

# **Drivers of Change: Women Lawyers and Human Rights Defenders in Africa** Challenges, Risks and Opportunities

ICJ Reflection Paper, December 2015

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

® **Drivers of Change: Women Lawyers and Human Rights Defenders in Africa**  
Challenges, Risks and Opportunities

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## I. INTRODUCTION

The International Commission of Jurists (ICJ) has been engaged in a multi-year initiative to support women judges, lawyers and human rights defenders who work as agents of change. As part of this initiative the ICJ has convened a number of colloquia with these actors, which have taken place in Tanzania, Tunisia, Geneva, Zimbabwe and Swaziland and have involved the participation of representatives from over 45 countries across Europe, the Middle East and Africa.

The ICJ's paper *Women and the World's Judiciaries*, published in 2014, explored challenges affecting female judges within Africa.<sup>1</sup> This paper focuses on women lawyers and women human rights defenders in Africa and will reflect on the (often gender-based) challenges they have encountered in their work, including when promoting women's rights, as well as the recommendations they have made.

The ICJ's work is set within a large body of international standards that address issues of equality and strives to eradicate discrimination based on sex. The Universal Declaration of Human Rights (UDHR) and a number of human rights treaties make it clear that the rights they enshrine are to be guaranteed to everyone without discrimination, including on grounds of sex.<sup>2</sup> The Convention on the Elimination of All Forms of Discrimination against Women, to which some 189 States are Parties and thus bound to implement its provisions, further addresses issues of discrimination against women; it provides a basis for realizing equality between women and men and sets out measures necessary to eradicate discrimination based on sex.<sup>3</sup> Within the African regional human rights system, the Maputo Protocol addresses the elimination of gender discrimination; the majority (36) of the African Union's member States are States Parties and a further 15 have signed the treaty, indicating their intention to become bound by it.<sup>4</sup>

Despite the well-established international prohibition against discrimination on the grounds of sex, it is evident that women around the world continue to remain subject to gender-based discrimination. In some areas this discrimination is blatant yet in other areas it may be less obvious but nonetheless invidious. Full equality between men and women remains largely aspirational and more needs to be done to ensure respect for the right to gender equality. The inequality between genders is not limited to poorer and uneducated sectors of society but is also prevalent among sectors of society whose members are enabled to undergo more than basic education and are generally more comfortable financially, including those working in the legal sector.

The ICJ's work with women lawyers and human rights defenders is also set in the context of international standards protecting the rights of human rights defenders (HRDs). The work of human rights defenders around the world relies on States upholding the fundamental rights to freedom of expression,<sup>5</sup> assembly<sup>6</sup> and association<sup>7</sup> as

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<sup>1</sup> International Commission of Jurists, *Women and the World's Judiciaries: Identifying Key Challenges and Opportunities: A synopsis of findings from colloquia in Arusha, Tunis and Geneva, 2013* (2014), URL: <http://www.icj.org/women-and-the-judiciary-new-document-synthesizes-findings-from-icj-colloquia-in-tanzania-tunisia-and-switzerland/>.

<sup>2</sup> The Universal Declaration of Human Rights (UDHR), Article 2; The International Covenant on Civil and Political Rights (ICCPR), Article 2; and The International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 2; The European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights or ECHR), Article 14; The African Charter on Human and People's Rights (ACHPR), Article 2; The American Convention on Human Rights, Article 1; and The Arab Charter on Human Rights, Article 3.

<sup>3</sup> Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly, Resolution 34/180 (18 December 1979) (CEDAW).

<sup>4</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).

<sup>5</sup> ICCPR, Article 19; and ACHPR, Article 9.

guaranteed under international human rights law. The UN Declaration on Human Rights Defenders<sup>8</sup> underscores the right of everyone to promote and strive for the protection and realization of human rights and fundamental freedoms, at national and international level, individually and in association with others.<sup>9</sup> It also clarifies the responsibilities of States to respect, protect, promote and implement human rights, and take measures necessary to ensure the effective guarantee of the rights and freedoms referred to within the Declaration.<sup>10</sup>

The UN Basic Principles on the Role of Lawyers set out norms aiming to safeguard the role of independent lawyers, whose role is fundamental to protecting human rights and respect for the rule of law. The Principles aim to assist States in fulfilling their duties to promote and respect the role of independent lawyers, ensure the proper functioning of the legal profession and protect lawyers, including by ensuring that:

lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Similar provisions are also set out in the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.<sup>11</sup>

Lawyers and human rights defenders are instrumental to the protection and promotion of fundamental freedoms and rights, including the realisation of gender equality. Women have an equal right to become and practice as lawyers and to act to defend human rights; they should be encouraged to do so, not impeded.<sup>12</sup> The Preamble to the Convention on the Elimination of Discrimination against Women emphasises that States Parties to the Convention are:

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields.<sup>13</sup>

The term Women's Human Rights Defenders (WHRDs) is understood to describe both females that are engaged, either alone or in association with others, in the promotion and protection of any human rights, as well as persons of any gender who are engaged in the promotion and protection of rights that specifically affect women.<sup>14</sup> The WHRDs described in this paper are women who fall into the first category: women who alone or

<sup>6</sup> ICCPR, Article 21; and ACHPR, Article 11.

