



# GENDER SECTION NEWSLETTER



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## GREETINGS FROM THE CHAIRPERSON



This edition of the CMJA Gender Section Newsletter focuses, in large part, on new initiatives and resources to assist the judiciary to be more sensitive and effective in their response to gender based violence against women and girls.

This follows an insightful discussion of the challenges of responding to domestic violence at the last meeting of the Gender Section held in Port Moresby, Papua New Guinea as part of the CMJA Conference.

The catalyst for our discussions was a presentation by Judge Kumudini Wickremasinghe, a judge of the Court of Appeal of Sri Lanka, and Indian Ocean Representative to our Gender Section.

Judge Wickremasinghe addressed the topic of marital rape and in particular,

the Sri Lankan perspective on that issue (she has published a related article in The Manurawa Law Journal 2018). She reported that there are proposed amendments to the Penal Code in Sri Lanka to make marital rape a crime. She also drew attention to the need to combat other instances of violence against women.

I observed at the meeting that it was as late as 1983 when marital rape was criminalized in Canada. I noted further that it is clear that abolition alone is insufficient and additional legislative reform and societal education is necessary to promote women's equality.

The judiciary also has a significant role to play in appropriately dealing with allegations of domestic violence.

To that end, the United Nations Office on Drugs and Crime has created a Handbook for the Judiciary on Effective Criminal Justice Responses to Gender-Based Violence Against Women and Girls. We are very proud of the fact that the CMJA was asked to participate in the development of this handbook and we were very ably represented by Linda Bradford-Morgan, Australia, the Pacific Gender Section Representative.

We commend to you the excellent work reflected in the Handbook. This edition of the newsletter contains a comprehensive summary of the

Handbook and also provides the link to access the complete Handbook.

We are also very pleased to highlight the first Gender Based Violence Court in Pakistan which has been created to prioritise and sensitively respond to gender based violence offences. This edition contains an article authored by Judge Rehmat Ali, the first judge to preside over this court describing the specialized procedures adopted by the court which, as he notes, "have enhanced the confidence level of victims and witnesses".

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The need for these measures is apparent from the UN Women's 2019 article on The Presence of Violence Against Women, which is summarized in this edition.

Lastly, this edition of the newsletter concludes with our News From Around the Commonwealth, summaries of reports of developments in gender and human rights.

The newsletter benefits greatly from the leadership of Dr. Karen Brewer. We are very appreciative of the contributions made by our interns and in this particular case, Miss Sierra Ross who collated the issue.

We hope that you will find this edition thought provoking, as well as, helpful.

We welcome contributions to future editions from our members. Please share with us your challenges, legislative reforms, new procedures and other initiatives.

## **THE HANDBOOK FOR THE JUDICIARY ON EFFECTIVE CRIMINAL JUSTICE RESPONSES TO GENDER-BASED VIOLENCE AGAINST WOMEN AND GIRLS**

*This handbook was created for the United Nations Office on Drugs and Crime (UNODC) by Eileen Skinnider, Associate, International Centre for Criminal Law Reform and Criminal Justice Policy with the help from several organisations and individuals – including CMJA Council Member Mrs. Linda Bradford Morgan of Australia. The full Handbook is available at [https://www.unodc.org/pdf/criminal\\_justice/HB\\_for\\_the\\_Judiciary\\_on\\_Effective\\_Criminal\\_Justice\\_Women\\_and\\_Girls\\_E\\_ebook.pdf](https://www.unodc.org/pdf/criminal_justice/HB_for_the_Judiciary_on_Effective_Criminal_Justice_Women_and_Girls_E_ebook.pdf).*

The Handbook for the Judiciary on Effective Criminal Justice Responses

to Gender-based Violence against Women and Girls (the Handbook) is a comprehensive document that covers many of the facets of Gender-based violence against women and girls (GBVAWG) and its relation to the judiciary. While it is true that progress has been made in regard to how these cases are handled in many states, there has yet to be a significant reduction in the prevalence of GBVAWG. This violence is still largely accepted and unpunished. The intent of this document is to formulate a set group of norms that can govern the Judiciary's interactions with this type of violence and raise awareness of issues within the area of GBVAWG.

Judges have a significant role to play in regard to the handling of GBVAWG cases. Judges, more than anyone else, have the power to pursue justice for the victim through their ability to enforce laws, protect the victim from past and future trauma, respect the victim and the experience that they have suffered, and much more. Because judges play such a large role in GBVAWG cases, the UNODC believes that it is important for judges to remove all prejudices and pre-conceptions from their courtrooms – whether prejudices and pre-conceptions belong to the judge or others involved with the trial.

While this handbook does focus on judicial processes as they relate to the criminal justice system, the handbook suggests that GBVAWG be treated holistically as a legal problem because GBVAWG criminal cases can be intertwined with civil or family law issues. Essentially, the UNODC hopes to equip the judiciary with the necessary tools to increase its effectiveness and sensitivity when dealing with cases of GBVAWG. To achieve this goal, the handbook is broken into three parts: "the conceptual framework, guidance for judges and effective institutional practices of the judiciary." (Page 4)

### **Section One: the Conceptual Framework**

GBVAWG cases are often treated differently by the judicial system. As such, context is an important part of GBVAWG cases. Context can provide judges with information that will assist them with their fair adjudication of GBVAWG cases. There are four major elements of a context-driven analysis: the extent and nature of GBVAWG, the realities of the criminal justice response to GBVAWG, the understanding of a victim's trauma, and the influence of harmful gender stereotypes on the entire judicial process.

The scope of GBVAWG is broad; the issue is not limited to one group, perpetrator, or method. The social complexities of GBVAWG make it imperative that judges consider that the violence – which is either focused solely or mostly on women – occurs within the context of that society and can be used to perpetrate a certain view of women and their position within society. GBVAWG is not an isolated issue, but a society-wide problem; therefore, any response must be suited to that reality.

