

Alliance of NGOs on Crime Prevention and Criminal Justice

Resolution 78/227

“Equal access to justice for all”¹

United Nations Office on Drugs and Crime (UNODC)

Objective:

To provide substantive information on challenges, lessons learned, best practices and enabling factors needed to enhance the functioning of criminal justice and social support systems to ensure equal access to justice for all.

Approach:

Access to justice requires the capacity to recognize that a right has been violated and obtain legal help to bring a dispute to court and navigate an oftentimes lengthy and complex trial. This often entails navigating a complex legal landscape, which may extend beyond criminal matters to encompass civil, family, or administrative proceedings, to name a few.

Access to justice has traditionally been seen as access to legal representation, lawyers (e.g., legal aid) and court-based processes². Yet, for survivors of violence, we must understand that access to justice goes beyond reporting crime to officials, participating in criminal proceedings or the imposition of sanctions as a result of criminal legal processes. It also goes beyond the use of the justice system in family, criminal, and civil law. In all nations, factors such as poverty, geography, culture, health and various government policies can make it harder for victims to access justice, i.e., to report crimes, assert their rights, seek assistance, and/or take part in criminal trials.

For survivors of violence, access to justice involves **seven inalienable rights** that must be met in the aftermath of their lived experiences³. First is **RECOGNITION**. Survivors want and need to be heard, respected and believed by compassionate individuals when they

¹ Cfr. <https://documents.un.org/doc/undoc/gen/n23/421/04/pdf/n2342104.pdf#:~:text=Encourages%20Member%20States%20to%20promote,9>.

² Department of Justice Canada, Development of an Access to Justice Index for Federal Administrative Bodies, Department of Justice Canada, 2017 CanLII Docs 4036, <<https://canlii.ca/t/t1r2>>, retrieved on 2024-08-29

³ Waller, Irvin. *Rebalancing Justice: Rights for Victims of Crime*. Rowman & Littlefield Publishers Inc., Lanham, Maryland. 2011.

come forward to disclose their lived experiences. We know that across the globe, survivors widely report negative social responses from many institutions specifically mandated to serve their interests. Crime causes harm, injury and loss to people (not states) and victims of crime must be recognized, believed, validated, and not overlooked, used or forgotten!

Survivors' needs are complex. Where they have suffered physical, spiritual and psychological injuries, as well as patrimonial damage, access to justice must include the provision of **ASSISTANCE & INFORMATION**. Assistance such as emergency shelter or accommodations to escape violence, supports in the aftermath of violence like medical treatment to heal injuries and therapy to move forward from the trauma they have endured. IOVA believes survivors have a right to access aftercare that is paid for by the state when they are innocently victimized, yet most nations and states fail to provide this critical care, or only provide time-limited and capped financial or psychological supports through state compensation programs. Around the globe, we know that survivors bear the overwhelming brunt of the cost of victimization, which are estimated in the billions, and survivors are left with life changing injuries, unable to work, and often disabled physically, emotionally and spiritually.

Survivors must be provided with information to assist them to have agency in decisions that will affect them. Information may be required that goes beyond strictly legal issues. Victims need information about services and supports available to them; as well as information about their rights and how to assert them in the criminal legal system and processes they may become involved with. They also need information about the support services and assistance programs which are accessible to them in their communities.

PARTICIPATION & VOICE means victims and survivors are provided choices and opportunities to seek resolution mechanisms outside the formal justice system, if desired. Not all survivors seek vengeance or criminal justice sanctions, yet restorative or transformative solutions are rarely presented to them. Can restorative justice (or transformative justice) meet the needs of victims, accused Indigenous peoples, and other offenders? Evidence shows it can. In many nations, the issues of overrepresentation, as both accused and as victims, for Indigenous Peoples and other racialized groups are at the forefront of calls for criminal justice reform, defunding or de-tasking the police and decolonization. Youth in Canada would like to see more diverse representation among staff in justice system institutions, such as the courts and the police force⁴. If there were more diverse decision-makers, particularly more Indigenous representation, youth believe that there would be better access to justice for all⁵.

⁴ Department of Justice Canada, Youth Views on Access to Justice, Department of Justice Canada, 2020 CanLII Docs 3568, <<https://canlii.ca/t/t1qn>>, retrieved on 2024-08-29

⁵ Ibid.