<sup>7</sup> ICCPR, Article 22; and ACHPR, Article 10.

<sup>8</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN Doc. A/RES/53/144 (Adopted 8 March 1999) (Declaration on Human Rights Defenders).

<sup>9</sup> The Declaration on Human Rights Defenders, Article 1.

<sup>10</sup> The Declaration on Human Rights Defenders, Article 2.

<sup>11</sup> Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (Principles of Fair Trial in Africa), (adopted by the African Commission on Human and Peoples' Rights, 2003), Section G.

<sup>12</sup> ICESCR, Article 7(c); CEDAW, Articles 1 and 7; and CEDAW General Recommendation No. 33 on women's access to justice, UN Doc. CEDAW/C/GC/33 (2015) para 15(f).

<sup>13</sup> CEDAW, Preambular Paragraph 12

<sup>14</sup> See, e.g., Office of the UN High Commissioner for Human Rights, Women Human Rights Defenders, URL: <http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/HRDefenders.aspx>; and African Commission on Human and Peoples' Rights, *Report of the study on the situation of women human rights defenders in Africa* (2015), paras 60-63, URL: <http://www.ishr.ch/sites/default/files/article/files/achpr-whrd-report.pdf>.

in association with others work to promote and protect any human rights, although this paper will also focus on a number of challenges WHRDs have encountered in their promotion of women's rights. Some of these WHRDs may also be lawyers.

Human rights defenders, including those who challenge those responsible for human rights violations and act on behalf of victims, are frequently subjected to harassment, arrest, prosecution, violence and death. Women human rights defenders have also been subject to gender-specific acts of intimidation and violence including rape and other forms of sexual violence as a result of their work.

Over 20 years ago, governments throughout the world stated, in the Beijing Platform for Action, that "women engaged in the defence of human rights must be protected", and underscored the duty of governments to do so.<sup>15</sup> In 2013, in a resolution promoting the Declaration on Human Rights Defenders and addressing specific issues affecting women human rights defenders, the UN General Assembly however noted "the vulnerability to violence of women human rights defenders, who are prone to multiple, aggravated or intersecting forms of discrimination."<sup>16</sup>

In October 2012, the African Commission adopted a resolution calling for a study on women human rights defenders in Africa.<sup>17</sup> The Report of the study, which was launched in 2015, similarly acknowledged that "Promoting the work of women human rights defenders and protecting them in their work amounts to a secular struggle against inequalities and discrimination against women,"<sup>18</sup> and emphasised that "[African] governments should therefore make an effort to create a safe, enabling and secure environment for women human rights defenders."<sup>19</sup>

The international and African communities' awareness of the role that women play in upholding the rights of others and their sensitivity to the particular dangers faced by women who do so are greatly welcomed. The African Commission study on women human rights defenders made recommendations aiming to enhance protection for WHRDs including calls on the African Commission on Human and Peoples' Rights to: establish guidelines setting standards for protection of WHRDs in Africa, ensure compliance by States of existing obligations to protect WHRDs and ensure States are held accountable for their obligations to end impunity for violence committed against WHRDs.<sup>20</sup>

The ICJ hopes that the implementation of the recommendations by the African Commission and measures taken by States, including those recommended in this document, will help to translate the expressions of support and concern, the States obligations at the international level and the recommendations of human rights bodies and mechanisms into real action at the domestic level to support and protect women lawyers and human rights defenders.

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<sup>15</sup> Beijing Platform for Action, Fourth World Conference on Women (1995), para. 228.

<sup>16</sup> UN General Assembly resolution 68/181, Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders, UN Doc. A/RES/68/181 (18 December 2013), preamble.

<sup>17</sup> African Commission on Human and Peoples' Rights, Resolution 230 on the need for a study on the situation of women human rights defenders in Africa (adopted at the 52nd Ordinary Session of the African Commission on Human and Peoples' Rights in Yamoussoukro, Cote d'Ivoire, 9 to 22 October 2012).

<sup>18</sup> African Commission on Human and Peoples' Rights, *Report of the study on the situation of women human rights defenders in Africa* (2015), para 11, URL: <http://www.ishr.ch/sites/default/files/article/files/achpr-whrd-report.pdf>.

<sup>19</sup> *Ibid*, para 2.

<sup>20</sup> *Ibid*, paras 198-200.

## II. CHALLENGES, RECOMMENDATIONS AND OPPORTUNITIES

### THREATS TO WOMEN'S SECURITY OF PERSON

"Defending the rights of others you then become targeted and the targeting takes many manifestations, many patterns. In some situations it could be arbitrary arrest and detention, it could be extrajudicial execution, it could be administrative action."<sup>21</sup>

African women lawyers and human rights defenders, gathered together at an ICJ colloquium held in Zimbabwe in 2014, reported a number of reprisals they have routinely experienced as a result of their work in protecting human rights, which have impacted their ability to carry out their professional roles. Threats upon their security varied in nature from threats upon their lives to threats of a more insidious variety that left them feeling isolated within their communities. They reported being subjected to the following by State actors: arbitrary arrests, travel sanctions, denial of violations of their rights, searches of their houses and offices and State intrusion into the personal sphere where police interview and interrogate their family members.