Whilst GBVAWG raises many issues, there are commonalities: the high prevalence of the issue, the likelihood of re-victimisation, the likelihood of the victim knowing the perpetrator, the trivialisation of the violent act, and the persistence of attitudes that support GBVAWG. GBVAWG is a highly prevalent issue in both the number of women who, at least once in their lifetime, have been a victim of such behaviour and the amount of men that perpetrated such acts. It is also common for women to experience GBVAWG repeatedly.

Discrimination is a type of GBVAWG that can enable additional violence. Stereotypes and prejudices can render women vulnerable as targets for certain acts of violence when based on a combination of factors. Those factors include personal characteristics – which can include a variety of things from race to socioeconomic status – and situational circumstances such as

refugee status, location, and things of that nature. A woman's ability to pursue justice is often linked to factors such as these.

On a more positive note, the Handbook goes on to describe how criminal justice systems have taken steps to address GBVAWG. However, despite these efforts, the criminal justice system, generally, has yet to reach the level that it needs to for ultimate efficiency: GBVAWG remains one of the most under-reported types of crimes, GBVAWG crimes are one of the least likely to result in a conviction, and re-victimisation of the victim is still a problem. While judges do directly address only the trial portion of the entire process, it is important for them to understand the broader social context in which the case in question takes place. Understanding the fact that few incidents get reported and even fewer cases make it to court can help judges understand that broader context. In addition, the conviction rates of such crimes are low regardless of the type of system the court employs – whether adversarial or inquisitorial. The perpetrators of such acts frequently face no to insufficient punishments for their acts. In addition to the previously mentioned issues, there is more of a struggle with GBVAWG crimes being seen as false accusations.

The treatment of victims within the judicial system is a persistent and wide-spread problem: the presence of re-victimisation, poor-treatment of the victims in court, and the lack of consultation of victims in court has remained constant. It is necessary to address these issues because the UN believes that approaches that are sensitive to the victims are just as important as the actual outcome of the case.

It is also imperative for the judiciary to respond appropriately to cases by comprehending and actively addressing the barriers between the victims and justice which include a variety social perceptions and

pressures. Furthermore, the dynamics of the situation – the effects of the trauma on both the victim and the victim's family - are important to understand because the actions of victims can be misinterpreted by the judiciary. The Handbook then proceeds to answer many questions about intimate partner violence (IPV), sexual violence, the reasoning of victims, and other subjects that relate to GBVAWG. The Handbook also suggests that judges can make trauma-based approaches to the violence by understanding the impact of the event, the prevalence of such issues, and the burdens on the victims while also creating a safe environment for the victim and taking note of any power imbalances between partners in a case. Cases can be complex, and there are negative and positive approaches that judges can take to handle those complexities.

Action at the international level is required. States have an obligation to address GBVAWG and protect the women that live within their borders. When a states fails to take steps against it, they are inadvertently encouraging such actions. The judiciary should prevent more harm from coming to the victim, use their power of judicial oversight to ensure that investigations and prosecutions are legal and effective, and appropriately apply punishments to the cases before them. The judiciary should also be aware of the relevant international and regional legal instruments and take steps to implement those documents when possible. When implementing international standards, there are four areas were international legal concepts that can be helpful to the judiciary: gender equality and non-discrimination, the balance between the rights of victim and defendant, gender stereotypes, and offender accountability through victim-centred approaches.

#### **Section Two: Guidance for Judges**

While it is true that each judge operates within his or her own domestic legal framework, the second section address many of the issues that are common amongst all judiciaries. Irrespective of nation, all judges have a duty to protect the victims that are in their courtroom. As much as possible, judges should ensure the safety of victims both in court and outside of it. The degree and type of protection necessary may vary per case and depends on the situation. In regard to in-court proceedings, the effectiveness of the witness can be reduced if the victim feels unsafe.

It is also important for judges to avoid re-victimising the victims by utilising approaches that are sensitive to gender, and age when appropriate, and victim-orientated. Re-victimisation can occur for a variety of reasons, and judges should take steps to reduce the likelihood of a victim being traumatised for a second time. Judges should also be sensitive to the possible presence of shame within a victim's feelings and understand the effect that legal proceedings can have on a victim's psyche. There may even be moments were special procedures could help the victim during the trial; when such moments present themselves, judges should employ the measures when possible

**NEXT MEETING OF  
THE GENDER SECTION  
14 SEPTEMBER 2020,  
Cardiff, Wales**

See [www.cmja.biz](http://www.cmja.biz) for further info on the CMJA Conference

If you have any suggestions for subjects to be discussed at this meeting please contact [kbrewer@cmja.org](mailto:kbrewer@cmja.org)

Judges should also be prepared to deal with inconsistent statements in a manner that is fair, consistent, and understanding of the complexities of the human memory

The quality of a person's testimony is also important for the courts to pursue. It is complicated, but judges should appreciate the new research on the subject and enhance the witness' testimony through good, logical measures. Improper questions can muddy the waters and perpetrate false myths and stereotypes about women. While cross-examination is essential, it should be tempered by the good judgment of the judge in regard to what questions exist to only perpetrate false myths and stereotypes about women.

Just like witness examinations should be done in a certain manner, so should the examination of evidence. Judges have a duty to ensure that the application of evidentiary rules and the interpretation of that evidence is done in a non-discriminatory manner. This is another area in which judges should balance the rights of both the victim and the accused and ensure that gender stereotypes and myths do not affect court room proceedings. If the evidence is irrelevant, then it should not be allowed into court. The judiciary should be careful when testimony or evidence shifts the attention away from the perpetrator's actions to the actions of the victim. For example, a woman's sexual history – which is still a frequent defence in rape cases – can shift the attention towards the "type" of woman that the victim is. The judiciary should take steps to avoid falling for these harmful stereotypes and myths when managing their court.

