



# *making justice democratic*



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**Making Justice Democratic** was a two-day seminar organised by One World Action in London in June 2001 as part of our Policy Change Programme, Local Democracy and Service Provision.

The aim was to explore how the poorest and most excluded communities can get access to justice that is appropriate, gender-sensitive and accountable, can enjoy personal safety and security for their property, and exercise their full human rights. We wanted to contribute to the thinking of DFID, the EU, NGOs, other donors and relevant UK bodies. We also wanted to strengthen networking among those interested in democratic justice.

Some 40 practitioners took part, from Bangladesh, Europe, India, Jamaica, Kenya, Nicaragua, Pakistan, South Africa and Zimbabwe. They were joined by representatives from the UK Department for International Development (DFID), NGOs, research institutions and community-based organisations.

In first-hand reports from around the world, presenters focused on issues concerning access to democratic justice faced every day by some of the poorest and most marginalised women and men. The presentations and discussions explored the issues of access to and accountability of justice systems to the poorest people, from a gender perspective, and shared information on useful approaches, initiatives and strategies from South and North.

Discussion of local issues was set firmly in the context of international human rights conventions and laws in order to explore how these can be used to defend the rights of the poorest people.

We hope that this booklet based on the seminar will make a useful contribution to thinking, policy making and practice on making justice democratic.



## introduction Helen O'Connell One World Action

Making justice democratic for the poorest women, men and children involves understanding the links between access to justice under the law and the wider issues of social and economic justice.

Safety and security are concerns shared by all people, North and South. Class, gender, race, age, other social factors and rural or urban location all affect people's access to justice. The poorest people are more vulnerable to crime, personal assault and theft or damage to their property. They lack access to sensitive police protection and justice systems. Those from ethnic minority groups are often victimised because of their status. The poorest women, regardless of social status or other social differences, enjoy little personal safety and face the ever-present risk of male violence in the home, community, workplace and wider society. The poorest people suffer disproportionately from inadequate justice systems.

### *Inaccessible justice*

Most justice systems have an in-built bias towards serving the needs and interests of the richest and most powerful members of societies. They have very little legitimacy with the poorest communities and inspire little confidence or sense of security. Stories about corruption in the police and judiciary do little to alter this perception. For the most part, justice systems lack accountability and transparency and are unrepresentative of the diverse communities they purport to serve. These institutional shortcomings are unchallenged by poor people's low awareness of their rights, and what alternatives exist for seeking justice.

In many Southern countries, for example, Bangladesh and Malawi, there are parallel systems of justice: the formal and the informal or customary. Neither is fully accessible to the poorest women and men. To those seeking justice, the formal justice system presents many logistical and practical barriers, such as cost, location of the court, lack of mobility or transport, and language. Time is another factor: it can take anything from weeks to months to pursue a case through the system. The alien nature of the institutions themselves and their arcane procedures do not enhance accessibility. There are other problems which particularly

inhibit women's access to justice. Specialist courts that deal with the issues of most interest to women, such as land, inheritance, divorce and child maintenance, are few and far between. There can also be a shortage of competent personnel, and little integration with other services, like education, welfare and health. The adversarial nature of the court process can be particularly off-putting for women, many of whom prefer extra-judicial dispute settlement mechanisms. In general, it would seem that many women are more willing to use the law to protect their children's interests rather than their own: protecting children is easier to legitimate than protecting oneself<sup>1</sup>.

The informal system and alternative dispute resolution processes can be inaccessible, also, and have problems of impartiality, independence and accountability. The lack of formal recognition of the informal justice system, and the absence of effective interaction with the formal system further undermines the informal system's legitimacy and accountability. As with the formal system, poverty and powerlessness shape access. The informal system is imbued with the social norms and values of the dominant patriarchal culture which perpetuates discrimination against women, the poorest people and minority groups; it can be extremely difficult to challenge this culture. In addition, the roles and procedures of the informal system are ill defined with little consistency from one place to the next, and there are few women adjudicators.

The family itself is a potential barrier to justice. Male relatives can deny women access to systems of dispute resolution and prevent women from going outside the family to seek redress. Even where the complaint is not against a family member, the lack of family support and family dependency can hamper ability to obtain justice. Fear of exposure and the knowledge that redress will not be forthcoming are other deterrents to seeking justice. There is a related problem of people's inter-dependency, particularly in rural areas. As someone asked: 'If I am economically dependent on the local chief, how can I make a complaint?'

One of the effects of a weak legal system is that women and men aggrieved by legal measures that run contrary to constitutional principles or to other laws are not able to access effective remedies to redress the violation of their rights. This is especially critical for women, but as well as considering the needs and interests of women, there is a need to engage with the issues of masculinity and male identity, both in the civilian population and in the police and judiciary.

Many of the legal problems that women face are generated within the private space, the family, and this is also the preferred space for dispute resolution. This contradiction has implications with respect to reproducing inequality and reinforcing women's traditional low status. Outside of the family, the systems of justice which are most accessible for women are also those which are the most gender oppressive. There is a wider irony in that the least accessible superior courts are the ones better resourced than the more accessible lower courts which are grossly under funded.

### **Transforming justice**

A dramatic shift is required to open justice systems to meet the needs and interests of the poorest and least powerful. There is a debate about whether it is best to influence change by working within traditional/customary systems, or try to superimpose other systems on them. There is a strong argument for working to improve informal justice systems, as these at least are near and more affordable, while at the same time working to transform the formal justice system to make it more democratic (accessible, appropriate, affordable, accountable) and expand its coverage. This sort of transformation will require action on many fronts.

Building accountability is linked to the issues of funding, administration, training and representation. An efficient and well-run justice system inspires confidence. As in other areas of service delivery, there are political choices to be made about priorities and the allocation of resources, and also about standards and monitoring. The more representative the institutions are, the greater the legitimacy, and therefore trust and confidence between service providers and citizens. It does matter who the agents of justice are

– whether they are rich or poor, men or women, black or white, young or old. All institutions of justice and the related agencies need to be much more representative of the communities they are serving; that is public face of accessibility. The low level of women's representation needs to be tackled in particular. A more democratic justice system is a product of democracy and also a tool to enable democracy. International instruments and agreements can be useful advocacy tools for standardising justice delivery.

The policies, and actions, of several government departments and services, notably, health, education and welfare, have an important influence on the accessibility of justice. Raising awareness and understanding of the linkages between social and economic rights and political, civil and cultural rights is vital to inspire and strengthen 'joined-up' thinking at the policy level. Important factors here are culture, attitudes and expectations: of the perpetrators, the victims, personnel in the justice system, as well as teachers and welfare workers. Training is essential for all the relevant officials and agencies to make them more responsive to community needs and able to deliver integrated actions, for example around crime prevention, victim empowerment and law enforcement. Even good laws can be ineffective in the hands of reluctant or incompetent officials.

Law reform is an essential, though not sufficient, component of democratic justice. Discriminatory laws across the whole spectrum of areas from property to marriage must be reformed if justice is to be equitable. Laws are rarely neutral or blind to social differences, such as gender or class, but even seemingly neutral laws can be interpreted and enforced differently. Ratification of international conventions can provide a stimulus to law reform.

Awareness and understanding of one's legal rights and the institutions of justice are fundamental to building a sense of entitlement and improving security and access to justice. The poorest women and men who are most likely to suffer infringements of their rights are also those most likely to have a poor grasp of their rights and how to obtain justice. Linked to this is

the issue of educating men about women's human rights, and raising men's awareness about masculinity and the issues of violence against women. This has to be a vital element of any successful public legal education programme.

A vibrant civil society is important in building pressure for change but also monitoring changes in progress. The importance of advocacy and lobbying work cannot be overstated, and thus strengthening civil society and developing social movements, particularly of the most marginalised, is an important part of any strategy for democratic justice. Community activism can play a vital role in empowering women and men from the poorest communities to speak out for themselves and challenge the barriers to justice.

### **In conclusion**

Access to justice has been on national and international agendas for decades. Working alongside Southern governments, donors have supported a wide range of programmes aimed at strengthening the rule of law and respect for human rights. Civil society organisations have pioneered innovative projects. Others have campaigned vigorously against violence against women. Much has been achieved, yet mainstream justice systems everywhere remain largely unchanged, hierarchical, and prone to bias. Much remains to be done to transform them, make them accountable, accessible, gender- race- class- and youth-sensitive, and to ensure that bad laws are changed and good laws are enforced.