Victims need to recover from the financial harm and losses and brought on by their victimization, including **REPARATIONS** from the offender and **compensation** from the state. The state should ensure enforcement and collection mechanisms are in place to pay victims what the court has ordered or to remove debts perpetrators have incurred in the victim's name, which is common in cases of human trafficking. Some scholars have examined the use of reparative justice in cases of sexual violence, so victims are able to choose how they would like to proceed in the civil, criminal, or administrative justice systems⁶. But for other survivors, justice means repairing the harm caused by the offender's actions through healing and reintegration. It means holding the offender accountable through voluntary measures that engage the community and prevent future crime. It means understanding sexual violence, for example, as the product of complex systemic forces that impact different groups differently. It means working together with offenders to promote gender equality in our society.

Access to **SAFETY** provides crucial access to justice for many survivors. Victims need to be protected from the accused or perpetrator, but not only when participating in criminal justice proceedings, they require it in their everyday lives, as well. As most survivors of sexual and gender-based violence do not report to the police, they may want options to manage this person in their life; to access safe refuge such as shelter bed space if needed for themselves and their children; personal and home safety devices; and safety planning to help keep them safe at home, when sharing custody of children, at work, in educational settings and when using technology or living life online.

Road safety is an issue impacting many nations. According to the World Health Organization, approximately 1.19 million people die each year as a result of road traffic crashes and road traffic injuries are the leading cause of death for children and young adults aged 5–29 years. Road traffic crashes cost most countries 3% of their gross domestic product. Many crashes involve criminal activity like impaired driving yet are often deemed less serious or non-violent crimes despite evidence that a loss related to impaired driving is comparable to a loss related to homicide. Governments must take steps to reduce road traffic crashes like impaired driving and provide more holistic support services to victims and injured survivors.

Victims of crime recognize the need for **PREVENTION OF VIOLENCE** and want more investments by governments to stop violence before it happens. Violence is not inevitable, it can be prevented through public education, public health and bystander intervention programs designed to tackle root causes. Violence is a serious public health problem

⁶ Wemmers, Joanne. "Judging Victims: Restorative choices for victims of sexual violence" in Victims of Crime Research Digest, Issue 10, 2017.

which profoundly impacts lifelong health, opportunity and well-being. The negative health, social and economic effects can span generations, and lead to cycles of violence and abuse within families and sometimes whole communities. While violence affects all people, some people are more at risk of experiencing violence because of various and intersecting forms of oppression, such as racism, colonialism, sexism, homophobia, transphobia and ableism. In order to reduce it, nations must address the complex interplay between individual, relationship, community, and societal factors that are overlapping in nature and put people at risk for violence or protect them from experiencing or perpetrating violence⁷.

The **IMPLEMENTATION** of measures which provide access to justice for victims and survivors, including statutory rights that are laid out in state and national law, must be implemented, monitored and measured so they are they not just rhetoric.

Delimitation:

TARGET:

16.3. Promote the rule of law at the national and international levels and ensure equal access to justice for all.

Proposed Indicators:

39. Percentage of referred cases of sexual and gender-based violence against women and children that are investigated and sentenced.

Challenges:

The financial implications of violence against women (VAW) are considerable for countries. The societal cost of VAW is estimated at approximately 0.31%⁸ and 2% of global GDP⁹. This is particularly evident in middle- and low-income countries. In the case of Mexico, it accounts for only 0.03% of GDP in 2016. Meanwhile, the cost of IPV in Ecuador in 2020 was approximately \$4,608 million US dollars, representing 4.28% of the country's GDP¹⁰. In Colombia (2021), physical IPV resulted in an annual health burden of \$90.6

⁷ Centers for Disease Control, Violence Prevention, 2024. <<https://www.cdc.gov/violence-prevention/about/index.html>>, retrieved on 2024-08-29

⁸ Hoeffler, A. and Fearon, J. (2015). Benefits and Costs of the Conflict and Violence Targets for the Post-2015 Development Agenda. Retrieved from: https://copenhagenconsensus.com/sites/default/files/conflict_assessment_-_hoeffler_and_fearon_0.pdf

⁹ Care International (2018). Sky-high costs of violence against women shown in new global report as CARE calls for better prevention and response. Retrieved from: <https://www.care-international.org/news/sky-high-costs-violence-against-women-shown-new-global-report-care-calls-better-prevention-and>

¹⁰ Vara-Horna, A. (2020). Los costos-país de la violencia contra las mujeres en Ecuador. PreViMujer, GIZ. Retrieved from: <https://www.researchgate.net/profile/Aristides-Vara->

million, with nearly 40% of the economic burden of physical partner violence among women aged 13-24 attributed to those affected by the conflict (24%)¹¹. In Bolivia (2018), the estimated cost is 6.46% of the GDP.¹² From a social and political standpoint, this effectively excludes more than half of the population in these countries from economic and democratic participation.

1. Funding.

While it is possible to determine the costs of violence and crime in monetary terms, including the costs of gender-based violence (GBV), there is a challenge in identifying and establishing mechanisms that measure what countries invest in preventing, mitigating, and addressing the effects of violence and crime on victims, in the Global South.