Another factor that should be ignored, but is not in some courts, is the amount of time between the incident and the complaint to the authorities. There is no evidence that reports made after a certain period are less truthful than reports that were made shortly after the incident.

Like the previous issues, the judiciary should take steps to remove such arguments from their courts.

The Handbook also expresses concern about corroboration requirements, which require sexual assault cases to be based on more than just the victim's testimony. In some jurisdictions, these requirements are based on the judiciary's decision to be especially cautious with the testimony of sexual assault victims; traditionally, such cautionary actions were taken only in regard to sexual assault cases. This contradicts international standards that hold that the complaint in a sexual assault case is assumed to be just as credible as any other type of complaint. International tribunals have also decided that corroboration is not necessary in sexual assault cases. Despite changes, many courts remain reluctant to convict based solely on a victim's testimony. In response to this, the Handbook advises judges to disbelieve the theory that corroborating evidence is necessary and ensure that those in their court follow suit.

The Handbook also addresses propensity evidence (also known as similar fact evidence or tendency evidence) admitted against the defendant – a process that may actually have more probative value than prejudicial effect. When considering the admittance of such evidence, judges will have to weigh the value of such evidence against its prejudicial value.



In regard to third party records and the admittance of such records, the Handbook maintains that Judges should take care to avoid admitting evidence whose purpose is to shift the blame to the victim and embarrass her.

In regard to expert evidence, the Handbook maintains that experts can provide useful information for the trial but, like anything else, judges must be careful about what type of testimony is admitted. However, despite the possible dangers, experts can be important for trials. In regard to forensic evidence, there is an over-reliance on such evidence and an over-estimation of its value. Psychological evidence may not be present in every case for a variety of reasons.

To address some of the issues within the courts, the Handbook suggests that courts incorporate a gender perspective: courts will assess the facts without any type of gender bias in their decisions and decision-making process. Adopting a gender perspective can help reduce that effect because judges will look at a case in a manner that promotes gender equality, ignores myths and stereotypes, promotes the safety of women, and adheres to international obligations and laws. Judges should ensure that the interpretations of the laws are transparent with the context evident and considered.

The crime itself should also be considered in the sentencing of the defendant: the punishment should suit the crime; thus, it is necessary to consider the totality of the circumstances when fixing the sentence. Judges must determine the offense category, consider aggravating factors, consider mitigating factors, consider the dangerousness of the defendant, consider whether or not additional orders would be appropriate, and determine the appropriate sentence with clear reasons as to why it is appropriate. Judges should be able to clearly explain why they sentenced the criminal the way that they did. Sentences should hold the perpetrator accountable, protect the victim and the community, take into consideration the impact of the crime, provide the victim with reparations, rehabilitate the offender, and aim to deter such

behaviour. Reparations, which possesses many forms, is a type of punishment that has not been used to its full capacity; however, its use is being realized by some nations. Despite its usefulness for the courts, compensation should not be a substitute for other punishments. Steps should also be taken to create treatment/ rehabilitation programmes for offenders and ensure that the defendant complies with any orders from the court. The victims should also be notified when their attacker is released from prison. Sentencing hearings are useful for determining exactly which punishments would be appropriate. The Handbook suggests that a checklist could be useful for this process.

The updated Model Strategies and Practical Measures and the Committee on the Elimination of Discrimination against Women suggests that the lack of consent should be the basis for sexual violence crimes. There are many ways consent can be defined and there are still some issues as to the ambiguity of the term. Thus, the handbook argues that judges and the letter of the law should look for agreement to the act instead of consent.

Judges should also be aware of the interpretations of the burdens of proof in GBVAVG and combat any misinterpretations or misrepresentations. The manner by which the jury understands the burden of proof can affect conviction rates. Inferences by the jury considering proven facts can also be dangerous in GBVAVG cases because of harmful stereotypes.

Another thing that judges should be aware of is whether or not the case that they are hearing is being heard in a different court: occasionally, civil or family suits can intersect with criminal cases.

In regard to cases where a woman is the defendant, it is suggested that the courts should consider the self-

defence claims of women during such trials. The battered woman syndrome is not something to be ignored; although, the usage of the term “battered woman syndrome” is certainly being argued. In addition to battered woman syndrome, victim resistance violence is a term that is the Handbook uses. According to the Handbook, victim resistance violence is the term used to describe the phenomenon where women become violent as a result on repeated partner violence. When adjudicating cases like this, Judges should not only examine the most recent incident; Judges should consider the patterns and history of the violence between partners. To do this, especially in cases of dual arrest, a full consideration of the evidence is necessary to determine which party is the aggressor and which is the victim.

The handbook also touches on restorative justice, which is a way to approach justice that focuses on addressing the harm caused by the crime and holding the perpetrator responsible for the crime. Restorative justice achieves this goal through a variety of ways and programmes and models. Restorative justice can be both dangerous and beneficial for cases that involve GBVAVG. Some studies show that the restorative justice approach can do more harm than good by making the victim vulnerable to victimisation, intimidation, and abuse. As a result, mandatory mediation and conciliation sessions are forbidden by international and regional standards. In some jurisdictions, mediation and conciliation sessions are forbidden altogether. When considering restorative justice and GBVAVG, judges should consider the power dynamics of GBVAVG; if the power gap between the victim and the offender is large, judges should avoid mediation. The safety of the victim is important. However, while dangers are present, there are benefits to the use of restorative justice; some studies have shown that restorative

justice programmes can help victims and the satisfactions rates for those programmes have been good. Furthermore, rates of recidivism decrease with the use of these programmes.