The reprisals against these women for carrying out their work contravene their internationally protected rights, including their rights to security of person and to freedom from arbitrary detention,<sup>22</sup> to freedom of movement,<sup>23</sup> and to freedom from arbitrary interference with one's privacy, family or home, as well as their rights to freedom of expression and to defend and promote human rights.<sup>24</sup>

The women at the colloquium commented that in addition to the actions that were attributable to State actors as clear reprisals for their work, they also regularly faced isolation, derision, humiliation, threats and abuse for the work they do from within their communities, from local and religious leaders as well as other private actors. While such reprisals may seem less significant than threats of a more direct nature, and may be harder to pinpoint, they are often symptomatic of feelings of ill-will towards the lawyer or defender from the within the community. These reprisals can have very dangerous consequences.

One WHRD described it thus: "of course, as a defender you are ostracised in your life. You live a life that is really, really of loneliness."<sup>25</sup>

An example of the dangers women HRDs can face was provided by one woman lawyer from Malawi who told the ICJ that her life was threatened by gang members acting in collusion with the local police force. When the lawyer made an application for the bail of a client who was involved in business with a local gang, the police officer in charge reportedly did not immediately release the client but instead called one of the members of the gang. The lawyer said that gang members arrived at the police station, and in front of the police who did nothing to intervene, they called her a whore and threatened to kill her. She believed her life was spared only because of a remote connection between her family and one of the members of the gang that harassed her. The involvement of the police in contacting the gang members and in failing to intervene when the lawyer's life was threatened was a violation of Malawi's international obligation

<sup>21</sup> Participant at the ICJ's colloquium of women judges, lawyers and human rights defenders held in Zimbabwe, 30-31 July 2014.

<sup>22</sup> ICCPR, Article 9(1); and ACHPR, Article 6.

<sup>23</sup> ICCPR, Article 12; and ACHPR, Article 12.

<sup>24</sup> ICCPR Article 17.

<sup>25</sup> Participant at the ICJ's 2014 Zimbabwe colloquium.



to protect the right to life<sup>26</sup> and contravened the UN Basic Principles on the Role of Lawyers, which underscores the duty of the authorities to adequately safeguard lawyers whose security has been threatened as a result of discharging their duties.<sup>27</sup>

Similar to this lawyer's experience, women human rights defenders have been subjected to attacks that focus on their reputations or their sexuality, because they do not conform to the dominant (frequently discriminatory) stereotypes of appropriate female behaviour. One Kenyan lawyer explained at the ICJ's Zimbabwe colloquium that, as a result of their work in promoting the rights of women, "people will be at risk, human rights defenders will suffer, they will be vilified because it's like you're disturbing the status quo."<sup>28</sup> Women human right defenders have been subject to such attacks and to sexual violence, including rape, with the aim of silencing them; such attacks also aim and serve to deter other women from getting involved in this work.<sup>29</sup>

A Zambian rights defender present at the ICJ's 2015 colloquium in Swaziland explained that the Minister of Justice for Sudan had said that Sudan would never ratify the Maputo Protocol (though it has signed it) because the State did not accept that women and men are equal. Sudan has also neither signed nor ratified CEDAW. Promoting women's rights in patriarchal societies unreceptive to the concept of gender equality can be dangerous. Even in African States that have signed and ratified CEDAW and the Maputo Protocol and outwardly support women's rights, this support of the work of lawyers and women HRDs may be non-existent in relation to certain women's rights such as sexual and reproductive rights or rights relating to lesbian, bisexual, transgender or intersex women.

Women lawyers at the Zimbabwe colloquium spoke of the particular challenges they had faced in promoting the rights of lesbian groups and individuals, who are particularly vulnerable when not supported within their communities or by State officials. A female lawyer in Lesotho explained at the ICJ's Zimbabwe colloquium that, in her country, 'corrective rape' of lesbians, particularly at University when many young lesbian women choose to openly come out, is commonly practiced though rarely discussed. The Lesotho lawyer explained that, in the context of national anti-LGBTI sentiment, defending the rights of LGBTI persons is very challenging. When trying to register an LGBTI organization this lawyer was reportedly accused of being a lesbian and then subjected to personal attacks on her reputation and harassment in her work place contrary to the UN Basic Principles on the Role of Lawyers that clarify that lawyers should not be identified with the cause of their clients.<sup>30</sup>

Another female human rights defender from Uganda described that she faced reprisals after she had given evidence before a parliamentary committee concerning how the anti-homosexuality bill contravened the country's international and regional human rights obligations. The parliamentary committee's session was televised and, following the broadcast of this session, the human rights defender and her family were subject to verbal harassment by community members. Participants at the Zimbabwe colloquium noted that sometimes media identification of a woman lawyer or HRD with the cause of their client can stir up attention that can put individuals in danger, this is particularly the case where the client's cause is as unpopular as LGBTI issues are within certain African States.