<sup>1</sup> Fareeda Banda, Using International Human Rights Treaties at the domestic level, paper prepared for Making Justice Democratic seminar, June 2001



# 2

## justice in reality - voices from South and North

*Justice delivery falls short on many counts. A gap exists between the letter of the law and what happens in custom and practice. Social inequalities separate the users of the justice system, particularly the poorest, from its providers and administrators and thus hamper equitable access. Little knowledge of legal rights also makes it difficult for the poorest women and men to use the justice system. On each of these counts women experience added disadvantage. Research carried out in Southern Africa shows that both the formal and informal justice systems pose obstacles for the poorest women. There are a number of contradictions: the least accessible higher courts are those with most staff and financial resources; and the most accessible forum for dispute resolution is the family, but most legal problems women face are related to family matters.*

*Eliminating the social barriers that prevent the poorest women and men from accessing justice is one of the approaches adopted by civil society organisations in Bangladesh. One such organisation, Nagorik Uddyog, is working to transform the traditional mediation structures while at the same time raising women's awareness of their human rights. The Centre for the Study of Violence and Reconciliation in South Africa takes a different approach: it organises public campaigns to draw attention to violence against women and girls and obtain changes in the law, and ties this in with training for the police. Collaborating with the police to set up women and children's units in police stations has been a successful strategy of Grupo Venancia, a women's organisation in Nicaragua. Raising women's awareness of their rights is complemented with training for police. The 'Hard to reach and female?' project in the UK, also a collaborative effort, set out to bring women's experience and needs to those in power. Herbert Gayle from Jamaica introduced another dimension of the links between gender and justice. While not denying the existence of domestic*

*violence, he points out that violence in Jamaica is predominately a male-on-male phenomenon. Policy-makers, he argues, must pay attention to the situation of young black males from poor urban communities.*

*The importance of raising men's awareness of violence is widely accepted. Women's organisations dealing with violence usually create women-only spaces, but many are now recognising the need to work with men and are supporting emergent men's groups.*

### **Gendered dynamics in accessing justice in Southern Africa**

*Sara Mvududu Women and Law in Southern Africa Research and Educational Trust*

Recent Women and Law in Southern Africa (WLSA) research in Botswana, Lesotho, Malawi, Mozambique, Swaziland, Zambia and Zimbabwe investigated the gendered nature of people's access to justice, looking at both formal and informal justice delivery systems. The informal justice delivery system is defined as including the family, political party structures, village head/kraal head courts, and chiefs' courts.

The research confirms that there is a social distance between poor, particularly women, users of the justice delivery system, and providers or administrators of the system. There is a gap also between written statutes, people's perceptions, custom and actual practice. Even when women know their legal rights and are prepared to use the formal judicial system to exercise them, certain factors prevent or discourage women from doing so. These include inaccessibility of courts, cumbersome administrative procedures, the language used in court, the insensitivity of court personnel and other agents, conflict between laws, and limited knowledge of what legal aid is available.

### Customary and other sources of law

Plural legal systems are the norm in all the WLSA countries, and family law is typically governed by African customary law and religious laws. The justice delivery system in these countries reflects the colonial legacy of the imposition of European and English Common Law on indigenous systems, and it seems to be in the interests of the ruling elites that it stays this way. There is a 'legacy of confusion' resulting from this imposition and attempts to standardise the law. This is apparent in WLSA studies of inheritance, which show that the official version of customary law has little relevance to people's everyday lives. Pluralism results in conflicting laws, and it is not at all clear what women's actual status is in law.

Customary law often applies to many matters that concern women, such as marriage, divorce, the status of widows, child custody, legitimacy, adoption and property ownership. Except for Lesotho, it is not codified or written. Women suffer discrimination because of the non-uniformity of marriage and divorce laws, customary property laws that favour men's ownership of land, violence, and unequal access to education. If their marriages are not legally valid because they are not registered, women are unlikely to seek redress through formal courts. In divorce cases, customary law favours men in fights over property. Customary practice, for example in Mozambique, that used to award child custody according to whether an ethnic group was patrilineal or matrilineal has given way to custody decisions based on the child's best interests. Other variations in customary law pertain to marriage, property, land and women's right to physical integrity.

### Women's legal status

Laws relating to women's legal status are important because they reflect social attitudes that affect women's access to justice. The law is an important empowering tool for achieving rights and access, but various legal obstacles block women's access. These include laws that appear to be neutral but may be interpreted in different ways; laws that are potentially discriminatory because of what is left out; and laws that are ineffective because those who apply them refuse or are unable to apply them. If people are

ignorant of the law, it becomes ineffective in practice. Women in particular suffer from this lack of knowledge.

Many laws that are apparently gender neutral still perpetuate discriminatory practices. WLSA research shows that equality under the law does not automatically translate into actual equality. There are many examples of anomalies between gender neutral constitutions and discriminatory personal and customary law, for example, Lesotho, Zambia and Zimbabwe. By contrast, Malawi has clear provisions for gender equity in that customary law is subject to the bill of rights.

### WLSA's approach

Many organisations working on women and law issues operate on the assumption that changes to the letter of the law will end discrimination against women and create access. WLSA's approach is different. Recognising that laws discriminate against women on different levels, WLSA's approach is to divide the operation of the law into three components and see how each may discriminate against women. The three areas are the substantive (content of the law), the structural (problems with the courts, enforcement and administration) and the cultural (shared attitudes and behaviours towards the law).

The combination of these three forms of discrimination have effects on women which range from denying access to land and therefore food security, to denying an individual woman a right to an identity outside her family. Discrimination by and through the law perpetuates women's second class status in many ways, and ultimately denies them a role as full citizens in civil society. Poverty exacerbates this.

### Existing mechanisms for justice delivery

The availability and efficiency of formal legal institutions affect access to justice. No matter how gender sensitively the law may be phrased and how well people have knowledge of their legal rights, the full benefit of such laws will not be fully realised if the structures which administer such laws are inadequate and ineffective. An important linked point is that women are more likely to consult informal or traditional structures.

In Southern Africa there is a range of judicial services including the family, traditional local courts (such as Chiefs and Headmen's Courts), and community courts. In reality, because of women's low standing and status, their problems tend to be confined to the family space for their resolution and families have traditionally mediated and settled a range of disputes. But patriarchal systems are inherently biased against women. Moreover, as poverty deepens as a result of structural adjustment and the HIV/AIDS crisis, this has led to family breakdown. The family is unable to honour its obligations and provide mediation and dispute resolution. It is more concerned with survival, and even an abuser may be tolerated if he is the main breadwinner. Most women rely on accessing resources through the family, especially male relatives, and have to maintain warm relationships within families.

Women are the majority of clients in the community court system, but many local court justices are poorly paid with little or no access to the relevant pieces of legislation to guide them. In Malawi, for example, the local courts do not have statute books on the laws of the country.

Alternative dispute resolution mechanisms exist. Social welfare departments and municipalities in urban areas and mining towns deal with certain disputes, for example housing disputes or child custody, but are usually hampered by inadequate resources. District commissioners also deal with disputes. NGOs, churches and doctors are also part of the justice delivery system. Here again resources and capacity are limited.

People have very limited access to the formal justice system. Magistrates, high and supreme courts are physically far away and prohibitively expensive as legal charges and lawyers' fees are beyond most peoples' means.

There is very little communication and co-ordination between the informal and formal justice systems: case law is not applied and similar cases are treated very differently. One of the important effects of a weak legal system is that women aggrieved by legal measures that run contrary to constitutional principles or to other laws are not able to access effective remedies to redress the violation of their rights.

### Strategies for transforming the justice delivery system

Advocacy work on and about laws made on behalf of women is an important way of raising political consciousness and improving policies regarding family, women and children.

### Recommendations

- Recognition of the critical role played by traditional courts
- Support to institutions, e.g. police, legal aid departments
- Setting a minimum set of standards
- Gender sensitisation for justice system personnel
- Simplifying court procedures
- Improvement/standardisation of services at all levels
- Small claims courts, as in Zimbabwe
- Local family courts
- Remedying the lack of a unified court structure system
- More human and financial resources.

### Conclusion

Access to justice from the formal system is very limited to the majority of the people due to lengthy bureaucratic procedures, high cost, the limited number of judicial service structures at the local level, the limited staff and the hierarchical and centralised nature of the system. Poverty is a major barrier to access to justice, particularly for women, as are low levels of education and knowledge about laws and legal rights.

Most of the problems that women face, are generated within the private space, the family, and this also is the preferred space for dispute resolution. This contradiction has implications with respect to the reproduction of inequality and reinforcing the women's traditional low status. The irony of the whole justice system is the fact that the least accessible superior courts are the ones better resourced than the more accessible lower courts which are grossly under funded.