Regardless, judges should be careful with their use of restorative justice programmes. For GBVAVG cases, judges should only utilise programmes that are strictly regulated, possess certain safeguards, and meet the necessary criteria. It also should be necessary for an evaluation to be done by a specialised team to ensure the safety and freedom of the victim. In addition, if the restorative justice programme fails, there should be the option for criminal proceedings against the defendant.

### **Section Three: the Effective Institutional Practices of the Judiciary**

This section’s goal is to provide general guidance for the judiciary; it is not, in any way, supposed to be a thorough assessment of what judges should do.

Actions taken by countries to respond to the concerns of victims of GBVAVG have resulted in specialised courts, designated specialised judges, dedicated court time in regular courts, and special measures in regular courts. These measures have been effective for addressing GBVAVG.

There are some common similarities that are present within these types of courts which include, but are not limited to, legal assistance for the victims, guidelines or procedures that are gender-sensitive and victim-focused, and the appropriate infrastructure to facilitate the victim’s testimony. Like any other method, there are benefits and challenges to this method. When Specialised Courts are not possible, some courts have used alternative methods. For example, some courts have created specialised dockets with designated judges and docket times that

prioritize GBVAWG cases. This method should possess certain elements to make it effective: the designation of judges that are both trained and experienced, designated court times, and proper management of GBVAWG cases. In addition to that method, attempts to reduce the negative impact that the criminal justice process can have on a victim can also be useful. Adjusting the infrastructure of the court to address these issues is another effective strategy.

Furthermore, studies have indicated that it is possible to change practices through training and capacity development. Training can be good for creating an environment in the criminal justice system that is more gender-responsive. To achieve this, training should always be examined to ensure that it does not perpetuate the attitudes that foster GBVAWG, gender-based myths, or gender-based stereotypes. Training should also utilise available technologies. Mandatory training for judges has raised a few concerns: some argue that it infringes upon the independence of the judiciary. However, some also argue that mandatory training is more effective.

In addition to training, some courts have developed tools to assist the judiciary. These tools vary in form and use, but for the most part, these tools are orientated towards gender-equality and women's access to justice. These tools typically provide frameworks or guidance to judges and court staff.

Another duty of a judge is to manage the cases before them – including the techniques used by the attorneys in the courtroom. Case management is important because delayed or cancelled cases can be a source of trauma for victims of GBVAWG. Some courts have prioritized GBVAWG cases, used specialised dockets, designed procedures to fast-track cases, and/or developed specific procedures.

Some countries have focused their energy on adjusting the internal organisation of the courts. Courts need to take is the creation and use of programmes that focus on supporting the rights of the victims. Studies have indicated that, regardless of court tradition, it is important for victims to have access to legal representation.

Victims that live in rural or remote areas face additional challenges when pursuing justice due to the lack of transportation, privacy, and access to justice due to the isolation of a rural or remote community. To address this issue, courts have utilised several different strategies, and the Handbook does provide guidelines for those judges that go into rural or remote areas to discharge their duties.

Regardless of gender, judges have a responsibility to remove gender discrimination from the judicial system. This includes the actions of court staff because their actions can affect those coming to court; thus, the judiciary has a responsibility to ensure that staff members are acting in an appropriate and non-discriminatory manner. Policies that promote gender-perspectives in the workplace is a possible avenue to achieve this goal. Another viable option, which has been implemented by several Latin-American countries, is the establishment of gender offices or gender equality units.

A 2011 report by UN Women found that women only account for 27% of judges worldwide – women are underrepresented in the judiciary. Men also hold more high-level positions than women do; as the level of the position increases, the amount of women in those positions decreases. While a female judge does not ensure equality, having a balance of gender in the workplace creates several benefits. To address this issue, the Handbook provides its readers with a variety of strategies and policies.

Judges, like the victims, can also suffer as a result of their involvement with the judicial court system; the continued exposure to GBVAWG cases can negatively affect judges and court staff. Those effects can alter the judicial process in a variety of ways.

While judicial independence is important, it can be used to hide possible unethical behaviour. Such actions can have a negative effect on the judicial system. For judges to be removed, typically, certain standards must have been violated and the removal process must be done in a certain manner. While the approaches to ensuring judicial accountability and integrity vary, there are certain processes that are especially important. Standards of conduct and accountability mechanisms are necessary. A formal code of conduct can also be a useful tool.

## **FIRST MODEL GBV COURT OF PAKISTAN, SPECIAL MEASURES, ITS FUNCTIONING AND EFFECT ON CONVICTION RATIO IN PAKISTAN**

*This paper was written by Judge Rehmat Ali. Judge Ali, is an Additional District & Sessions Judge and the first judge to preside over GBV Court in Pakistan.*

### **Introduction**

Gender Based Violence (GBV) is an act of violence that results in or is likely to result in physical, sexual, psychological and economic harm or suffering committed on the victim by reason of the sex or gender. It includes threats of such acts, coercion or arbitrary deprivations or liberty whether they or in private and

it includes domestic violence. The idea behind creation of a GBV Court is to enable cases, which concern gender based violence offence to be prioritized and conducted in a gender-sensitive manner. GBV court is first Model court of Pakistan established at Sessions Court Lahore to hearing gender based violence cases, established by Lahore High Court in collaboration of Asian Development Bank and inaugurated by Honourable Chief Justice Lahore High Lahore on 27th November, 2017. The GBV Court applies to the victim of gender based violence; these victims would include women, children and other vulnerable witnesses, including persons who may regard themselves as having a different gender identity.

