliance. For instance, in Spain, in 2007 the Government enacted a law that obliges political parties to allocate at least 40% of the places on list of candidates for different positions to women and respect 40/60 proportion in every five positions within each list.

Consequently, Spain has become one of the European countries with highest proportion of female politicians, bettered only by Sweden and Finland.

Advocating for legislative reforms to increase gender equality is essential in advancing women's rights. This has worked well in Kenya, enabling them to adopt the Sexual Offenses Act of 2006, the Employment Act of 2007, and the Protection Against Domestic Violence Act of 2015, recognized as landmark laws promoting women's rights in Kenya. Substantial evidence, broad coalitions, and incorporation of the highest standards based on international best practices were crucial elements that led to this success.

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### **Best practice 6: Engaging informal justice systems**

Since women, especially in rural areas, seek justice through informal or customary justice systems, due to the affordability and duration of dispute settlement, the Government and non-government actors, including NGOs, should seek to engage the customary justice systems to influence change and promote women's rights. According to International Center for Research on Women (ICRW), despite the patriarchal nature of customary and religious laws, these informal justice systems are better options for women to seek justice because of their low cost, accessibility, familiarity, and social acceptance, as studies suggest. However, only a few NGOs attempt to focus exclusively on reshaping customary laws and social norms in ways that promote women's rights and those that focus attention on changing the norms and attitudes of local leaders and administrators so that laws are enforced and applied in women's favour.

For instance, in South Africa, an NGO called Transkei Land Service Organization (TRALSO) exclusively focuses on changing local customs and norms.

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### **Best practice 7: Collaboration and working in coalitions**

To create maximum impact in advancing women's rights and access to justice, NGOs and other stakeholders must work in unison to address key issues and challenges and provide legal aid services. Interviewed stakeholders mentioned various stakeholders that they collaborate with in advancing women's rights, including like-minded organizations such as THRDC, LHRC, WiLDAF, TANLAP, TAWLA, LSF, WLAC, CWHRDS, TENMET, TAMWA; media; Judiciary; the Ministry of Constitutional and Legal Affairs; the Ministry of Community Development, Gender, Women, and Special Groups; LGAs; SWOs; CDOs; international organizations; religious leaders and institutions; police gender and children desk; and paralegal units. All these stakeholders need to collaborate better to push the agenda of women's rights.



## **CHAPTER FOUR:**

### **CONCLUSION AND RECOMMENDATIONS**

#### **4.1 Conclusion**

The assessment has generally found that progress has been made in advancing women's rights and access to justice, albeit slowly. The Government has done a commendable job of promoting and protecting women's rights, including through legislative and policy measures discussed above. One of the key achievements is that more women are now coming out to report violations of their rights. Nevertheless, various legal, cultural, social, and economic barriers hinder women's effective enjoyment of their human rights. These barriers include gaps in laws and policies, discriminatory customs and traditions, low legal awareness, and underrepresentation of women in decision-making positions.

#### **4.2 Recommendations**

The following key recommendations are made to Government and Non-Government actors to improve women's rights and access to justice.

##### *4.2.1 Government Actors*

- ☞ Review of laws, policies, and practices which discriminate against women and hinder their access

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to justice.

- ☞ Amend all laws that deny women's rights to property and inheritance.
- ☞ Enact the Anti-Gender Violence Act law to protect women and girls from all forms of violence and enhance their access to justice.
- ☞ Review and amend the Legal Aid Act of 2017 to align with international human rights standards, including the United Nations Principles and Guidelines on Access to Legal Aid in the Criminal Justice Systems, 2013.
- ☞ Increase budgetary allocation for the implementation of the NPA-VAWC II.
- ☞ Re-allow class action or strategic litigation, which shall mean NGOs shall be able to represent individuals, including women, in the legal process. This means amendment of the Basic Rights and Duties Enforcement Act (BRADEA) to make this possible once again in Tanzania.

### 4.2.2 Non-Government Actors

- ☞ Increase the provision of legal education to boost knowledge of legal rights among women, especially in rural areas, so they know where and how to claim their rights.



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- ☞ Conduct outreach access to justice and legal aid activities and increase presence in rural areas, including through mobile legal aid services.
- ☞ Popularize and promote the implementation of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) of 2010 to ensure gender-specific options and alternatives to pretrial and sentencing of women in conflict with the law are developed and implemented, taking into account the history of victimization of many women offenders and their caretaking responsibilities.
- ☞ Engage customary justice systems through advocacy and awareness-raising to promote women's rights and access to justice, targeting customary norms that discriminate women.

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