## Improving access to justice for women and the poorest people in Bangladesh

Zakir Hossain Nagorik Uddyog (Citizens' Initiative)

For generations, people have been using the informal justice system because the formal one could not ensure their access to justice, and it was beyond the reach of most disadvantaged and poor people. Though the law is changing, ensuring access to justice is still a 'far cry' for millions. Institutional and social reforms are necessary to lay the foundations of a new judicial order and social change, and to raise awareness of injustices such as gender disparity, unequal control of resources and institutional barriers facing the poorest and women.

The question of accessibility raises a broad range of fundamental questions, such as the meaning of justice for the masses and how we are to eliminate the social barriers, which prevent poor women, men and children from getting into the legal framework to redress their grievances.

### Nagorik Uddyog's approach

Nagorik Uddyog (NU) is an NGO that emerged as a citizens' initiative in 1995. It supports local democracy through voter education (for example using folk theatre), development of grassroots women's leadership and promotion of alternative dispute resolution. It is trying to develop people's legal awareness, provide legal aid, build 'watchdog capacity', settle disputes using the principles of equality, and sensitise community leaders. Its goal is to strengthen democratic traditions through the civic and legal education of rural people. It is hoped that once citizens are educated, they will be able to create their own agenda. The work is all about creating enabling conditions.

NU believes that democratisation of the justice system should start at grassroots level through transforming and democratising traditional mediation structures, and linking them with the formal justice system. This process is in turn linked to the democratisation process in Bangladesh.

In rural villages, a system of non-formal dispute resolution, Shalish, is popular and legitimate. Shalish is used to adjudicate cases involving everything from marital discord to property distribution and access to common resources. The system plays a very important role in ensuring acquiescence to prevailing moral codes of conduct upon which rural society is based. Democratisation of Shalish would help emerging institutions to protect women and the disadvantaged, within the framework of Bangladeshi law.

### Women's access to justice

NU has implemented a women's access to justice programme, in order to redress some of the injustices which local women brought to its attention. One complained about not being able to get justice in the village, yet she could not afford to go to court. Another, for example, complained that her husband had married for a second time without her permission, and though she had gone to a family court, it had not delivered a result in three years. NU decided to take action to improve legal awareness and to make public life more appealing and accessible to women.

NU is raising women's awareness of their legal and human rights through workshops, mediation committees, para-legal training for field workers and community mobilisers, monitoring of Shalish judgements, and by strengthening the capacity of women's groups. Educating and empowering women goes hand in hand with educating men, sensitising elected representatives and community leaders, and motivating men to work with women in challenging patriarchy and gender disparity. The message is: these practices demean women and pauperise. Community workshops have given villagers an insight into family laws and women's human rights, and challenged preconceived ideas. Now more village women are raising their voices and asserting their rights.

This work links to voter education, and has led to greater female participation in elections. It has also been important for NU to help construct a public sphere for women, so that women can voice their concerns openly without men interfering. The basic premise behind constructing a public sphere for women is the idea that, in a democracy, the right to speak up, argue or testify is an

inalienable right. No one has the right to take that away through intimidation.

Strategies include creating women's leadership in all social spheres, in the belief that women have a key role to play in improving their own human rights position as well as that of their community. Lack of knowledge undermines the existing framework of laws that protect women's rights. NU also offers free legal aid to its clients, mainly women, and provides legal aid training to small groups of women in its project area. These courses do not simply offer information. They also provide a forum for women to discuss their problems and concerns, and therefore play an important role in creating community-based support groups for poor women.

### Lessons learned

NU has drawn some lessons from its work. Firstly community judiciaries with local jurists should be set up, linked by legislation to the formal justice systems; secondly, international human rights conventions and covenants, and those aimed at strengthening local democracy, must be integrated into legal education at grassroots level; and thirdly, human rights education should be promoted holistically across society.

NU has consistently argued for the importance of re-orientating the traditional justice system, not just as a mechanism for dispute resolution but because social mobilisation around these informal institutions can pave the way to social change and democratisation. Democracy is the pre-requisite for making justice democratic.

## Justice, democracy and gender – lessons from South Africa

Kailash Bhana Centre for the Study of Violence and Reconciliation

The Gender Unit of the Centre for the Study of Violence and Reconciliation (CSV) undertakes research aimed at understanding the causes and effects of gender-based violence. The three projects described below highlight its approach.

Violence against women in South Africa has reached unprecedented levels. However, no police statistics are available for domestic violence because there is, officially, no such crime. Studies have reported rape figures of 1300 per 100,000 women<sup>2</sup>. But many women do not report rape for many reasons including fear of being disbelieved, fear of reprisal and intimidation, shame, or the fact that they know the offender (see 'Challenging secondary victimisation' below).

### The Justice for Women Campaign

CSV's Justice for Women Campaign aims to secure the early release of women imprisoned for killing their abusive partners. The effect of years of abuse upon these women was not understood or fully taken into account in sentencing. The campaign focuses on five women, jailed for between 15 and 21 years, who have exhausted all the legal remedies open to them.

The issue was set in the framework of international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), which South Africa has signed, and regional initiatives to combat violence against women and children. Some argue that the ICCPR and the Universal Declaration of Human Rights (UDHR) can be interpreted to include domestic violence and that the state is responsible for preventing such abuse. Under these and other international conventions, states are legally obliged not only to refrain from committing human rights violations but also to take affirmative action to protect individuals from human rights violators. The state clearly fails to prevent domestic violence and may be obliged, by these statutes, to go further, and create structural remedies for

domestic violence. States may be obliged to provide special, as well as equal, protection for women. International law can be a potent instrument for change in domestic law. State failure to prosecute, convict and protect the victims of such crimes constitutes gender-based discrimination which is prohibited by the ICCPR and other international statutes<sup>3</sup>.

South Africa's constitution treats violence against women as discrimination against women, or an infringement of the right to equality on the grounds of sex and gender. Equality is a core value of the constitution. New legislation<sup>4</sup> passed in 1993 and 1998 provide legal remedies open to women, however, there are still shortcomings of domestic law and state approaches to domestic violence.

The Justice for Women Campaign advocates using existing common law defences for women who kill their abusers, rather than incorporate 'battered woman syndrome' into South Africa's criminal law. The syndrome is inappropriate as a defence because it perpetuates and relies on the stereotype of women as passive and helpless.

As for the women at the centre of the campaign, reducing the sentences of women who have killed abusive partners would be one step towards addressing the gendered imbalances.

### Links between HIV/AIDS and violence against women

The unit is investigating links between two South African 'epidemics': HIV/AIDS and violence against women. Evidence shows that HIV/AIDS is leading to a rise in violence against women. The two epidemics may be converging in new and lethal ways. Yet responses to both phenomena remain split, and initiatives typically run parallel instead of being complementary. The Gender Unit set out to identify and describe gaps in current initiatives, and to distinguish those that can be built on and strengthened.

A number of important observations have been made. Firstly, concerns about rape have driven policy and legislative responses to HIV/AIDS far more than concerns about other forms of violence

against women. Secondly, women in abusive relationships (who may be unable to negotiate safer sex) are not taken into account in state and NGO responses. Thirdly, studies focus on violence as a precursor to or consequence of infection, but fail to consider the impact of violence upon the progression of HIV and the care/treatment of infected women. Fourthly, women's greater susceptibility to HIV results from biological and social factors, to which violence must now be added. Finally, HIV infection is a factor leading to rape, for example, the belief that sex with a virgin can cure HIV/AIDS is widespread, and younger girls are being targeted.

By failing to take women's greater vulnerability to HIV infection into account when designing programmes around HIV, organisations and institutions are further contributing to women's vulnerability.

The South African government has explored some measures to respond to violence against women and HIV/AIDS, but gaps remain. CSVr has outlined the implications for the criminal justice system in responding to HIV-positive women and made a number of recommendations, including, developing and implementing standing orders, and training on HIV, for police on the treatment and handling of rape survivors who are HIV-positive or at risk of HIV-infection.

### Challenging secondary victimisation

Challenging secondary victimisation of rape survivors in the community and criminal justice system is another programme of CSVr's Gender Unit. Only 1 in 20 to 1 in 36 women in South Africa report being raped because they fear how the justice system will treat them. In an attempt to reduce secondary victimisation, and improve community access to the justice system by empowering rape survivors to participate in the justice process, CSVr and police partners launched a project to train police investigators of family violence and sexual offences. A second component of the project trains community members and organisations that deal with violence against women.