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<sup>26</sup> ICCPR, Article 6(1).

<sup>27</sup> United Nations Basic Principles on the Role of Lawyers (Adopted at the 8<sup>th</sup> United Nations Congress on the Prevention of Crime and treatment of Offenders, Havana, Cuba 27 August to 7 September 1990), Principle 17.

<sup>28</sup> Participant at the ICJ's 2014 Zimbabwe colloquium.

<sup>29</sup> *Report of the women human rights defenders in Africa* (2015), paras 100-102.

<sup>30</sup> UN Basic Principles on the Role of Lawyers, Principle 18.

It seems that authorities often turn a blind eye to abuses, particularly those of a sexual nature, of the rights of young women who do not conform with societal norms, such as lesbians, transgender and intersex persons and others not conforming to gender stereotypes. This reluctance to protect such women and their rights has also extended to an unwillingness to protect women lawyers and human rights defenders working on the behalf of such young women.

This unwillingness to protect rights defenders promoting unpopular women's rights extends beyond issues of sexual orientation and gender identity and also includes the right to be free from domestic violence. The African Commission's study on women's rights defenders reported allegations of women rights defenders being physically assaulted in police stations whilst assisting victims of domestic violence, in a way that draws parallels with the Malawian lawyer's experience in making her client's bail application.<sup>31</sup>

Whilst it is highly commendable that many women continue the rights protection work they are committed to despite the disincentives to do so, it is not acceptable that harassment and reprisals, including human rights violations, are so commonplace and continue to be inadequately addressed, and in some place condoned, by States.

No women lawyers or human rights defenders should feel their security is threatened because of the work that they undertake.

States hold primary responsibility for ensuring that lawyers may carry out their professional functions and that human rights defenders may carry out their work without reprisal.<sup>32</sup>

**States must take appropriate measures in line with their international obligations to create an enabling environment that respects and protects women lawyers and human rights defenders.**

**States must ensure that women lawyers and human rights defenders are not associated with the causes of their clients and must act against those, including private actors, that undermine this principle.**

**Women lawyers and human rights defenders should be protected from undue interference and must be able to carry out their work free from harassment, threats and attacks. States must investigate any allegations of violations of the rights of and crimes against women lawyers and rights defenders and ensure that those responsible are brought to justice.**

## **DISCRIMINATORY ATTITUDES AND GENDER STEREOTYPING**

Women human rights defenders and women lawyers often face discrimination in the private and public spheres because of their gender and their work.

Discriminatory gender stereotypes are frequently applied to women that impact on their roles both in the workplace and at home. At work, women are often discriminated against by male colleagues; at home, the roles and work of women lawyers and human rights defenders are often not understood within communities, which expect them to fulfil a primary role as wives and mothers.

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<sup>31</sup> *Report on women human rights defenders in Africa*, para 112.

<sup>32</sup> UN Basic Principles on the Role of Lawyers, Principles 16-17; Declaration on Human Rights Defenders, Article 12(2); and Report of the UN Special Rapporteur on the situation of human rights defenders, UN Doc. A/69/259 (5 August 2014), para 67.

Women at the ICJ's Zimbabwe colloquium reported that as legal professionals they often found themselves trying to inhabit a space that has been shaped by patriarchy and, in most instances, remains dominated by men. The lawyers at the Zimbabwe event said they often felt pressured to either try to assimilate to become as 'man-like' as possible, which one lawyer described as 'menstreaming', or to make use of their femininity in a way that will not threaten the men in their working environment.

The discrimination these women have encountered is inconsistent with international obligations to ensure equality in the workplace.<sup>33</sup> Workplace equality means ensuring equality of pay, treatment and opportunities.

These women reported that they were often patronized by their male colleagues and experiences were shared of having been dismissed, ignored or ridiculed as a result of their gender.

"I've come up against senior attorneys ... when I started practising, who would say to me "Oh, what a pretty face. You are so young. This is not the right place for you. Do you think you fit in here?"<sup>34</sup>

One lawyer from Swaziland gave an example of a court case where the presiding judge gave preferential treatment to a male attorney she was arguing against; the judge patiently listened to the male lawyer's arguments and then told the female lawyer not to lecture the judge when she made her arguments. This kind of treatment is something that is frequently encountered but is difficult to combat. Women lawyers and HRDs at the colloquy expressed a need for support and guidance on how to find their voice and to make themselves be heard in settings where many men do not want to listen.