Canada has made significant investments in addressing gender-based violence (GBV). Since the launch of its strategy to prevent and address GBV, the Government of Canada has invested over **\$800 million** and continues to allocate **\$44 million per year** for ongoing efforts¹³. Additionally, Budget 2021 included targeted investments of \$601.3 million over five years to address the rise in GBV and support the advancement towards a National Action Plan to End Gender-Based Violence¹⁴. On the other hand, the total expenditures on policing in 2021 amounted to approximately 16.5 billion Canadian dollars¹⁵. Given that Canada's GDP for 2021 was around 2,007.47 billion USD¹⁶, this expenditure represents roughly 0.82% of the GDP.¹⁶

2. Saturation and slowness.

The average time to resolve a case in Latin America and Africa varies significantly between countries and is dependent on a number of factors, including the efficiency of the judicial system, the complexity of the case in question, and the availability of resources. However, some studies and reports indicate that trials can take several years to resolve.

For instance, in Mexico¹⁷, Kenya, and Nigeria¹⁸, the typical duration for resolving a criminal case is approximately three to five years. In other countries, such as Colombia

Horna/publication/345902502_Los_costos_pais_de_la_violencia_contra_las_mujeres_en_Ecuador/links/5fb5421592851c2994e43bfb/Los-costos-pais-de-la-violencia-contra-las-mujeres-en-Ecuador.pdf

¹¹ Brown, D., Meinhart, M., Poulton, C., & Stark, L. (2023). The Economic Burden of Intimate Partner Violence in Colombia: Estimated Health Costs Among Females Aged 13–24. *Journal of Interpersonal Violence*, 38(3–4), 3215–3243. <https://doi.org/10.1177/08862605221104531>

¹² Ibrahim, Z., Kuru-Utumpala, J. and Goulder, J. 2018. Counting the cost: The price society pays for violence against women. Geneva, Switzerland. Retrieved from: https://www.care-international.org/files/files/Counting_the_costofViolence.pdf

¹³ <https://www.canada.ca/en/women-gender-equality/gender-based-violence/facts-stats.html>

¹⁴ <https://www.canada.ca/en/women-gender-equality/gender-based-violence/gender-based-violence-strategy/progress-report-2021-2022.html>

¹⁵ <https://www.statista.com/statistics/436375/total-expenditures-on-policing-in-canada/>

¹⁶ https://www.macrotrends.net/global-metrics/countries/CAN/canada/gdp-gross-domestic-product#google_vignette

¹⁷ <https://www.ppd.com/wp-content/uploads/2020/01/2019-Oct-Regulatory-Rapporteur-Latin-America-Regulatory.pdf>

¹⁸ <https://oximio.com/insights/clinical-trials-in-africa/>

and Brazil, the times can be similar or even longer due to the saturation of the judicial system and lack of resources.

3. Inequality and discrimination.

Violence against women represents a significant and pervasive issue. Many women are deterred from reporting these crimes due to concerns about retaliation, a lack of trust in authorities, and the risk of further victimization. Women, particularly those from indigenous and Afro-descendant communities, frequently encounter heightened levels of poverty and social exclusion, which restrict their access to legal resources and support services. Legal services are often underfunded and lack the training and resources to effectively address these challenges. Additionally, the criminal justice system is marred by gender biases and stereotypes.

4. Corruption.

The perception of corruption has been demonstrated to reduce women's trust in the justice system, which in turn discourages them from seeking assistance and justice. This is particularly problematic in vulnerable communities where gender-based violence is more prevalent, thereby exacerbating the problem¹⁹.

Corruption continues to be a significant factor contributing to impunity. Despite the long-standing focus on anti-corruption efforts in Latin America and Africa, there has been minimal progress in this area. As indicated in the Transparency International Corruption Perception Index, significant corruption cases have yet to be prosecuted. Additionally, the growing number of corruption scandals involving high-ranking officials in various countries has not been adequately addressed. Since 2018, there has been a concerning perception of the use of prosecution offices as a political tool, which has further eroded public confidence in the institution's independence²⁰.

5. Impunity.

Impunity is a persistent problem, where many cases of violence and discrimination against women are not adequately investigated or prosecuted, perpetuating a cycle of violence and mistrust in the judicial system.