**1. GBV Cases and Guidelines lay down by Supreme Court of Pakistan:**

In Salman Akram Raja case (2013 SCMR 201, PLJ 2013 107), Supreme Court by means of a Constitutional Petition set following recommendations:

1. Every police station that receives rape complaint, should involve reputable civil society organizations for the purpose of legal help and counselling and the list of such organizations will be maintained at each police station.
2. Administration of DNA test and preservation of DNA evidence should be made mandatory in rape cases.
3. As soon as the victim is composed her statement should be recorded u/s 164 Cr.P.C. preferably by the female Magistrate.
4. Trial of rape cases should be conducted in camera and after regular court hours.
5. During a rape trial, screens or other arrangements should be made so that victims and vulnerable witnesses do not have to face the accused persons.
6. Evidence of the rape cases should be recorded, in appropriate cases,

through video conferencing, so that the victims, particularly juvenile victims, do not need to be present in the Court.

Keeping in view the guideline issued by the Hon'ble Supreme Court of Pakistan in Salman Akram Raja case, the Hon'ble Lahore High Court in collaboration of Asian Development Bank established a Model GBV Court at Lahore in October 2017 and also approved the Practice Note for the working of GBV Court.

**2. Purpose and Object of the Practice Note:**

Practice Notes/procedures for conducting gender-based violence cases were issued by Hon'ble Lahore High Court, Lahore.

At the same time, the Practice Note is to be applied flexibly if particular situations require some modification in order to maintain the purpose and principles of the guidelines.

The Practice Note will apply both to the witnesses and the accused with the zeal and zest of fair trial being fundamental rights enshrined in the Constitution. It is important for all witnesses in the court to have the best conditions be able to give their best evidence.

**3. Special Measures to be adopted by the GBV Court while recording evidence of minor victims/witnesses:**

The purpose of the GBV Court is to enable cases which concern gender-based violence offences to be prioritized and conducted in a gender-sensitive manner. The GBV Court applies to the victims of gender-based violence; these victims would include women, children, and other vulnerable witnesses including persons who may regard themselves as having a different gender identity. The purpose of GBV Court also recognises the fact that the victims of gender based violence are mainly women (and girl children) and they often do not report violence against them for fear of retribution,

humiliation, shame, social stigma and loss of honour.

1. Before the victim gives evidence, the Judge will introduce himself or herself to victim and explain who the other persons in the court room are.

2. Questions asked by the Judge would include the following:

- a. The Presiding Judge will ask the security concern of the victim and his/her family and will provide the victim comfortable atmosphere. In case of danger, the evidence can be recorded through video/e-court or with screen inside the court.
- b. Victim is also made understand the importance of her evidence and in case of cross examination, if she is unable to understanding the question, she can ask again and again.
- c. All the other problems, faced by the victim, in the court except the merits of the case will be dealt with by the female support officer.
- d. Trial will be proceed without any unnecessary adjournments except permitted by the Judge and reason is to be recorded for this purpose.
- e. The questions in cross examination to the victim will be in written form duly vetted by the Presiding Officer in order to check the humiliation to the victim and in a gender sensitive manner.
- f. The questions to the victim should be in a gender sensitive manner keeping in view the sex, age and mental ability of the victim and in an appropriate tone.
- g. Court may limit the questions. In case of insecurity to the victim, the GBV Judge will issue appropriate protection orders to the Superintendent of Police.

**4. Attrition and Deviation from Previous Statements by the victims/witnesses:**

1. In case of resiling by the victim/witnesses from their previous statements, GBV Judge may adopt any of the following procedures or a combination of such procedures or another procedure, which the Judge

considers appropriate to address the issue.

**a. Procedure 1:-** The Judge may clear the court from all persons including accused and will hear the victim in his chamber and in order to be satisfied, will put some questions to the victim that why she/he is resiling from previous statements and whether it is any menace of coercion or undue pressure. Keeping in view the facts, the Court will make appropriate orders.

**b. Procedure 2:-** The Judge may adjourn the case until the following day or some other early suitable day, and make appropriate protection orders and arrangements to protect the victim and or other relevant family or persons. On the resumed day the Judge may undertake Procedure as he deems fit according to circumstances of the case

**c. Procedure 3:-** If the position remain so, the Judge may adjourn the case or direct the Sub-Divisional Police Officer concerned to look into the matter whether the victim and /or witnesses have been pressurised by anybody and concerned SDPO will submit report before court within 7 days. After receiving the report, the GBV Judge may make appropriate protection orders, if required so.

**d. Procedure 4:-** The Court will insist that the trial be continued and the victim and witnesses be required to give evidence on that day or otherwise. In spite of this fact, if witnesses insisted to resile from their statements, the following procedure will be adopted.

- i. Victim and witnesses should be informed the procedure in case of resiling statement and they will be declared hostile and liable to be cross examined from both sides.
- ii. In case of victim, cross-examination will be in written

question answer manner in order to avoid the undue pressure and intimidation. After recording the evidence, the Court will decide the case in the light of assessment of the evidence in totality.

#### 5. Difference between GBV Court and other Courts dealing with the same cases:

- Speedy Trial
- Comfortable atmosphere of court
- According to practice note only 10 cases will be fixed for hearing on every day but this practice is not in ordinary courts.
- Separate room for victim/witnesses for their preparation by prosecutor and counselling.
- Audio/Video trial facility.
- Female Support Officer to attend the victims and witnesses.
- Appointment of Female Prosecutor in GBV court.
- Protection to the victim and witnesses in shape of protection order (inside and outside of the court)

#### 6. Effects and Need of GBV Court:-

- Confidence of victim/witnesses and accused on Court
- Mental peace and security for victim and witnesses
- Speedy trials of GBV cases.
- Protection of identity of victim and witnesses
- GBV court arrangements, environment inside court and in presence of female support officers and female prosecutor there is feeling of protection safety as compare to other ordinary courts.
- As it is first specialized GBV, so the victim feels very comfortable and considers it victim's friendly court.
- Frequent adjournments avoided by GBV court and dispose of trial early.
- Facilities available in the GBV court like E-video trial,

screening, female support officer and female prosecutor make this court more different from other courts.