Women colloquium participants also reported being penalized professionally for being unable to participate in after-work events and missing out on valuable networking opportunities outside of work hours, because of family commitments. One lawyer from Zimbabwe explained that she was viewed as anti-social because she would not stay for drinks after meetings when, as a single mother, she had to get home to her child. She discovered that she was missing out on a lot of work opportunities that were being raised and discussed in these after-hours meetings among male colleagues. She explained that the "recognition that I'm a woman and I've many roles that I play is just not there."<sup>35</sup>

Some women at the Zimbabwe colloquium said that they had experienced discrimination when starting their legal careers. They said they were often given the cases men didn't want, the so called 'soft law' cases, including those related to family law and wills. They said assumptions are frequently made, that as women, they would not have the capacity to take on business cases and that businesses would not want to be represented by women. One Kenyan lawyer said that because of her gender when she started her legal career she was given "the bottom of the lags – the work that is not exciting for the partners. Those were divorce cases, those were women who were coming to seek orders that their husband pay maintenance for their children."<sup>36</sup>

Some women said that they had taken advantage of the opportunities that arose by having been pushed into certain avenues of law. For example, negotiating skills learnt from family law cases, particularly divorce cases, could be applied in other situations.

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<sup>33</sup> ICESCR, Articles 2(2), 6 and 7; ACHPR, Articles 2 and 15; CEDAW, Article 11; and Maputo Protocol, Article 13.

<sup>34</sup> Zimbabwean lawyer at the ICJ's 2014 Zimbabwe colloquium.

<sup>35</sup> Participant at the ICJ's 2014 Zimbabwe colloquium.

<sup>36</sup> Participant at the ICJ's 2014 Zimbabwe colloquium.

One judge said that as a result of having been pushed into family law as a young lawyer, she had developed negotiating skills that she has relied on throughout her career and that are now widely recognized by others in her profession. She was recently called on to help negotiate the terms of a Government coalition between multiple parties. Whilst it is inspiring that some women have transformed the discrimination they have faced in their careers to their advantage, junior women lawyers should be adequately mentored by senior partners and exposed to a range of legal areas to enable them to shape the career trajectories they would like. The Beijing Platform for Action called for governments to “ensure that women of all ages can acquire the knowledge, capacities, aptitudes, skills and ethical values need to develop and fully participate under equal conditions”.<sup>37</sup>

Another problem highlighted by female lawyers at the Zimbabwe colloquium was the lack of opportunities they were given by senior partners, compared to their male colleagues, to learn how to market their legal practice and gain clients – skills that are instrumental for women looking to establish their own legal practices. Women reported the need to have the business know-how to effectively manage financially viable practices. Training and mentoring should be provided to young women lawyers in leadership and business skills; such training and support could take place in the context of formal training at universities, career training provided by legal networks and mentoring by women that are already established in their profession.

Another example given of gender discrimination in the workplace described by women lawyers was the practice of some male dominated law firms of purposefully hiring young attractive female associates to draw in male clients, whilst then denying these associates meaningful career opportunities. Women lawyers should not be subject to such objectification and discrimination; they should be hired on the basis of merit and offered the same opportunities as their similarly qualified male colleagues.<sup>38</sup> Article 11(b) of CEDAW refers to equality of application of selection criteria in matters of employment. The Maputo Protocol also calls on African States to “ensure transparency in recruitment, promotion and dismissal of women and combat and punish sexual harassment in the workplace.”<sup>39</sup>

Gender bias in the legal system and amongst professionals could be addressed by ensuring, among other things, the inclusion of components of gender studies, women’s rights and the prohibition of discrimination in core legal studies and into continuous legal education programmes. This was something that the Beijing Platform for Action called for in the 1990s recommending that Governments ensure that human rights programmes, including a gendered element, be included in all levels of education and particularly in postgraduate juridical curricula.<sup>40</sup> These programmes should clarify and demonstrate that gender discrimination is a human rights issue that affects everyone.

Greater awareness of and advocacy for women’s rights within the legal profession would also be improved if there were a greater proportion of women in leadership roles within the legal profession.<sup>41</sup> Law Societies and Bar Associations should take steps to encourage applications for leadership roles from a diverse range of members that encompass a full spectrum of the membership body, including women.

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<sup>37</sup> Beijing Platform for Action, para 80(h).

<sup>38</sup> CEDAW, Article 11 (1)(b) obliges states to ensure the elimination of discrimination against women in the field of employment, and in particular to ensure the rights of women to the same employment opportunities, including the application of the same criteria for selection in matters of employment.

<sup>39</sup> Maputo Protocol, Article 13(c).

<sup>40</sup> Beijing Platform for Action, para 83(j).

<sup>41</sup> Maputo Protocol, Article 8(e) requires State Parties to take all appropriate measures to ensure ‘that women are represented equally in the judiciary and law enforcement organs.’

In addition to encountering gender based discrimination and problems within the legal profession, women lawyers and rights defenders said that they have also encountered gender stereotypes from members of their local communities that have impacted on their work. A Malawian female lawyer said that she was not infrequently interrupted in the middle of client meetings by calls from her child's school. She recollected one specific incident where the school phoned to inform her that her child was sick. When she asked if the father had been contacted she was told that as he was a man they had presumed he was too busy to come.

