



POLICY BRIEF

The shadow pandemic: COVID-19 and justice for gender-based violence survivors in conflict-affected and transitional settings

Vanessa Passos Araújo & Linn Häggqvist

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This brief examines the shadow pandemic of gender-based violence (GBV) and how the layers of crises brought on by COVID-19 have exacerbated the barriers for women and girls' access to justice for GBV crimes in conflict-affected and transitional settings. After reviewing recent reports on the topic, we explore possible ways for improving justice for GBV survivors, building on the measures to address the increase in reported cases of GBV during the COVID-19 pandemic.



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Women and girls are disproportionately affected by every crisis – the COVID-19 pandemic is no different

Women and girls are disproportionately affected in times of crisis, whether in violent conflicts, health emergencies, environmental disasters or during economic depression. A clear example is the increase in reported cases of gender-based violence (GBV)¹ in the wake of every crisis setting.² The COVID-19 pandemic is not an exception and human rights and legal security for women around the world have been threatened by this healthcare crisis. The legal, economic, and social effects of the COVID-19 pandemic on women and girls are further magnified in countries where there already were a severe resource strain on the judicial system and a record of systematic GBV.

Key Points

- ❏ Governments worldwide took key immediate justice solutions at the start of the COVID-19 pandemic in 2020. Helplines and digitalisation of case management and court proceedings for GBV crimes were amongst some of the main solutions. While not sufficient, immediate measures are a key step to removing legal obstacles to women's and girls' access to justice and to provide accountability to GBV crimes and should remain in place beyond the COVID-19 pandemic.
- ❏ Violence and crimes against women and girls will not end when the COVID-19 pandemic does. Judicial systems will need to be reinforced and prepared to deal with a high number of cases accumulated during the pandemic and the effects of the economic crisis that follows on the number of GBV cases.
- ❏ Digital justice is not enough to close the gap of the decrease in in-person legal aid services during the pandemic for GBV survivors living in transitional and conflict-affected settings. The existing digital gap for women and girls must be minimised so that access to justice is guaranteed.
- ❏ The future of justice for and prevention against GBV crimes in transitional and conflict-affected settings should include basic e-justice, but it must be accompanied by an inclusive digitalisation process, legal reform to include laws that aim to eliminate GBV, trainings and awareness-raising of the entire chain of justice – from judges to customary justice chiefs, from the police force to healthcare workers – aimed at countering gender stereotyping, victim-blaming and other harmful practices as well as empowerment of grassroots women's organisations.

In conflict-affected and transitional settings, – weakened by political and economic instability and with fragile institutions – access to basic legal services was already difficult in the pre-pandemic era. Even before the pandemic, people living in these settings were often at a higher risk to be subjected to GBV.³

The pandemic further increases the gap between GBV survivors and justice. The reallocation of public resources from the criminal justice system to more immediate public health measures during the pandemic has hampered the ability of the justice system to respond to the increase in reports of GBV cases during the pandemic and to provide effective remedies to victims of GBV crimes.⁴

With the unfolding of the COVID-19 pandemic, lockdowns and quarantines have been employed to protect the population against the virus and to decrease infection rates. However, it is often on women that the burden of home and family care falls. They are often responsible for household chores, home-schooling, care for the elderly and/or the sick while at the same time carrying on with their income-earning work. Women represent 70% of the world's labour force in healthcare systems⁵ and they form the majority that work informally and in low income jobs,⁶ both drastically impacted in 2020 and 2021 due to lockdowns and other restrictions put in place to curb the pandemic.

The COVID-19 pandemic has therefore augmented existing gender inequalities. As a consequence of the pandemic, progress on closing the global gender gap is estimated to have been set back by a generation.⁷ Women are more exposed to the virus and more vulnerable to economic distress following lockdowns and other restrictive measures. With the closure of schools, girls are more exposed to sexual exploitation, early pregnancies, rape, female genital mutilation, early marriages and forced marriages. Some girls might never go back to school.⁸ The ILAC report “Access to Justice for Vulnerable Groups in Times of COVID-19 – Palestine” shows that during the pandemic, legal professionals in the West Bank and Gaza have been concerned about an observed increase in child marriage.⁹ Poverty is one of the main determinants of child marriage as it is a way of securing the family's economy. During COVID-19, the surge of unwanted pregnancies that happened during home quarantine have also contributed to the observed increase in child marriage.¹⁰ Restrictions due to the pandemic have had a serious life threatening impact on women and girls as violence increases, especially for those living in poorer areas across the globe and in fragile and conflict-affected settings. In Gaza, the risk of being exposed to GBV increased with compounding factors of tense living conditions of poverty, overcrowding, widespread violence and economic insecurity.¹¹ The pandemic aggravated this situation as a result of the home quarantine measures.