Both training programmes highlighted the fact that certain women are most vulnerable to secondary victimisation on grounds of

lifestyle or age. There is a widely held belief that certain women are complicit in their own victimisation, for example, police tend not to believe rape reports by teenagers, sex workers, lesbians, women who were drunk at the time of the rape, and homeless women. As a result of being disbelieved, they find it very difficult to access justice. An independent evaluation of the training found that community workshops held in five provinces had had 'a remarkable impact', and changed both behaviour and attitudes.

In conclusion, the Gender Unit has adopted a highly successful strategy of partnering with relevant stakeholders and sharing information that has led to community members being in a stronger position to access the justice system.

### Access to justice from a gender perspective

Bego Gonzales Grupo Venancia, Nicaragua

Grupo Venancia is an organisation working in feminist popular education in northern Nicaragua. It began in 1991, when hundreds of women's groups were emerging after the defeat of the Sandinistas in the previous year's elections. It facilitates the processes of empowerment and organisation of other women's groups, and is active in several major women's networks.

Grupo Venancia's objectives are to help develop a critical analysis of power relations and the construction of women's subjugation, based on the many different realities of Nicaraguan women, enabling discriminatory beliefs, attitudes and practices to be transformed. It sets out to strengthen the individual and collective leadership of women of all ages and to promote a culture of equity, diversity and human creativity which contributes to eliminating prejudice, and to the visibility and appreciation of the value of women. It also seeks to improve its own synergy and quality of work through institutional development, empowerment and the personal growth of all its members.

### Women and children's units

One very important part of Grupo Venancia's work is on women and children's units in police stations. This involves training and awareness-raising of female staff and women police officers, carried out by Grupo Venancia in partnership with other NGOs.

The first unit was set up in 1993 in the police station in Managua's District 5. There are now five units, in the Department of Matagalpa, and in the Waslala, Mulukuku, Matagalpa and San Ramon municipalities. In five years, 1224 cases of family and sexual violence have been reported. Of these, 51 per cent were cases of family violence, 46 per cent involved sexual offences, and the rest were minor offences. One result of setting up the units is that both citizens and government pay more attention to the issue of violence. There are now five units in the Department of Matagalpa.

The units form a network of specialised integrated services and support around family and sexual violence, based in police stations and civil society organisations such as Grupo Venancia. They are part of the national police force, and facilitate access to justice for victims and survivors of family and sexual violence. Set up in response to the Women's Movement's demands to the Nicaraguan government for action on family and sexual violence, they represent the first steps towards honouring commitments made under the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Girls and Boys (ratified by Nicaragua in 1995).

The training of the units' women staff and women police officers has covered such subjects as, national laws, legal processing of sexual offences, conflict resolution, crisis intervention, forensic medicine, sex and gender, self-help, self-esteem and well-being, as well as, the institutional framework of the units. Grupo Venancia also does training in mental health and psychological assessment, and follows up women who report cases to the units and the progress of the cases themselves.

The steering committee of the units is made up of members of the National Network of Violence Against Women, which contributes to

awareness-raising and the drive to get violence against women and children on the public agenda. The women's movement as a whole has been the driving force behind the units, and played a vital role in mobilising civil society to put pressure on the government.

### Networking

Grupo Venancia and other NGOs working on violence against women and children saw the need to set up a Co-ordinating Committee in 1994 (this subsequently became the Executive Committee and is now renamed the Regional Committee). Among other functions, it secures funding for police training and undertakes publicity which has led to a steady stream of cases being reported. It took on this work because of a lack of will by the state, particularly the legal system. Also, there was a need for regular training, more publicity to raise awareness of different forms of violence, lack of follow-up of cases reported to the units and lack of proper referrals to specialised services and support.

As part of the Matagalpa Women's Network, Grupo Venancia is doing permanent case monitoring and playing a vital role in denouncing, and raising awareness of, bribery, corruption, lack of transparency and the lack of access to justice faced by women victims of violence.

In the Network of Women in Northern Nicaragua, Grupo Venancia is trying to support the need for a refuge for abused women, and for women who come in from rural areas in order to gain access to the legal system.

Grupo Venancia's six-year apprenticeship in this women's struggle has taught them to have regard for the Women's Movement's role in awareness-raising and as a force behind laws and public policy that benefit all women. The local networks and the National Network of Women Against Violence have enabled organised civil society and women in particular to denounce the lack of appropriate services and other support mechanisms, and put pressure on the government to assume its role and responsibilities.

### Hard to reach and female?

*Ann Todd* Consultant to the Women's National Commission's 'Hard to reach and female?' Police Project, UK

The Women's National Committee (WNC) is a non-departmental, government body representing some 250 partner organisations in the UK which represent women or have a strong interest in gender. It acts as a bridge between the British government and NGOs, and is therefore a bridge into civil society. Its purpose is to represent the views of women to the UK government. It was founded some 30 years ago.

The 'Hard to reach and female?' project was set up by the WNC to bring women's experience and needs to those who have power and influence, in order to influence policy, particularly with regards to access to the criminal justice system, from the point of view of women who need the protection of that system. The phrase 'hard to reach' means that part of the UK community which is perceived as difficult to reach by state agencies. The project has concluded that they are probably more 'hard to hear' than 'hard to reach'. The police authority concerned was very aware that it could not see what was going on in some of those communities. The project set out to answer a number of questions including: what are women's experiences of the police service? In what circumstances would women from these hard to reach communities go to the police? And what are these women's expectations?

The project involves collaboration between the private sector (Todd Consulting), the public sector (Thames Valley Police), the voluntary sector and the WNC. Thus the project involved a range and mix of values, and differences of approach.

### Outputs of project

So far, the outputs are a report representing the authentic voices of women, talking about their experience and expectations of the police. There has been no filtering of these voices. The report will be sent to the Thames Valley Police, the Home Office (which provided some funding), the Greater London Authority and through it to the Metropolitan Police Authority, Metropolitan Police and WNC partners and friends who include members of government. The second output is informal: the positive experience of the participants. In talking to women, it undoubtedly helped that we were not police officers or government officers. It undoubtedly helped that we were women. It probably also helped that we adopted an approach of talking to rather than talking at. The feedback was very positive. The project is proud of the fact that it may, in the process, have encouraged some groups of women who are relative newcomers to the UK to become part of the civil process.

The Thames Valley Police are to be congratulated in being proactive, in going out and consulting a group that most police forces have ignored, avoiding the temptation to find quick solutions, and allowing the women's voices to be heard.

### Key points from the study

The project talked to 'every woman' - all ages, classes, income levels. The communities in which these women live are widespread and frequently predominantly composed of women. Women's key concerns are domestic violence, personal safety and the civility of society. The conventional criminal justice approach does not work with regard to complex and long-term problems such as domestic violence and stalking; it is best to use expert groups instead. Women experience big contrasts between the 'front desk experience' in a police station and specialist units, and individual community officers. This experience includes being patronised, stereotyped, listened to after a man, and taken more seriously when you have a rank. There is also a great deal of police inconsistency. The closure of police stations, their hostile environment, low numbers of police in London are other problems women experience. Police stations are hard to find. When you find them, they are hostile places. The researchers

were told about women having to stand out on the street after being attacked because they were only allowed into the police station one at a time.

The study shows that gender is the main determinant of women's experience of the police, irrespective of their socio-economic class, cultural background or race. New entrants to the country are often simply uninformed about the protections available to them, and how things work. Police are very often uninformed about who these new groups are and how they should talk to them. The police seem to be somewhat reactive in their response to the community. They will talk to the young men who are throwing bricks at them. Why are they not talking to the women in these communities: the wives, the daughters, the sisters and the girlfriends? Talking to women is the also the best way to find out women's views on culturally specific practices regarded as unacceptable to the set of values expected of individuals in the UK.

Despite their experiences of the police, women in these communities are surprisingly positive about the police and sympathetic to the problems the police face. Sometimes they need the police literally to save their lives. They are the natural supporters of the police because they want society to be civil and they need their protection. The report contains many suggestions as to how the police can deliver better services.

2 Jewkes, R, Penn-Kekana, L, Levin, J, Ratsaka, M and Schriber, M. [aidacons@global.co.za](mailto:aidacons@global.co.za) (1999). "He must give me money, he mustn't beat me" Violence against women in three South African Provinces. Pretoria: CERSA (Women's Health) Medical Research Council.

3 Also, the Declaration on the Prevention and Eradication of Violence against Women and Children, drawn up by the Southern African Development Community (SADC) and signed by South Africa in 1998, obliges the state to protect victims and eradicate gender bias in the legal system. Domestic violence is gendered, and constitutes gender inequality.