#### 7. Comparison of other Courts with GBV Court in Lahore:-

- With regard to all these guidelines, practice notes, amendments, a great change in conviction comes up.
- In GBV Court, 80 cases have been decided out of which 13 convictions awarded by this Court including death penalty. Whereas the other three Courts adjudicating same cases but there is very low conviction rate.
- The comparison of GBV Court with other three Courts is given as under:-

	Number of Decided Cases	Number of Conviction	Percentage
GBV Court	80	13	16.25%
Other three Courts	137	02	01.45%

#### Conclusion:

GBV cases are very sensitive, which require certain precautionary measures at investigation, prosecution as well as at trial stage. For this purpose, certain special measures are to be used by the Court at trial stage while recording the evidence of minor and vulnerable witnesses. These precautionary steps adopted by the court and have enhanced the confidence level of the victims and witnesses, which is resulted into the high conviction rate as compared to other Courts dealing with the cases of same nature.



## INTERNATIONAL LABOUR ORGANISATION

In the year of 2019, the International Labour Organisation (ILO) adopted a legally-binding convention – the first since 2011 – that created new obligations and measures for the ILO member states. These obligations and measures address violence and harassment in the workplace and work-related activities. 438 states voted in favour of The Violence and Harassment Convention, 2019 (the Convention) while 7 voted against it and 30 abstained from the vote. The Convention addresses a variety of actions that states party to the convention must take; from training to legislation, the document's scope is broad. It applies to a wide area of employment arrangements and to all sectors of the economy. The Convention also applies to those seeking a job. Eight principles guide the states party to the Convention. The Convention desires states to adopt a zero-tolerance policy in regard to violence and harassment in the workplace – problems that disproportionality affect women. States should also provide resources, remedies, and guidance in pursuit of the goals set forth in the Convention. To assist the states party to this convention, the ILO created a non-binding document titled ILO, Violence and Harassment Recommendation, 2019, 20 June 2019.

For a copy of the Convention and the Recommendation, visit [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_711242.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_711242.pdf).

## UN WOMEN ARTICLE: THE PRESENCE OF VIOLENCE AGAINST WOMEN 2019

*The following is a summary of the UN Women's article titled "A staggering one-in-three women, experience physical, sexual abuse". This information was gathered and dispersed by the UN in recognition of the International Day for the Elimination of Violence against Women in November 2019.*

The United Nations reported that a third of women and girls have experienced sexual or physical violence during their lifetimes. This reality, the UN argues, must change soon. Rape and other acts of sexual violence can have devastating long-lasting effects on the victim – both psychological and physical – and that victim's friends and family. Violence against women can, and has, resulted in the death of women. Violence against women is a world-wide phenomenon. In addition to the act of violence itself, some women have felt threatened by the words of others: threatening communication, both in person and via social media, has occurred. This issue is not limited to a particular group of women, but there are certain groups that are more vulnerable than others: members of the LGBTI community, migrants, refugees, indigenous minorities, and those experiencing humanitarian crises are more vulnerable to this type of violence. To compound this issue, the perpetrators of violence against women are not always punished for their acts. Findings such as these are why the UN continues to advocate for the cessation of violence against women.

## NEWS FROM AROUND THE COMMONWEALTH

*The following are summaries of various reports that the CMJA has gathered from around the Commonwealth that outline some of the developments in the field of gender and human rights.*

### BANGLADESH

In January 2020, the High Court ordered the government of Bangladesh to address the dramatic increase of rapes in the country. The High Court became involved in this issue after receiving a private petition from Khandoker Kawsar, an attorney, after the rape of a student at a top university. The High Court has given the government one month to create a commission and six months to create a set of recommendations to address the issue. Deputy Attorney General Abdullah Al Mahmud has promised to obey the order and acknowledged that the number of rape incidents has increased. There are no official numbers yet; however, the Ain o Salish Kendra – a human rights organisation – estimates that approximately 1500 rapes have occurred. Regardless of the exact number, the occurrence of rape has increased according to Mahmud. Women rights groups place the blame on the lack of proper enforcement of sexual violence laws.

### CANADA

The forced sterilisation of indigenous women in Canada is an issue that was addressed by the UN Special Rapporteur on the right to health and the Special Rapporteur on violence against women in their respective reports to the UN Human Rights Council in the summer of 2019 after they visited Canada in 2018. These reports built upon past recommendations to Canada concerning this persistent issue. The

report by the UN Special Rapporteur on the right to health addressed several subjects, but did make specific reference to the issue of forced sterilisation of indigenous women; the report found that at least seventy-six indigenous women were sterilized without their informed consent. The UN Special Rapporteur on the right to health also reaffirmed the views and suggestions of the UN Committee against Torture in regard to proper investigatory and accountability practices by Canada in pursuit of these acts. The report also addressed the availability of adequate options for redress and the possible criminalisation of such actions. The report also addressed the importance of awareness among the indigenous communities and healthcare personnel about what proper consent looks like and Canada's need to increase that awareness. The Special Rapporteur on violence against women also addressed the issue of forced sterilisation in her report in addition to other subject matters. The Special Rapporteur expressed concern about racism within the healthcare system.

## CAYMAN ISLANDS

In November 2019, the Court of Appeal in the Cayman Islands overturned a lower court's decision to remove the ban on same-sex marriage – untimely resulting in the criminalisation of same-sex marriage in the Cayman Islands. Despite the criminalisation of same-sex marriage, the Court maintained that same-sex couples should be afforded a functional legal equivalent for marriage. The purpose of the ruling, according to the Premier of the Cayman Islands, was to ensure that marriage would retain its traditional meaning. The UK's Foreign and Commonwealth Office spokeswoman stated that the Cayman Islands Legislative Assembly should take steps to ensure that same-sex couples are afforded equal rights but

declined to speak on the subject of Britain's involvement with the issue.