In addition, an International Rescue Committee study revealed that 73% of women living in refugee, displaced and post-conflict settings in 15 African countries reported an increase in intimate partner violence, 51% cited sexual violence and 32% observed a growth in the levels of early forced marriage¹² during COVID-19.¹³ While violence against women and girls has been recognised as a global pandemic, the ongoing COVID-19 pandemic is yet another crisis where GBV is intensifying at an alarming rate, especially in conflict-affected and transitional settings.

Access to justice for gender-based violence survivors before, during and after the COVID-19 pandemic

The COVID-19 pandemic response has, to a large extent, failed women and girls. Before the pandemic, layers of legal bureaucracy impeded access to justice for women even in countries with strong rule of law mechanisms. At the same time, the stigma against GBV survivors has also posed serious obstacles in the access to justice for women and girls. In fact, while 243 million women and girls aged 15-49 were subjected to sexual and/or physical violence perpetrated by an intimate partner between 2019 and 2020, only 40% that suffered violence sought help.¹⁴ According to one study, fewer than 20% of women reported the violence episode to the police.¹⁵ Even when cases of GBV were reported, only between 1% and 7% comes before the criminal courts.¹⁶ Impunity for GBV crimes is at the high end. Most perpetrators of GBV crimes face no or insufficient legal consequences. Some studies show that up to 97% of men who perpetrated rape did not experience any legal consequences.¹⁷

During the COVID-19 pandemic, these insecurities have worsened. The risk of violence towards women trapped with abusive partners increases while at the same time there has been a drastic reduction of the already scarce support and legal services. Key immediate justice solutions were taken at the start of the pandemic. Helplines and digitalisation of case management for GBV crimes were amongst some of the main solutions. Preliminary studies show that in Tunisia, for example, the number of calls to helplines in the first days of confinement increased five times.¹⁸ Following advocacy from women's rights organisations, domestic violence was included among the urgent cases that Tunisian courts prioritised during the lockdown.¹⁹

Immediate justice solutions that were initiated early in the pandemic are however hampered by norms and attitudes towards GBV crimes and which continue to prevent access to and delivery of justice. Many women and girls are discouraged from bringing their cases forward, and when they do file a report, the justice institutions are often ill-equipped to handle the cases with the care needed. Many suffer in silence – either for being ashamed or for fear of the perpetrators as well as justice and security actors. In addition to the reported increase in the number of complaints received by GBV helplines in Tunisia, domestic violence shelters have also received a higher number of women since the beginning of the pandemic.²⁰ At the same time, the ILAC report “Access to Justice for Vulnerable Groups in times of COVID-19 - Tunisia” shows that the landmark Organic Law No. 58 of 2017, which targets GBV, is rarely applied by justice and law enforcement operators, while women are not aware of their rights under this law. The report also shows that there is an increasing practice in some parts of the law enforcement to dissuade victims from reporting GBV crimes, even though the dissuading the reporting of GBV is a crime in Tunisia.²¹ While Tunisia is in the vanguard of women's rights in the Middle East and North Africa region, where laws against GBV are in place and key reservations to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) were lifted in 2014, there must be continued efforts made to realise the full implementation of laws available.

Where weak legislation and other legal mechanisms to ensure women's rights are non-existent, victim-blaming and shaming compounds the problem as social prejudices married to the insufficient legal framework reinforce the obstacles to achieve justice. In Libya, comprehensive legislation criminalizing domestic violence and other forms of GBV and ensuring protective measures is still missing. The ILAC report "Access to Justice for Vulnerable Groups in Times of COVID-19 – Libya"²² shows that there is a negative perception of women who file complaints at police stations. "It is considered a taboo to bring what many perceive as 'family matters' to the police or the courts. Some respondents noted that women have begun to break this taboo, but still in very small numbers".²³