Women should not be forced to choose between having a career and having a family. A female lawyer from the Democratic Republic of Congo told the ICJ that when she got her law degree, she graduated with 29 other women but she was the only one still practicing today; all the others had gotten married and felt that they could not continue to maintain a working role and meet the gendered standards of what it means to be a good wife and mother.

More needs to be done to ensure that women within the legal profession who have families are given the support they need to carry out their professional functions without having to compromise their familial responsibilities. More efforts should be made to support working women including the introduction of meaningful part-time and flexible working, increasing the availability of support systems including childcare,<sup>42</sup> and ensuring adequate maternity leave.<sup>43</sup> In addition, adequate healthcare should be accessible to all women, including those within the legal profession and their families; in some countries this will require ensuring the availability of affordable insurance and/or services delivered free of charge to the recipient.

Women at the ICJ's colloquia spoke of the benefits of strong women's professional networks in challenging gender discrimination. In their experience, being able to raise women's issues through a professional association has had the dual benefit of lending greater authority to the causes raised and of separating these causes from individual women. However in some States, funding issues and a lack of political space in which to maintain these networks has led to some women's professional associations fragmenting.

In some States there has been a lot of executive interference with civil society organizations (CSOs), including legal associations, such as the introduction of legislation that restricts CSOs' ability to operate and attract funding. Such legislation in Ethiopia, for example, reportedly led to the dissolution of the Ethiopian Women Lawyers' Association because external funding was restricted and the Association was unable to source local funding.

The impact of restrictive measures on such organizations combined with punitive measures that are frequently imposed on individual women human rights defenders have, in many cases, made it difficult to sustain the momentum and motivation necessary to keep these organizations alive. Restricting the spaces in which professional associations can operate removes a valuable tool for women lawyers and rights defenders to advocate and act against gender discrimination. It also impinges on rights to freedom of association<sup>44</sup> and expression<sup>45</sup> guaranteed under international law.

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<sup>42</sup> CEDAW, Article 11(2)(c).

<sup>43</sup> CEDAW, Article 11(2); and Maputo Protocol, Article 13(i).

<sup>44</sup> ICCPR, Article 22; ACHPR, Article 10; Declaration on Human Rights Defenders, Article 5(b); and UN Basic Principles on the Role of Lawyer, Principles 24-25.

<sup>45</sup> ICCPR, Article 19; ACHPR, Article 9; and Declaration on Human Rights Defenders, Article 6(c).

**States have an obligation under international law to ensure that women are not subject to gender discrimination, including within the workplace, and are able to access and enjoy equality of treatment, opportunities and pay.**

**States should ensure human rights, including women's rights, are core components of legal training at university level, and in continuing legal and judicial education.**

**States must ensure they do not place any unnecessary administrative burdens on the operation of professional associations.**

**Professional associations of lawyers should make efforts to ensure that women occupy leadership roles.**

## **PROMOTION AND PROTECTION OF THE RIGHTS OF WOMEN**

Women lawyers and HRDs play an important role in promoting and protecting women's rights. However, they frequently encounter a number of challenges in this work.

Women lawyers and rights defenders speaking at the ICJ's colloquia in Zimbabwe and Swaziland identified three common challenges they faced in promoting and protecting the rights of victims of violence against women:

- Gaps in knowledge about women's rights;
- Gaps or inadequacies in national legislation; and
- Insufficient funding.

### ***Informing women about their rights***

Many women are unaware of what their rights are and how these are protected on national, regional or international levels. Women's rights defenders have encountered challenges where women are neither aware of their legal rights, nor of their relevance, nor about how to make claims for the fulfilment of these rights, including through the courts.<sup>46</sup> As one participant at the ICJ's colloquium in Zimbabwe explained: "If someone doesn't even have background knowledge as to what their rights are, how exactly is she even going to begin to understand what the issues are about."<sup>47</sup>

In a number of African States there are not enough lawyers to inform women of their rights and to advise and to act on behalf of those who may have suffered rights violations. The African Commission's Principles on Fair Trial acknowledge this problem in referring to "the fact that in many States the number of qualified lawyers is low" and calling for greater recognition of the role of paralegals in providing basic legal assistance.<sup>48</sup> Paralegals and NGOs have and can continue to play key roles in human rights education and raising human rights awareness. However, whilst paralegals and NGOs can and do play an important role in informing women about their rights and providing legal assistance, they are not altogether a substitute for trained lawyers; States must take measures with a view to addressing shortages of lawyers.

Women lawyers and human rights defenders can and do play key roles in efforts to inform women about their rights, and measures available to protect and defend them. A female judge from the ICJ's colloquium in Swaziland encouraged all rights defenders and

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<sup>46</sup> Beijing Platform for Action, Para. 227; and CEDAW General Recommendation No. 33, para 32.

<sup>47</sup> Participant at the ICJ's 2014 Zimbabwe colloquium.

<sup>48</sup> Principles of Fair Trial in Africa, Section H (g-k).

legal professionals to actively engage in legal outreach and rights-awareness initiatives in their local communities to help raise basic legal awareness amongst women and girls, as well as other community members.