## ENGLAND AND WALES

In a recent rape and domestic violence case, a judge ruled against the victim because she failed to take any physical action against the man attacking her; as a result, the action of the man was not rape from the perspective of the judge. This case was appealed. Because cases in Family Courts are held behind closed doors and confidential, the public cannot access these rulings and this information is only divulged when there is an appeal. Some argue for these courts to be more transparent and concerns have been expressed that judges in family courts lack accountability to the public because of the secret nature of their judgements.

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In December 2019, it was reported that Kate Gallafent QC argued against the High Court's decision to not issue non-gendered passports in the Court of Appeal. Gallafent maintains that the refusal constitutes a human rights violation because it forces a person to assume a gender with which they do not identify. This suit is being brought by Christie Elan-Cane who has been a non-gendered activist for more than twenty-five years. In 2010, Elan-Cane applied for a passport, but the application was rejected by the computer. That rejection, as was relayed to the Court, did not occur for security reasons. Elan-Cane argues that people should have more than just a choice between male and female. Furthermore, some argue that the current policy is discriminatory and inconsistent. It will also be asserted that the policy suppresses a group that is already marginalized within society. In addition, more than eighty MPs put their signatures on the most recent Commons early day motion, which was tabled in July 2017, that

requested the implementation of non-gendered passports and Human Rights Watch supported the claim before the Court. Outside of the UK, non-gendered passports have been implemented by some nations: Australia, Canada, Denmark, Germany, Malta, New Zealand, Pakistan, India, Ireland and Nepal issue passports with a third option for gender. On a broader scale, the UN International Civil Aviation Organisation (ICAO) allows for the usage of such passports.

## ESWATINI

It was reported on 7 November 2019 that Ethel Dlamini – an elderly widow – is locked in a dispute with her brother-in-law, Prince Chief GasawaNgwane. After the death of Dlamini's husband, Prince Chief GasawaNgwane refused to allow the widow to construct a new toilet on her homestead, tore down a fence that she was building for protection, and took possession of a field that she was gifted by her father-in-law. This case is still pending a decision by traditional sources, but the Supreme Court upheld her appeal from the High Court and granted an interim interdict which orders the Prince Chief to rebuild the fences he tore down, restore possession of the field, and allow Dlamini to build a new toilet.

## INDIA

The Supreme Court has decided to delay its verdict concerning a ban on the entrance of women of menstrual age into Hindu temples. The case in question sought to lift that ban and open the temple doors to women. The court delayed the verdict in order to seek the opinions of other judges concerning the issue. In 2019, a five-judge bench ruled against the ban; the judges held that the ban was not necessary for religious pursuit and upheld the right to equality of worship. This decision sparked

controversy India; some attempted to ignore the ruling and many created petitions to reinstate the ban. This controversy led to the Supreme Court's decision that it was necessary for a seven-person bench to consider this case in addition to three other cases that dealt with gender discrimination. In February 2020, the Court decided that it was acceptable for the Court to refer an issue to a larger panel. The issue before the Court now extends past the Hindu religion and into other religions that exist within India. This broadened scope could, as some suggest, lead to the creation of a uniform civil code. The ruling party maintains that the creation of a code is necessary for the attainment of gender equality in India. While these cases are ongoing, despite the lifting on the ban, women are still being limited in their entry into temples and access to religious rites.

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In Lucknow, a city in Uttar Pradesh, a 23 year-old victim of rape was drenched in kerosene and then lit on fire by a gang of five men while on her way to court in November 2019. One of the gang members had been accused of raping the woman at gunpoint and had been given bail. The woman did not lose her life in the attack. However, this incident sparked outrage and shame from the already furious community. Crimes against women are not new to the public of Uttar Pradesh and protestors and parliamentarians are pushing for courts to impose tougher penalties and fast-track rape cases.

## KENYA

The Kenyan Government's decision to prevent five human-trafficking victims from the leaving the country in order to testify has prompted a suit by a charity group. The organisation claims that the government is failing to appropriately care for the victims and that victims should not be

compelled to testify about their experience. The women, who were originally from India and Nepal, simply wished to go home and have been traumatised by the experience according to Sophie Otiende – a consultant for the organisation that obtained a safe house for the women.

## MALAWI

In December 2019, Namatunga Tisauke Phiri was stoned to death by relatives of her husband after she attended the funeral of her sister-in-law. The relatives believed that Phiri used black magic to kill her sister-in-law, Gilberta Gwirize, who had died of malaria on 27 December 2019. Gwirize's death occurred a short time after Phiri threatened her on 24 December 2019. The police have condemned the act and are attempting to capture the culprits.

## SOUTH AFRICA

On 6 September 2019, the Commonwealth Human Rights Initiative (CHRI) requested that South Africa take strong, but legal, steps to end violence against women in the nation. This request was made in the context of a nationwide strike that possessed strong public support concerning the issue of violence against women. Violence against women in South Africa is a significant issue with one-hundred and thirty-seven sexual offences being committed every day and more than thirty women being killed by spouses. President Ramaphosa has vocalised his intent to reduce violence against women in his nation.

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The CMJA has reported previously on the progression of the Traditional Courts Bill, which many felt disenfranchised women in traditional courts. The Inyanda National Land Movement (INLM) has voiced its disapproval of the bill because it is a

proponent of the patriarchy and fails to empower women in the name of tradition. Others argue that the bill encourages servitude. Despite these concerns, the bill was passed and signed into law by President Cyril Ramaphosa along with the Khoi-San Leadership Bill.