4 The Prevention of Family Violence (Act 133 of 1993), and the Domestic Violence Act (116 of 1998)

## Poverty and violence - the need for a male focus in urban Jamaica

Herbert Gayle University of Wales, Swansea, and Jamaica

The rapid post-war development of Jamaica has largely bypassed a significant percentage of the population, including the most 'powerful' group in the country – young black males from poor urban communities. This helps to explain the high levels of out-migration and violence, which put Jamaica in the top ten of the world's most violent countries.

Homicide rates are highest in Greater Kingston, which is home to just over a third of the whole population. Within the capital, violence is concentrated in the most densely populated areas. Some communities outside the centre, where crime and violence are also rife, share similar characteristics to the inner city. These include dense population with a majority of people under 30, high unemployment, low education, poor housing, poor sanitation and infrastructure.

Before the late 1970s, Kingston was a relatively safe city. General elections in 1980 were characterised by violence, with youths being used as mercenaries by the two main political parties. Many people died, others fled the country. Another crisis followed when young men began returning en masse from about 1995 onwards (many deported largely for crimes committed overseas) as Jamaica did not have the resources to cope.

Without wishing to ignore domestic violence, the fact is that violence in Jamaica is predominantly a male-on-male phenomenon, involving men under the age of 30. Young inner city males are also the group most likely to be killed by police. There is a terrible irony here: we are now able to appreciate how it is possible that, in a middle income island paradise with one of the highest life expectancies on earth, five per cent of its population, overwhelmingly males, cannot expect to live to see age 40. For young men in the inner cities, life is an oxymoron: sorrow and death in the land of sunshine and long life.

Academic studies have flagged up the marginalisation of the black Jamaican male. Unfortunately, politicians failed to take note.

Other studies have showed that Jamaican women are much better educated than men, and women from the lowest social classes are more likely to be upwardly mobile than their male counterparts.

The problem of male criminal, educational and sexual behaviour is clearly linked to the construction of masculine identity. Many young men are frustrated by demands made upon them that they cannot meet. Lack of education and skills makes it difficult for them to find jobs and provide for their families. If they cannot provide, women call them 'half men'. They are expected to earn an income at any cost and this often leads them into crime in a search for respect and economic survival. But because inner city youth gets drawn into criminal activities and groups which make him primarily 'most dangerous to himself', the state ignores his plight. Its response to violence is to target police inefficiency and build more prisons, rather than focus on how to give this group a reasonable quality of life and human dignity.

There is a strong link between the illegal drug trade and the importation and use of guns by young men. Inner city youths see guns as both a weapon and a work tool. They are used to demand respect and obedience, often from women. Economic frustration leads to violence against women – on a bad day, as one young man put it, 'woman get nuff licking'. Many people get killed simply because angry young men see them as a blockage, standing between them and their economic goals.

On top of this, poor urban Jamaicans have lost all faith and confidence in the police and the justice system. Everyday inequality is mirrored in their treatment by police. As a result, some inner city communities rely upon informal systems of justice which attempt to resolve conflict. This can involve horrific acts of violence, and endless feuds. A vicious cycle is established: the result of young men's continuous war against each other is increased social prejudice against them. Such is the stigma, no 'uptown folk' would employ a potentially violent inner city youth even if he had the necessary skills.

Many politicians and policy makers do not take urban violence seriously enough. They take a lifeboat approach because they feel

that whatever happens, there will always be a way out for the ruling class. Today the government has come to realise that a small angry group can indeed sink the ship, and the attitude is changing, but much needs to be done and quickly. Key to any development strategy in Jamaica must be a direct approach aimed at incorporating the urban male with his female counterpart.



# 3

## transforming justice and building accountability

*These stories of justice in reality all point to the need for radical change in the way justice systems are established, managed and funded, coupled with new attitudes and approaches on the part of the police, court officials, lawyers, the judiciary, and officers in the social services. A responsive, efficient and well-run justice system inspires confidence. But it also matters who is delivering the service. The more representative the individuals staffing the institutions of justice, the greater the legitimacy and therefore trust between users and providers.*

*South Africa is a lesson in how difficult it is to transform a justice system built on injustice and discrimination into one delivering democratic justice and inspiring trust. In Graeme Simpson's view, it is also a sober reminder of how an over-ambitious national crime prevention strategy can flounder by failing to meet short-term needs and interests. The experience of countries as different as Jordan and Pakistan, related by Chris Gale, show the importance of political will to tackle public policy matters, such as policing, and the commitment to allocate the necessary financial and human resources. This issue of human and financial resources is now central to the approach of the UK Department for International Development (DFID). DFID is encouraging Southern governments to develop long-term strategies on safety, security and crime prevention, as part of their national development and poverty reduction plans. Regrettably, Annabel Gerry admits, most governments still opt for shorter-term, but more expensive, punitive responses. DFID is keen to support programmes which link the different government institutions and agencies concerned with justice delivery.*

*International donors, like DFID, have a role to play, but internal pressure is vital. Civil society organisations, parliamentarians, journalists and others campaigning on justice issues can be*

*successful in achieving legal changes and greater accountability. International human rights treaties can be useful tools. There are many positive examples of the use of international human rights law in cases involving women's rights. However, as Fareda Banda reminds us, the idea of enforcing one's rights locally using international agreements is a flight of fancy in many countries. Thus, making justice democratic cannot be divorced from the wider project of making our societies democratic. As Hameda Hossain explained, democracy is about establishing the rule of law – law based on respect for human rights, difference and plurality.*

### Transformation in practice – South Africa

*Graeme Simpson* Centre for the Study of Violence and Reconciliation

I want to begin by asking three questions: what kind of transformation? What kind of justice? What kind of accountability? Part of the problem is that we tend to deal with all these topics as if they are static or have a singular meaning, when in fact they change.

#### What kind of transformation?

South Africa's process of transformation has to be seen from the perspective of marginal groups (the very poor, women, young black men), for whom rather too much stays the same amidst all the change. Marginalisation continues. Delivery falls short of expectations.

High levels of violence are ongoing. Young black men's experiences of marginalisation have remained the same. Under apartheid they were politically voiceless and disempowered yet incredibly resilient in forging alternative places of belonging, particularly in political organisations. They often acquired status

through the violence of resistance. There is an incredible irony that, as the politics of confrontation shift to the politics of negotiation and the struggle moves from the street to the boardroom, these young men are being re-marginalised. The criminalisation of young black men is not new. As political activists they were always criminalised, but before, it was noble to be on the wrong side of the law.

We need not be surprised when young marginalised men display exactly the same levels of resilience as they did in the 1970s, with the gang providing the alternative home instead of the party. Status and power are acquired through violence, often against women. Young men's violent response to marginalisation is the same. Under apartheid, the violence was called political and socially functional. Today we call it criminal and anti-social, but the underpinnings are very much the same.

The 'new' South Africa inherited all the old institutions and their staff, largely intact. How do you transform those state institutions and build their popular legitimacy, given the legacy of mistrust? Nowhere is that more evident than in the institutions of criminal justice. They were the primary perpetrators of human rights violations under apartheid; now they are supposed to be the guardians of a human rights culture. South Africa is also dealing with the legacy of international isolation, and there is an urgent need to learn from international best practice. For example, the police have had their eyes opened, after years of isolation, to learning about best police practice in other parts of the world.

### What kind of justice?

It is important to think about justice as an integrated system which links the police and justice departments with welfare, health, education and other departments. We must also talk more about prevention.

CSVr's work with perpetrators and gangsters is important not just because of what it reveals about gendered patterns of violence, but because it offers powerful insights into prevention-based interventions with a wider group of men. However, combining enforcement and prevention approaches needs to be done with caution. CSVr's experience of helping to draft the national crime prevention strategy is a useful example. It failed to understand the need to make policy

that met short-term popular needs and expectations. The strategy died on the sword of popular frustration about non-delivery of effective policing. The South Africa's national crime prevention strategy was based on a visionary integrated strategy, but it was utterly impossible to implement. Cross-departmental co-operation at government level fell apart in wrangles over budgets. At local level co-operation can work well, for example, CSVr's schools-based violence prevention project with young people.

A subliminal message is sent out to police that crimes against women are less important than crimes against property; there is no prestige involved in tackling these crimes. Governments need to send the right messages in terms of resource allocation, with a view to changing police attitudes. Another dimension is the 'perpetrator-obsessed approach to enforcement' which leads to police insensitivity to victims.

### What kind of accountability?

In a slowly maturing democracy, the basis on which people seek accountability or responsiveness to their needs from government changes. Post-apartheid, relationships had to be re-built, for example between police and community. But people's needs change and they become more concerned with the quality of services and their efficient delivery. They become uncaring about issues around human rights and policing, and there are calls to 'bring back the rope!' In response to popular pressure, a government rapidly retreats from its prevention agenda and commitment to human rights.