In addition, intersectionality plays a key role in women's access to justice for GBV. Factors such as living in rural areas, ethnic, racial, and religious identity as well as migrant or refugee status, mean that some women and girls face further obstacles to access justice. It has been reported that globally one in every five displaced women (refugee or IDP) has experienced sexual violence.²⁴ The justice gap and stigmatisation of GBV survivors are even larger for women and girls in a position that leaves them with overlapping systems of discrimination and disadvantage. The literal road to access formal justice institutions for indigenous women living in rural areas of Latin America, for instance, is much longer as they may have to walk for days to get to the nearest city to report the violence they have suffered.²⁵

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In Syria, the COVID-19 pandemic has further impacted women who were already under considerable pressure due to widespread displacement and violence throughout society. The lack of a functioning healthcare system in most parts of Syria has left the population to face the pandemic on their own and has further decimated women's access to sexual and reproductive healthcare, including maternity health. There are reports of increased domestic violence during lockdowns in Syria, and due to mobility restrictions and strict patriarchal norms and attitudes, women are prevented from seeking legal help.²⁶ The legal framework does not recognise domestic violence or marital rape as crimes,²⁷ and there is no functioning justice system to support and defend women's rights.²⁸ Women refrain from reporting cases, as the police and the judiciary system itself may abuse women who try to bring forward cases of GBV.²⁹ Mobility restrictions have meant that women are kept away from their usual GBV coping mechanism of seeking support and protection within their social networks.³⁰

With the COVID-19 pandemic, the world has witnessed the increase in reported cases of domestic violence and other forms of GBV. While not sufficient, immediate measures such as the opening of helplines and digitalisation of court proceedings are key to removing legal obstacles to women's and girls' access to justice and to provide accountability for GBV crimes. However, a holistic and multi-sectoral approach needs to be in place to ensure the implementation of such laws. This in turn depends on adequate and ear-marked investments along with the changing of norms, mindsets and behaviours of justice and security sector actors when handling cases

of GBV, including shifting focus to how to ensure the perpetrator does not continue to re-offend. Justice operators and community leaders are part of the society and are not free from societal biases. Even when laws are reformed and constitutional guarantees are introduced, the true implementation of such laws requires a holistic reform of institutions and a multi-sectoral approach to address the GBV pandemic. Institutions are composed of individuals who follow the behaviours and mindsets of a broader society.³¹

Layers of crises: post-pandemic justice to gender- based violence survivors

In conflict-affected and transitional settings, where justice systems were already fragile pre-pandemic, the COVID-19 pandemic is a crisis over a multitude of crises. Pre-existing fragile institutions and the lack of legal instruments necessary to provide redress for GBV crimes pose further challenges during the COVID-19 pandemic in such contexts. The post-pandemic reality will require that national and international policy makers and international development actors put justice for women in the front and centre of any recovery plan. Stakeholders must consider strategies that support public legal education, awareness raising and efforts to change attitudes and behaviour towards GBV. Yet, these efforts need to come in tandem with strengthening justice institutions, legal reform, and increased women's participation in decision-making.

In Liberia, a country that has received a significant amount of funds to respond to GBV crimes after the country's devastating 14-year civil wars, GBV cases have increased by 50% in the first half of 2020.³² Pre-COVID-19 challenges regarding access to and the delivery of justice were in part sustained due to a lack of judges and magistrates. Limitations to access to justice were specifically pronounced in rural areas, but also in the urban settings such as Monrovia, where courts suffered a backlog of cases. Before the COVID-19 pandemic, financial resources allocated to justice delivery did not cover basic infrastructure demands, such as computers for the courts or fuel for police cars.³³

In the post-pandemic, the 50% increase in reported GBV crimes will thus compete with an even larger backlog of cases, higher judicial debts and reduced budgets for justice due to the ripple effect of the COVID-19 pandemic on the economy. West Africa's lessons learned from the Ebola epidemic show that the COVID-19 pandemic cannot be used as an excuse to disrupt or divert essential services and increase the vulnerabilities of those already hard hit by the situation.³⁴ In addition, the Ebola crisis showed that women's groups are a lifeline for GBV survivors, especially where justice fails them. Frontline workers need to be trained to recognise and safely refer GBV cases to justice operators. Thus, a holistic and multi-sectoral approach to justice for GBV survivors needs to become an integral part of upcoming pandemic recovery strategies.

With the long-term effects of the COVID-19 pandemic on the economy, the GBV crisis will surpass the time of the current healthcare emergency. This means that measures taken throughout the pandemic, such as opening of GBV helplines, need to stay in place even after the pandemic and further mechanisms will need to be created to contain the GBV emergency, worsened by the COVID-19 pandemic. Violence and crimes against women and girls will not end when the COVID-19 pandemic does. Judicial systems will need to be reinforced and prepared to deal with a high number

of cases accumulated during the pandemic and the economic crisis that follows.