However, the controversy has not ended with the passage of the bill. John Clarke – a social worker, human rights activist, and theologian – believes that the passage of these bills do not bode well for the State of South Africa – especially in regard to the power it grants traditional leaders. Clarke also doubted its constitutionality, as did two panel reports. Despite the reports, the President signed the bill into law instead of referring the bill back to parliament. The editor of Maverick Citizen, Mark Heywood, spoke-out against the law in a report.

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The Constitutional Court has expressed concern that the Justice Ministry has not met the two year deadline and made the appropriate changes to the Recognition of Customary Marriages Act (RCMA) to protect women in polygamous marriages. The Constitutional Court held that certain parts of the original law perpetuated inequality in marriages. This type of inequality, according to Justice Mbuyiseli Madlanga, limits the wives' right to human dignity. The changes were supposed to ensure that the assets were distributed equally if a spouse in a polygamous marriage were to die. Justice Minister Ronald Lamola requested a one-year extension, but the Constitutional Court was not moved or convinced by his request. The Constitutional Court believed that the amount of time given to the Ministry was adequate and that an extension would serve no purpose because of the steps that the Court put in place if the Ministry failed to deliver. If the Ministry fails to accomplish the task, an interim

regime will govern the distribution of marital property.

## SIERRA LEONE

In Sierra Leone, traditional cutters have recently vowed to cease female genital mutilation (FGM) according to UN Women. In fact, the traditional cutters, who were the ones who performed most of the FGM procedures, have now agreed to fight against FGM. According to the Founder of the grassroots anti-FGM group Amazonian Initiative Movement, Rugiatsu Turay, the organisation has managed to convince approximately 700 practitioners to cease their FGM operations. In Sierra Leone, the rates of FGM are among the highest in Africa – 89.6% of women from the ages 15 to 49 have experienced FGM in Sierra Leone. Minors are not exempt from this procedure.

FGM is closely linked to initiations to Secret Societies in Sierra Leone. It has been reported that it is this link to powerful secret societies that keeps the practice from being outlawed. Initiations of this sort were banned in 2019 by the Minister of Local Government and Rural Development, Anthony Brewah, but the practice of FGM is still legal in a general sense. FGM procedures can have long-term effects; according to The Lancet, which is a medical journal, there is a possibility that girls who experience FGM can be infertile later in life.

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After hearing the case of a six year-old who was raped by a family acquaintance in August 2015, Senior Judge Fynn advised mothers to be more cautious about the safety of their children; they should be sensitive to any changes in their child's behaviour and less trustful of others. Judge Fynn sentenced the man responsible for the act, Ibrahim Lahai, to a ten years in prison.

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The Court of Justice of the Economic Community of West African States (ECOWAS) demanded that a policy barring pregnant women from studying in public schools be removed from law on 12 December 2019. The Court held that the law and the exclusive schools for those pregnant girls were discriminatory and violated the girls' right to an education. The government of Sierra Leone, according to the Court, needs to help end the stigmatization of pregnant girls and provide education about sexual and reproductive health in schools.

On a broader note, African governments have approved of the United Nations Sustainable Development Goals (SDGs) and agreed to its provisions which include a commitment to inclusive education for all. African leaders have also committed to Agenda 2063 – a document that stretches the continent and focuses on sustained investments in education. In addition, the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child believe that states are obligated to pursue the retention and re-entry, if needed, of pregnant and/or married girls in school.

## SOLOMON ISLANDS

The government and police have promoted SAFENET. SAFENET is an approach that coordinates front-line responders to ensure effective and survivor-centred responses to victims of gender-based violence. It is led by Ministry of Women, Youth, Children and Family Affairs. This organisation partners with UN Women and receives funding from the Pacific Partnership to End Violence Against Women and Girls. The adoption of the Family Protection Act by Police Force and other efforts are aimed at increasing the police force's respectful assistance of domestic violence survivors. While these

efforts have changed the way that police officers in the Solomon Islands address domestic violence issues, to end violence, the police recognise that mind-sets must change.

## TANZANIA

In Tanzania, Justices Mary Levira, Winnie Korosso, and Augustine Mwarija upheld a 2016 High Court decision that banned any person under the age of eighteen from getting married in October 2019. In this decision, the Court of Appeals held that the provisions that contradicted this holding in the Law and Marriage Act were unconstitutional. The initial application was put forth by Rebeca Gyumi – the director of a child's rights NGO in Tanzania called the Msichana Initiative. The appeal from the High Court to the Court of Appeal came from the Attorney General on behalf of the government of Tanzania. The appeal had put a hold on the changes that the High Court decision would have prompted. Each argument put forth by the government of Tanzania was dismissed by the Court of Appeal in favour of the international and regional laws and treaties that Tanzania has ratified. The State has twelve months to make the necessary amendments to the Law of Marriage Act.

## CONTRIBUTIONS AND COMMENTS

We would like to hear from you. If you have comments, suggestions, ideas, or concerns please send us an



e-mail at [info@cmja.org](mailto:info@cmja.org)

If you have an interesting story to tell, please send these too!!

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## Objectives of the Gender Section

### Aims

- ◆ To promote the interests of judicial officers throughout the Commonwealth
- To ensure wherever possible, equal access to the law

### Objectives

- ◆ To provide a forum for judicial officers to be able to consider ways of redressing any gender imbalance:
  - a) Gender Bias and other colleagues;
  - b) Gender Bias and the Public both specifically and generally;

c) Institutionalized Gender Bias and the Justice System.


- ◆ To exchange information among judicial officers;
- ◆ To encourage the advancement of women;
- ◆ To promote and encourage women to be aware of their legal rights;
- ◆ To address women's groups on issues relating to the law and their legal rights.


**Gender Section  
News  
Publication by  
Justice Lynne Leitch  
(Chair)  
Dr. Karen Brewer  
(Editor in Chief)**


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### 13-17 SEPTEMBER 2020

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