In conclusion, it is important to note the differences between restorative and punitive systems of justice. There is a tendency, particularly when dealing with gender violence, to retreat to a model of punitive justice. The women's movement risks taking a heavy handed, punitive approach to crimes of sexual violence, without thinking about some of the restorative and preventive dimensions to justice

We must be wary of the marketing of the Truth and Reconciliation Commission (TRC) as a model of restorative justice; this had hidden components. If amnesty was defensible in constitutional

terms in South Africa then it was on the basis of full disclosure and, implicitly, because victims' rights were extinguished, the state would have to notionally step in and provide reparation. But there was no agreement on what constituted full disclosure. There are failings in the restorative justice model in South Africa, because of non-delivery of reparation, for example. There is one interesting gender aspect of the TRC – huge numbers of those who testified about abuse were elderly women, testifying about dead husbands and sons.

### Transformation in practice – some lessons

*Chris Gale Independent Consultant*

The need for political will and commitment by governments in addressing public policy areas such as policing, is a key issue. This is particularly important when dealing with violence against women and children. Political will must be demonstrated by creating a positive policy environment, and commitment in the form of prioritising resources, both material and human.

Jordan is an example where political will brought change. Policing changed, on the orders of the then Crown Prince (later King Hussein), only after a British woman was raped and reported her treatment by police in a UK newspaper. A Family Protection Unit was set up by police to investigate domestic violence and child abuse. Growing awareness of gender-based violence in Jordan followed but the data only show the tip of the iceberg, for example, only 'severe' cases are reported, and marital rape is still not recognised.

Lesotho is an example of a state that has completely abrogated its responsibility for public policy making for vulnerable citizens. There are no national policy guidelines on issues such as places of safety for children at risk. This leads to some highly questionable social work practice. Child protection laws are outdated, and do not comply with the UN Convention on the Rights of the Child. No formal structures exist for consultation within the justice system, for example, between social workers and police.

### The police and gender-based violence

Research in Pakistan has identified gender bias in the criminal justice system and, until recently, the failure to develop public policy to address it. Domestic violence is a huge problem that is ignored. But there are signs of growing political commitment to address these issues. I am part of a team of UK and Pakistani consultants invited by the Pakistan government to study and identify entry points and possible donor interventions to strengthen family protection. But change is difficult to engineer in societies where domestic violence is still seen as a private matter.

The police effectively act as gatekeepers to the justice system, especially for poor people. They will direct cases back into the non-formal justice systems. They exercise considerable discretion as to how to deal with allegations of crime. Numerous problems arise when women complain of violence or abuse. The police may fail to register and pursue the matter, or may refer the victims to family elders instead of specialist support centres. If the offender is a relative, the police are unlikely to get involved because their view is that 'a person can do as he pleases with his property', and a woman is regarded as part of a man's property. Also police may accept family assurances that injuries were accidental, as happens with many 'stove burnings', or accept bribes to take no action<sup>5</sup>. To add insult to injury women may risk more abuse at the police station. The result is that many women feel too intimidated to press charges. There is the structural problem of poor police pay, however, paying police more does not necessarily mean they behave better; the size of the bribe can go up because they think they're worth more. But police, and prison staff, deserve better treatment, and corrupt leadership must be rooted out.

There are some positive signs of change in Pakistan, such as the setting up of separate women's police stations.

### Self-help policing and vigilantism

DFID is now designing a major programme for access to justice in Nigeria, where overall the police are in a state of collapse and are unable to deliver effective policing. One consequence has been the rise of ethnic, religious and ideologically based vigilante

groups which have stepped into the vacuum of law enforcement. Citizens are increasingly organising their own security, as violent crime escalates. DFID's programme will seek to work with community volunteer guards and the police to improve safety, security and access to justice for the rural and urban poor. However, it has to be recognised that the strong relationship between self-help groups and traditional structures can be very discriminatory against women.

### From traditional to democratic policing

The police must move from being violators to protectors of human rights, from fear to trust, to regain the confidence of the community. To regain this trust and confidence they need to become responsive to the needs of the whole community, by consulting, listening, and engaging in joint problem solving. Openness, transparency and accountability are essential elements of a democratic police service. They must have sufficient resources to do the job, including adequate salaries. Equally important is whether the police can move from an attitude of personal gain to one of public service. This can only be achieved through good education and training, sufficient resources, impartial political leadership, and an honest and independent judiciary.

### Justice and poverty reduction

*Annabel Gerry* Governance Department, Department for International Development, UK

Justice is critical to any poverty reduction agenda, conditions for economic growth, and also as an aspect of state failure that is key in any reform process. DFID is aware that acute insecurity arises when the justice system does not function properly. Individual livelihood opportunities are a primary concern. But DFID is also taking seriously research by others, such as the World Bank, which has found that where crime is significant economic growth falls by one to two per cent. A study in Uganda, by the Ugandan government, estimated that the malfunctioning of the commercial justice system alone cost at least two to more than ten per cent of GDP. This is the backdrop to the concerns DFID has in the area of justice. Its work on justice is critically linked to all its work around

state failure and reform, from anti-corruption strategies and public expenditure management to work on transitional economies and post-conflict situations.

DFID has concluded that a functioning justice system is not only a mark of development but also a factor of development. A more democratic justice system is both a product of development and will bring about development. Last year, the World Bank held its first conference on legal and judicial reform, and although issues of justice and poverty were marginalised, they were included. It was exciting to hear James Wolfensohn, President of the World Bank, make the statement: 'The law is of little use to the poorest and most vulnerable if they can only expect brutality from police and corruption from the courts'.

The key challenges DFID has found in trying to work on justice include under-resourcing, both in terms of human resources and funding. Preventing crime is cheaper than dealing with it after the fact, but this is not something that governments want to look at because it takes so long to put prevention strategies in place. There is the whole issue of expanding unaffordable systems, such as prisons. They are too expensive for any country to run, and in most cases the regimes do not work. As for politicisation, who are the police accountable to and who should they be accountable to? In many of the countries DFID works in, it finds the police are accountable to the ruling party and not to the citizens or the law. That creates enormous challenges in trying to work on a reform agenda. Systematised corruption from top to bottom is very difficult to challenge or change.

With all these issues, attitudes and expectations are critical to making justice democratic. For example, with under-resourcing, people come to accept that the resources are not there. With corruption, people expect to be able to pay their way out of trouble. Changing attitudes is fundamental.

From what DFID has seen, the real gender challenges are around the issues of the position of women, young men and older boys. For women in particular, there is the difficulty of overcoming fear and mistrust. How does one ensure that women are active partners

if voluntary participation is expected of them and they have minimal support to participate? There is the difficulty of confronting gender-related crimes, especially in situations where families themselves are the perpetrators. With young men, one of the key challenges is going beyond harsh punishments and incarceration, from suppressing the problem to dealing with it – engaging young men in crime prevention strategies and family law issues, integrating violence and youth crime issues into wider urban development programmes. One needs to look at alternatives to prison as well as alternative livelihood strategies, particularly for young men.

### DFID's approach to justice

The approach DFID is now taking arose from a combination of factors. Getting it wrong was a major one. There is a new focus on poverty reduction, a more people-centred approach, and a strengthened focus on human rights. As for getting it wrong: single institution interventions (for example, only working with the police or judiciary) seem easy and quick, but what happens is precisely nothing once the programme intervention is over. That has been learnt the hard way. Other mistakes were to assume that UK models were appropriate, and failure to see non-state or informal mechanisms, when the majority of disputes go through these. The question of political will had not been addressed very seriously. In reforming justice systems, we need to understand resistances and develop strategies for working with people who do not want to change at all.

A strong thrust in DFID's new approach is to treat justice as a sector. It is always tempting to get a request from one institution and go with that. An important change for DFID is to stand back and try to assess what the problems are across the sector, apply comparative experience and base what we decide on evidence, including the perspectives of users. With linkages, the important ones are the process and procedural linkages, the informal-formal linkages, and holding institutions to account. With inter-agency working, as well as improving accountability DFID is building shared agendas and shared priorities. An example is Uganda, where the nine different government agencies involved in justice

now meet regularly to come up with shared priorities and action. Recent DFID programmes have used very different entry points; for example, in Malawi it was around a sector reform plan.

DFID is getting more involved in other areas also. These include policing, and community participation with more emphasis on ordinary people's perspectives and involvement. Crime prevention is a new area. We are involved in programmes which work with multiple justice systems and issues around what kinds of linkages are desirable between them. We are also working on laws and legal frameworks, and linkages through to institutions. Other concerns are lower courts and legal activism. In addition, we are interested in penal reform, including improving conditions, recidivism, the position of vulnerable groups and alternatives to prison.