Digitalisation of justice: A double-edged sword in conflict- affected and transitional settings

The rule of law has been on retreat during the pandemic and access to and delivery of justice have been further harmed.³⁵ Digitalisation of justice has been an important way to avoid the collapse of justice in many countries during the pandemic. As pointed out in the ILAC report “Justice in Times of COVID-19: Challenges to the Judiciary in Latin America and the Caribbean”, digital justice tools are now a reality and needs to be expanded and improved while the digital gap must be minimised so that due process and fair trial rights are satisfied and access to justice on all matters is guaranteed.³⁶

While the COVID-19 pandemic has pushed the digital revolution onto justice worldwide, nearly no transitional or conflict-affected states have the resources to guarantee that justice operators and justice seekers have sufficient and secure connectivity to the internet, proper equipment or IT skills to take judicial proceedings online forward. For GBV survivors living in conflict-affected settings, digital justice is not enough to close the gap of the decrease in in-person legal aid services during the pandemic. Additionally, the levels of illiteracy and lack of reliable electricity in many of these settings are hindrances for GBV survivors to access justice in times of e-justice. This does not mean that investments on digital justice in transitional and conflict-affected contexts are to be dismissed. On the contrary, the future of justice for GBV survivors and prevention against GBV crimes in these settings will also need to include basic e-justice, such as mobile applications to speed the management of GBV crime cases and to provide online legal aid. However, it must be accompanied by an inclusive digitalisation process, legal reform to include laws that aim to eliminate GBV, trainings and awareness-raising of the entire chain of justice – from judges to customary justice chiefs, from police force to healthcare workers – aimed at countering gender stereotyping, victim-blaming and other harmful practices as well as empowerment of grassroots women survivors.

Empowerment of legal professionals, especially by increasing the representation of women and other minority groups in all areas of the legal profession, and strengthening justice institutions to deal with GBV cases need to be prioritised. More women, persons with disabilities, people who identify as LGBTQI+ and other minorities in the legal profession and in decision-making positions can bring more perspectives on how to deliver justice and be more reflective of the diversity of people’s justice needs. Actors within the justice system need to understand the gendered power dynamics behind GBV crimes and provide justice to survivors through a survivor-centred approach. Legal professionals are a product of their environment, and if they do not view GBV as a crime or do not understand how to apply GBV laws, the obstacles for GBV survivors to achieve justice will remain.

A gender-responsive legal framework, training aiming to change attitudes and behaviour towards GBV and a digital justice revolution need to happen all at once in conflict-affected and transitional settings. As it is well-known, not even the strongest democracies are on track to achieve gender equality by 2030 as set by the Sustainable Development Goal 5 of the 2030 Agenda.³⁷ Not in one single country in the world do women and men, girls and boys have the same voice and opportunities, nor has

gender-based violence been eliminated. The pandemic is an enormous setback to attaining gender equality. An improved system to combat and punish GBV crimes must be placed at the centre of recovery policies of any crisis. The COVID-19 pandemic is no different.

Conclusion

It is high time for rule of law actors to take the GBV pandemic seriously and find solutions to address it. Increased investment on justice (non-digital and digital) and gender equality initiatives will be key everywhere. Securing Sustainable Development Goal 16 on Peace, Justice and Strong Institutions will be the bedrock to achieve Sustainable Goal 5 on Gender Equality in the post-pandemic reality in conflict-affected and transitional settings. The COVID-19 pandemic is a time to look for creative and gender-responsive solutions that work immediately but is also an opportunity to build on lessons learned of past crises to rethink how the justice system shall address GBV crimes more effectively and efficiently. Strengthening justice institutions in tandem with empowerment of female legal professionals, legal public education on GBV along with investments on digital justice and gender equality programmes are all an integral part of this process.

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About the Authors

Linn Häggqvist, Programme Officer at ILAC.

Vanessa Passos Araújo, Programme Officer at ILAC.

The views and opinions expressed here do not necessarily reflect the views and opinions of all ILAC members.



ILAC Secretariat
Stockholmsvägen 21,
SE-122 62 Enskede, Stockholm, Sweden
Phone: +46 (0)8-545 714 20 info@ilac.se
www.ilacnet.org

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