Whilst it is important that women's right defenders engage with their local communities, States have a general responsibility to promote awareness of human rights,<sup>49</sup> including women's rights.<sup>50</sup> The Beijing Platform for Action also called for governments to "develop a comprehensive human rights education programme to raise awareness among women of their human rights and raise awareness among others of the human rights of women." This responsibility is also highlighted in, among other standards, the UN Guidelines on Access to Legal Aid in Criminal Justice Systems, which stated: "States should enhance the knowledge of the people about their rights and obligations under the law through appropriate means, in order to prevent criminal conduct and victimization",<sup>51</sup> and similar provisions are set out in the African Commission's Principles of Fair Trials.<sup>52</sup>

**States have a responsibility to ensure people have an awareness and understanding of their rights, including through undertaking public awareness raising activities and other measures, and to enable redress and/or remedy if these rights are violated.**

**States have an obligation to ensure that people have access to suitably qualified legal professionals who can inform and advise people about their human rights, ensure their fulfilment and avenues of redress for rights violations.**

### ***Gaps or inadequacies in national legislation***

As noted, States have international obligations to take the necessary legislative and other measures to respect, protect and promote women's rights, including the right to be free from violence, as well as to provide a remedy and ensure adequate reparation where a woman's rights are violated.<sup>53</sup>

However, sometimes the national legislation that should implement and ensure these obligations is either non-existent or ineffectual, leading to gaps or inadequacies in women's rights protection.

One participant said that in Swaziland a woman cannot bring a case before the courts unless she has the permission of her husband, unless the case is against her husband. The participant explained that although this rule is not always enforced, the fact that it even exists is highly alarming. Access to justice is indispensable for the protection and respect of women's rights; restricting a married woman's ability to access the courts by requiring her to obtain her husband's permission impermissibly impedes and may altogether preclude her access to justice and her right to a remedy or reparation for any violation of her rights. These restrictions are discriminatory and are inconsistent with the

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<sup>49</sup> Charter of the United Nations (26 June 1945), Article 55; and ACHPR, Article 25.

<sup>50</sup> CEDAW, Article 2; CEDAW General Recommendation No. 33, para 33; Maputo Protocol, Articles 5(a) and 8(c); and see Human Rights Committee General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant [on Civil and Political Rights] UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), para 7.

<sup>51</sup> United Nations, *Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, UN DOC A/RES/67/187 (20 December 2012) para 18.

<sup>52</sup> Principles of Fair Trial in Africa, Section G(c).

<sup>53</sup> CEDAW, Article 2.

State's international obligations to ensure women's access to justice without discrimination and to equality before and treatment by the law.<sup>54</sup>

When there are gaps in national legislation or in implementation of legislation, lawyers and other legal professionals and rights defenders can, and often do, work together to enhance human rights protection within their jurisdiction. For example, lawyers and human rights defenders can meet to discuss strategies for change of law and practice, including through strategic litigation and judges and lawyers can meet together to discuss and share expertise on rights issues.

One Zambian lawyer explained to the ICJ that she took a case of gender discrimination to the courts. The case involved the automatic allocation of residence permits to the non-national wives of male citizens but not to the non-national husbands of female citizens. While there were some issues that prevented the case from being considered on its merits, the judge said that he would review the case if it was brought again however, advised the lawyer to consider pursuing the issue directly with the Attorney-General and Minister of Justice. When the lawyer followed the judge's recommendation the Attorney-General and Minister acknowledged the discrimination and the law was rectified.

When national legislation is insufficient for ensuring the rights of women, women lawyers and human rights defenders can also make use of regional and international human rights systems and mechanisms. Lawyers can rely on international standards and their interpretation, as well as drawing on cases from other jurisdictions, to support arguments in women's rights cases. Women human rights defenders can use international standards as benchmarks to highlight limitations of national legislation and to advocate for change to enhance rights protection to relevant government officials, legislative bodies, the media and others who may be in a position to help affect change. Women HRDs can also call attention to any gaps in domestic protection by raising such issues to human rights treaty monitoring bodies, including the Committee on the Elimination of Discrimination against Women, and other human rights mechanisms.

**States have a responsibility to take all measures necessary, including addressing any gaps or inadequacies in legislation, to respect, protect and secure the rights of women.**

### ***Insufficient funding***

"When it comes to conflicting interests and issues around resources, gender issues consistently lose out."<sup>55</sup>

National legislation and other measures to protect women's rights, including those designed to combat violence against women, are often woefully under-resourced as States prioritise funding in other areas.

States may enact legislation that appears strong on gender issues but if this legislation is not adequately resourced it cannot be effectively implemented and its ability to afford women's rights protection is impeded. The Kenyan Sexual Offences Act includes provisions to ensure protection of the rights of victims of sexual offences and vulnerable witnesses; these measures include allowing the victim or vulnerable witness to give evidence under the protective cover of a witness protection box.<sup>56</sup> However, whilst this is

<sup>54</sup> ICCPR, Article 26; ACHPR, Article 3; CEDAW, Article 15; Maputo Protocol, Article 8; CEDAW General Recommendation No. 33, paras 21 and 25.