### How useful are international human rights treaties?

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What are human rights and who decides on their content? Human rights accrue to an individual by virtue of being human. But some have questioned their universality and whether they can be applied in the same way throughout the world, arguing that human rights should be subject to local conditions. The short answer to the second question is the United Nations, and various regional bodies. But the people who ratify human rights instruments tend to be political elites, who are not necessarily representative. Most ordinary citizens do not come into contact with the UN, unless they face a crisis such as war. For some people, especially women, their experience of UN peacekeepers may be as violators rather than protectors. Regional bodies may be even less well known, and may be suspected of supporting human rights violators.

There are a number of ways of tackling the remoteness of international institutions. These include using education campaigns to explain who they are and what they do, and using journalists and NGOs to spread public information. Also, holding international conferences in a Southern country may raise

awareness of the UN, buttress human rights locally, and allow monitoring of governments' implementation of human rights.

### National implementation of human rights law

The implementation of human rights law at national level depends on the constitutional provisions made for incorporating international agreements into domestic law. Many countries require a formal act of parliament first, and fail to enact the enabling legislation. This may be a deliberate ploy by the government. With aid increasingly tied to conditionality (good governance, democracy and human rights), countries now often ratify international instruments simply in order to access international aid. Even when governments do make international treaties part of domestic law, they may try to avoid a clash with local customary and religious laws by attaching so many reservations that they are rendered unworkable. One example is the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW). It is second only to the UN Convention on the Rights of the Child (1989) in the number of countries who have ratified it, but it has the most reservations.

Few citizens know what treaties their governments have signed, let alone how they apply locally. For example, in Zimbabwe, many civil servants, never mind ordinary citizens, have not heard of CEDAW. Education, and translation of treaties and conventions into local languages, is crucial.

The rejection or misunderstanding of the individualistic construct of human rights in societies that are based on mutual responsibilities and obligations, and communal in outlook, is another problem. The idea that enforcing rights is not somehow anti-government is also alien to many. The state is seen to be all-powerful and beyond challenge, and the head of state a 'father of the nation' figure. Fathers are owed respect, and should not be challenged. Consequently, citizens have little or no expectation of what the state can and should deliver. In Northern countries, by comparison, people have a highly developed sense of entitlement because they enjoy many state provisions. They are therefore more able to make the conceptual leap, linking violations of their human rights to the state's obligation to remedy the violations. The idea that one could

hold one's government accountable for violating one's rights is considered far-fetched by many people in Southern countries.

### What is needed

In order that all women, men and children can enjoy and exercise their full human rights, action is needed in several areas

- empowerment and enablement, so that people know their rights and are given the tools to claim them
- mobilisation and solidarity
- cross-cultural dialogue, leading to reconciliation of human rights norms with local customs and religious beliefs and texts
- engagement with local communities
- education about human rights, using all available media
- training the judiciary in human rights; it should be made compulsory in any law school curriculum.

Some doubt the value of local dialogue (the third point above), given the male domination of many cultural organisations and religious systems, and fear that dialogue may simply result in another form of male hegemony adding to the ones that already exist in domestic and international law. Academics and human rights advocates have an important role to play in challenging the limiting constructions of women's human rights in religious texts, and in offering alternative interpretations. Research grants could be provided for this work with progressive clerics and others.

There are many positive examples of the local use of international human rights laws in cases involving women's rights, such as *Unity Dow v. The Attorney General of Botswana*<sup>6</sup>. The High Court and Court of Appeal of Botswana found that the Citizenship Act discriminated on the basis of sex and was struck down. In reaching their decision the courts made reference to the fact that although Botswana had not ratified CEDAW, it had been involved in the negotiations to the 1967 Declaration on the Elimination of all Forms of Discrimination Against Women which was the precursor to CEDAW and thus showed a commitment to the principle of non discrimination. Moreover, the court noted that Botswana was a party to the African Charter on Human and Peoples' Rights.<sup>7</sup>

In conclusion, it seems clear that the challenge of turning rights talk into rights action is not for the faint of heart. It requires tenacity and determination to see that people, especially women are made aware of the content of their rights and are provided with the means both economic and psychological to enable them to vindicate them.

### Making society democratic

Hameeda Hossain Ain O Salish Kendra, Bangladesh

We need to work out how we can make our societies democratic, before we can make justice democratic. This is a particular challenge for post-colonial societies that have been engaged in some form of struggle.

In countries like Bangladesh and Pakistan, military regimes come to power with a promise to change people's lives because, they say, 'your politicians are all corrupt'. A few years down the line, we find the government is even more autocratic, and the people's movement starts. We bring down the military and hold elections. But our concept of democracy seems to be confined to the process of elections, and bringing one party or another to power. Moving beyond that, democracy should be about establishing the rule of law – a law based on respect for human rights, tolerance of dissent and plurality.

Ain O Salish Kendra, a legal aid and human rights organisation, is challenging government institutions. We are also challenging the communities in which we live, which tend to be dominated by the more powerful people, who are usually men. The organisation is trying to build greater tolerance and nurture a process of dispute settlement through negotiation. Democratisation has to begin at family and community level. If one cannot challenge power in the family and community, one cannot challenge the power barriers higher up.

In the last ten years, civil society organisations, particularly women's groups, have tried to democratise the informal justice systems. They have tried to increase the representation of women, not only of complainants but also at the level of dispute resolution.

Another issue they are challenging is the practice of fatwa – a form of justice imposed in the name of tradition, issued by religious and village leaders. Fatwas are mostly but not exclusively issued against women who try to exercise their rights and autonomy. Some judges have challenged them, and ruled them illegal. But enforcement is another matter. Injustice often takes place in very remote villages, law enforcement is weak, and Supreme Court rulings may be meaningless in practice.

Two recent examples of successful efforts to uphold economic and personal rights are interesting and encouraging. Workers' rights in the garment manufacturing industry were being totally ignored, and many workers had died in fires. Petitions were filed against two factories. This led to new safety regulations, and both government and manufacturers were held responsible for the fires.

As for personal rights, divorced women often lose their homes and children. But a recent judgement took women's and children's rights into account, and awarded custody to the mother, in contradiction of Islamic law. This is an encouraging step forward, and indicates a new sensitivity to rights among the judiciary.

<sup>5</sup> In India, hospitalised burns cases are invariably either suicide or homicide attempts, actionable in law, but no action is taken because of police corruption and ineffectiveness. One Indian NGO is trying to tackle this by placing a legal activist on the local burns ward, in disguise, to gather information. It also monitors behaviour at police stations. Doctors, not just police, are among the worst offenders when it comes to turning a blind eye. Police investigations are also hampered by the lack of forensic facilities.

<sup>6</sup> *Unity Dow v. The Attorney General of Botswana* [1991] I.R.C. 574. Unity Dow challenged the Citizenship Act of Botswana which allowed a Tswana man to marry a non-Tswana woman without losing his nationality but not vice versa. This had an impact on the citizenship of children: children borne of a Tswana mother with a non-Tswana father could not be Tswana citizens.

<sup>7</sup> The African Charter on Human and Peoples' Rights 21 I.L.M. 1982. Article 18(3) states: 'The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and child as stipulated in international declarations and conventions'.

## making justice systems democratic - strategies

The following strategies were discussed in working group sessions at the Making Justice Democratic seminar. Strategies were grouped under the following six headings:

### A. Institutional reform or transformation

*Administration and funding*

*Training*

*Representation*

*Accountability*

### B. Law reform

### C. Public education

### D. Victim empowerment

### E. Building social movements

### F. Monitoring and evaluation

### A. Institutional reform or transformation

The aim is to transform the institutions of justice so that they become more democratic, representative, accountable and sensitive to gender, class, age and other social differences.

#### *Administration and funding*

#### **Formal justice system**

- Expand state justice services and specialist services, e.g. family courts (which deal with the issues of most concern to women)
- Allocate government funding for administration costs
- Streamline the different court systems and strengthen specialisation
- Create more rural judicial bodies
- Simplify procedures for filing cases and publicise widely in all necessary languages
- Improve court management to speed up processes (including introducing punitive sanctions against frivolous litigation)
- Co-ordinate the different levels of the criminal justice system
- Adequately resource high quality legal aid systems, with links to civil society

- Fund formal and informal mediation services, including those set up by community based organisations and NGOs
- Ensure the justice system is furnished with essential law books and papers

#### **Informal justice system**

- Recognise the informal justice institutions
- Ensure informal justice systems are adequately resourced
- Improve informal justice system management, including guidelines for decision-making, time limits and written decisions
- Establish linkage with formal system, including appeal/recourse to formal system

#### *Training*

Raising awareness of gender, class, race and other social differences and their implications for personal security and access to justice is vital and needs to reach across the formal and informal justice systems. Training in delivering sensitive, equitable and transparent justice is fundamental.

- Establish awareness raising and training programmes for police, lawyers, court officials, judges. Gender, human rights and international conventions should be core, mandatory subjects. Awareness raising and training programmes need to be compulsory, reach all levels, but particularly the most senior, and be repeated on a regular basis
- Train judicial officials in overseeing police practice
- Use formal system to train informal
- Encourage formal system to learn from and emulate some of the procedures and environment of the informal, including notions of restitutive justice
- Establish awareness raising and training programmes for officials in related departments, for example, social welfare, health, education which also stress their 'justice' responsibilities
- Facilitate training for community-based para-legals in legal and civil rights issues

### Representation

Transforming the face of the justice system is a vital step in building legitimacy, popular confidence and enhancing accessibility. The justice system cannot be left solely in the hands of the majority. Every effort must be made to ensure justice systems demonstrate a diversity which more closely reflect the cultural, ethnic, gender, class and other social differences of the societies they service. The low level of women's representation need to be tackled in particular. Of course, diversity of representation in justice systems is inextricably linked to democracy in government as a whole.

#### Formal system

- Institute positive action in recruitment and promotion of judiciary, especially on gender and ethnic minority grounds
- Institute transparent and public systems for the appointment of judges
- Institute transparent mechanisms for promotion, including procedures to question promotions
- Establish civilian oversight mechanisms, including civil society representatives on promotion boards

#### Informal system

- Encourage greater community participation, for example in the choice of mediators and adjudicators
- Encourage greater gender balance in committees and mediation structures
- Establish people's courts or committees
- Set guidelines which make it possible for women to be represented by women
- Facilitate greater exchange of views between mediators from different areas

### Increasing accountability

Building accountability is linked to the issues of funding, administration, training and representation. An efficient and well-run justice system inspires confidence. Similarly, the more representative the institutions are, the greater is the legitimacy, and therefore trust and confidence between service providers and receivers. Accountability is measured in the levels of responsiveness and transparency of the services provided, as well as the quality of those services, and thus new measurement tools are required.

Strategies for achieving greater accountability are neither universally applicable nor mutually exclusive. Statutory bodies, social movements and international law all have roles to play. International organisations can include a watchdog/monitoring function. In constitutional democracies where the independence of the judiciary is fiercely protected it is especially important to strengthen other means of accountability.

#### Formal system

- Establish accountability systems which are outside the political process and independent of political will
- Establish mechanisms and procedures for complaints against police, lawyers and judges
- Publicise the right to challenge decisions and file complaints
- Establish systems which generate community respect and approval of the police
- Create multi-agency links and approaches to ensure multiple checks and balances
- Use inter-agency team feeling as relationships are key to generating accountability (people do not want to let their 'friends' down)
- Use international human rights instruments to generate accountability upwards, for example, by obliging governments to write reports (mindful that they only have leverage if their views are echoed by popular organisations)
- Establish independent investigative systems
- Establish civilian oversight mechanisms
- Recognise and foster the role of media and investigative journalism in building and sustaining accountability

### Informal system

- Limit the jurisdiction of the informal system
- Encourage the establishment of oversight and complaint mechanisms (including ombudsmen)
- Encourage the establishment of appeal processes and publicise
- Build the capacity of community-based organisations
- Recognise and foster the role of the media and investigative journalism
- Establish appeal procedures from informal to formal

### B. LAW REFORM

Law reform is an essential component of democratic justice. Laws governing, such areas as education, employment, commerce, property, marriage, divorce, inheritance and child custody, which discriminate against women or against minorities, must be reformed. The law is an important empowering tool for achieving rights and access, but various legal obstacles can block access. Laws which may appear to be gender neutral, for example, can be interpreted in different ways. Laws can be potentially discriminatory because of what is left out, and laws can be ineffective because those who should apply them refuse or are unable to do so.

Ratification of international conventions and instruments, such as, the Convention on the Elimination of All Forms of Discrimination Against Women, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights require governments to amend existing discriminatory legislation. In addition, by agreeing to the documents arising from the UN conferences through the 1990s, such as 1993 Declaration on Human Rights and the 1995 Beijing Platform for Action, governments commit themselves to action in the field of law reform.

- Institute a regular social audit (including a gender audit) particularly in the areas of family affairs, employment, property and credit, to identify laws requiring repeal or amendment
- Ensure compliance with international conventions and agreements

### C. PUBLIC EDUCATION AND AWARENESS RAISING

Awareness and understanding of one's legal rights and the institutions of justice are essential to building a sense of entitlement and improving security and access to justice. Inevitably the poorest women and men who are most likely to suffer infringements of their rights are also those mostly likely to have a poor grasp of their rights and how to access the justice system. If people are ignorant of the law, it becomes ineffective in practice. Women in particular suffer from this lack of knowledge. Popular education and awareness-raising is crucial, and may be one of the best ways of bringing about sustainable change. NGOs and community-based organisations are carrying out vital work in citizenship education and legal literacy but this falls far short of comprehensive coverage.

- Integrate civil rights and legal literacy into formal and informal educational curricula
- Establish training programmes for community activists in legal and civil rights issues
- Devise and adopt strategies to meet the needs of poorest, for example, street law programmes and barefoot lawyers
- Institute civil rights teaching in schools
- Support NGOs, CBOs, including women's organisations, active in legal literacy, citizenship education and law reform monitoring and lobbying work
- Encourage and foster public education media

### D. VICTIM EMPOWERMENT

The empowerment of victims of crime is an area neglected by most justice systems and government welfare departments. Criminal justice systems are (understandably) preoccupied with preventing crime and punishing the perpetrators.

- Establish special units within police stations to liaise with the victims of crime
- Incorporate victim empowerment in training programmes for police, lawyers, court officials, judges

- Incorporate victim empowerment within training programmes for relevant staff in education, health, and welfare services
- Support NGOs, CBOs and women's organisations to run victim empowerment programmes

#### **E. SOCIAL MOVEMENTS**

The very poorest and least powerful people need a mechanism through which they can participate in society and speak out against injustice. Community based organisations and social movements, including women's organisations, have a vital role to play. They can provide fora in which the poorest women and men can articulate their concerns and gain greater self-esteem, outlets for these concerns to be voiced more publicly, and pressure groups for changes in the law and the delivery of justice. In addition, in collaboration with other civil society organisations, they can play a very useful role in producing alternative reports, for example, on the implementation of the UN Convention on the Rights of the Child or the Convention on the Elimination of All Forms of Discrimination Against Women.

- Support the development and strengthening of community-based organisations, women's organisations, social movements and pressure groups, and particularly their work in citizenship education, legal literacy, social, economic and political empowerment

#### **F. MONITORING AND EVALUATION TOOLS**

There is an urgent need to develop better monitoring and evaluation tools which clarify what changes are taking place and which areas require change.

- Regular reviews (including social audits as mentioned above) to identify lessons learned and areas for improvement
- Regular reviews of training programmes
- Reports to international institutions
- Lesson learning sessions between formal and informal
- Civil society mechanisms for monitoring and evaluating legal changes

## ANNEX 1

PAPERS AVAILABLE FROM ONE WORLD ACTION  
AND ON WEBSITE: [www.oneworldaction.org](http://www.oneworldaction.org)

**The Challenges Of Using International Human Rights  
Treaties At The Domestic Level**

*Fareda Banda* School of African and Asian Studies, London

**Justice, Democracy and Gender-Justice in Reality: Lessons  
from South Africa,**

*Kailash Bhana* The Gender Unit, Centre for the Study of Violence  
and Reconciliation, South Africa

**Transformation in Practice**

*Chris Gale* Consultant, Police and Criminal Justice

**Poverty and Violence: The Need for a Male Focus  
in Urban Jamaica**

*Herbert Gayle* University of Swansea, UK and Jamaica

**Access to Justice from a Gender Perspective**

*Bego González* Grupo Venancia, Nicaragua

**Making Justice Democratic: Improving Access to Justice  
for Women and the Poorest People in Bangladesh**

*Zakir Hossain* Nagorik Uddyog, Bangladesh

**Overview of the Gendered Dynamics in Accessing Justice in  
Botswana, Lesotho, Malawi, Mozambique, Swaziland,  
Zambia and Zimbabwe**

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