<sup>55</sup> Participant at the ICJ's colloquium of women judges, lawyers and human rights defenders held in Swaziland, 30-31 July 2015.

<sup>56</sup> Kenya, Sexual Offences Act, No 3 of 2006, Article 31(4)(a).



provided for in legislation, the reality of many courtrooms is that they are not resourced to facilitate this; for example, there may not be a screened area to divide victims from the accuser. In such circumstances, those involved in court proceedings have been creative in overcoming these sorts of issues by using a veil to make a temporary screen for witnesses. However, there is a need for States to ensure adequate resources to implement legislation and other measures to protect women's rights.

At the ICJ's colloquium in Swaziland a female human rights defender from South Africa said that although South Africa has had widely supported Domestic Violence legislation in place since 1998, because this has not been adequately resourced, it has done little to affect South Africa's continued reputation as 'the rape capital of the world'. The colloquium participant gave an example of the under-resourcing of courts in explaining that victims of sexual violence, predominantly women, are given little support in making a claim through the courts. Clerks are instructed to provide assistance but many clerks do not have a legal background and are not provided adequate training to fully assist complainants. Many victims are then left to pursue a complaint of sexual violence with little understanding of the legal processes and requirements involved.

The problem of insufficient funding extends beyond under-resourcing of courts and includes inadequate or no resourcing of legal aid for women seeking to protect their rights.

The women lawyers at the ICJ colloquia presented some innovative approaches they had taken to fill the gaps left by insufficient State funding for legal aid. One women's bar association in Malawi, for example, lobbied for a requirement for renewal of legal practice licenses, overseen by the law society, to entail a requirement that lawyers work a certain number of pro bono hours per year, dedicated to women's rights. While there was initially strong resistance to this idea, after two years of persistent lobbying, the law society eventually agreed that a percentage of the license renewal fees should be dedicated towards legal aid clinic work on women's rights.

Another group of women lawyers from Kenya provided training to women on how to represent themselves in court. Magistrates exhibited a certain level of sensitivity towards the self-representing litigants and started to provide input to the trainers on the skills they thought were important and would like to see used in their courts. Some of the women who went through the training then volunteered to train others.

With a view to familiarizing people with their rights and court procedures, a Tanzanian women's legal association developed a range of simplified publications in a range of different languages, with the basic legal information about how to take a case to court.

The efforts of legal associations to address inadequate resourcing of measures to protect women's rights is admirable and most welcome, but this does not relieve the State of its responsibility to meet its obligations to protect and respect the rights of women. States must ensure they provide sufficient resources to ensure, among other things, women's rights to access to justice and a remedy, as obligated under international law.

Among other things these obligations require States to take measures to establish and adequately resource courts, that are accessible throughout the country, and to establish effective legal aid and witness protection programmes nationwide so that women can protect and defend their rights, and seek redress when their rights are abused or violated.

**States must ensure that all women have access to justice and to an effective remedy and reparation for violations of their rights, this requires, among other things, ensuring access to courts throughout the country, adequate resourcing**

**of courts and legal services, including the provision of legal aid and witness protection measures.**

### III. CONCLUSION

Women human rights defenders in Africa, some of whom are lawyers, continue to carry out an important role in promoting and safeguarding the fundamental rights of others. Such women often carry out this essential function at great risk to themselves and, in protecting the rights of others, themselves require protection.

Human rights defenders have faced reprisals for their work, because the nature of their work involves their challenging authorities to uphold the rights of others, some of which are deeply unpopular both amongst State actors and the wider community. Women human rights defenders have also faced reprisals when their work is viewed as disturbing the *status quo* of patriarchal societies.

States must create an environment which enables women human rights defenders and lawyers to carry out their work in safety, free from reprisals including harassment, arrest, prosecution, violence and death. Women human rights defenders and lawyers must also be able to carry out their work on the basis of equality, free from gender discrimination, emanating from State actors, judicial authorities, within their own communities, within their workplaces or elsewhere.

Women human rights defenders also face challenges to their work in situations in which women have not been informed of their rights or how to ensure their fulfilment, where legislation to protect those rights is inexistent or inadequate and where the legal and other mechanisms to protect these rights, including courts, are inadequately resourced. States must fulfil their obligations to take the measures necessary to respect, protect and fulfil women's rights, including by ensuring all women have access to justice, remedy and reparation.

The women lawyers and human rights defenders who attended the ICJ's colloquia stressed the importance of working in community with one another and training. These drivers of change considered that associations of women lawyers and networks of human rights defenders as well as conferences, including the colloquia organized by the ICJ and other workshops to be key opportunities for joint work, training, information exchange, support and innovation that better enable them to carry out their fundamental work. As part of creating an enabling environment for their work, States must ensure they facilitate rather than impede these networking opportunities for women lawyers and human rights defenders in Africa.

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