In times of volatility or instability, legislative accomplishments take a backseat when corruption or impunity hinder access to justice or the protection of fundamental rights. This undermines the state's legitimacy and undermines the belief in democracy as a way of life rather than just an electoral process. This can lead to setbacks and validate the reduction of rights to support authoritarian actions that directly and disproportionately

¹⁹ <https://cidh.oas.org/pdf%20files/Informe%20Acceso%20a%20la%20Justicia%20Espa%20ol%20020507.pdf>

²⁰ <https://library.fes.de/pdf-files/bueros/la-seguridad/12574.pdf>

affect girls and women, leaving them more vulnerable. Women are often the first to have their rights and participation spaces reduced and as a result, are the most dissatisfied with Latin American democracies²¹.

While it is estimated that globally, one in three women over the age of 15 has experienced physical or sexual violence, in Latin America, it is estimated that the number may be as high as one in two²². Mexico, Peru, Brazil, Argentina, El Salvador, and Bolivia collectively account for 81% of femicide cases in the continent²³. There is a perception of persistent failures to address gender-based violence, which steadily diminishes trust in political institutions, justice, and democracy.

6. Organized crime.

The last decade has demonstrated the significant influence of transnational organized crime networks in various countries in Latin America and Africa. It is challenging for national governments to effectively address the corrupting economic power and extensive territorial control of these networks when they decide to attack organized crime. In the Latin American subregion, they are considered a primary contributor to homicides. It is beyond dispute that they exert control over human trafficking for sexual exploitation.

Best Practices.

1. Funding.

Bolivia, Ecuador, and Mexico have all incorporated provisions for budget allocation within various legislative acts. The Fiscal Responsibility Law of Mexico requires that all budgets for the three branches of government, as well as government agencies, include, at a minimum, "actions to promote gender equality, eradicate gender violence, and eliminate all forms of gender discrimination" in their programs and budget lines. Additionally, specific cross-cutting indicators must be included within the Performance Evaluation System. Bolivia has established three channels through which the budget is allocated for the prevention and addressing of violence against women. Firstly, 5% of the budget is allocated to security institutions in accordance with Law 2145 of 2014. Secondly, it is treated as a cross-cutting component through the budgets of state bodies and autonomous territorial entities in line with Law 348 of 2013. Thirdly, the main focus is on providing equity and comprehensive legal services through Law 2028 of Municipalities.

²¹ Corporación Latinobarómetro. (2023). Informe Latinobarómetro 2023: la recesión democrática de América Latina, p. 40. Retrieved from: <https://www.latinobarometro.org/lat.jsp>

²² Sardinha, L., Maheu-Giroux, M., Stöckl, H., Meyer, S. R., & García-Moreno, C. (2022). Global, regional, and national prevalence estimates of physical or sexual, or both, intimate partner violence against women in 2018. *The Lancet*, 399(10327), 803–813. [https://doi.org/10.1016/S0140-6736\(21\)02664-7](https://doi.org/10.1016/S0140-6736(21)02664-7)

²³ Souza, D. et al. (2022) Domestic violence against women during the Covid-19 pandemic: A scoping review, *Forensic Science International: Reports*, Volume 5, Retrieved from: <https://www.sciencedirect.com/science/article/pii/S2665910722000226>

Ecuador has incorporated a gender approach into its policy implementation process through constitutional means.

However, a significant challenge persists in the practical implementation of these policies. While legislative frameworks have been established to facilitate gender-responsive financing, there is a discrepancy between policy intent and actual practice in all three countries.

2. Promoting faster access to justice and restorative justice models.

In the Latin American region, a variety of specialized institutions have been established to address the specific needs of women, including Women's Justice Centers, specialized police stations, specialized courts, specialized prosecutors' offices, and women's secretariats. However, the quality of care provided by these institutions varies significantly across countries and even at the subnational level. In most cases, the effectiveness of these institutions depends more on the political will and technical capacity of the institutions themselves, which can change significantly over short periods of three years.

In Mexico, the Civic Justice project has had mixed results and is still in the implementation phase. In Colombia, two noteworthy initiatives stand out. Houses of Justice and Citizen Coexistence Centers provide legal and conflict resolution services to vulnerable communities. They facilitate access to justice by providing free legal advice and conflict mediation services. The Justice in Equity program utilizes alternative dispute resolution methods, such as mediation and conciliation, to facilitate conflict resolution, particularly in rural areas and indigenous communities. However, these are general mechanisms that do not directly address GBV.

3. Independent judiciary and the importance of Open Justice.

An independent judiciary serves as a vital safeguard, ensuring democratic checks and balances that foster confidence in institutions and democratic systems. This approach fosters transparency, citizen involvement, and accountability within the judicial system. Initiatives such as the publication of judgments and the creation of citizen participation mechanisms have enhanced accessibility and trust in the system.

Mexico has established a model for publishing all the rulings of the judicial branches, including those of the Supreme Court of Justice of the Nation. It has also implemented a set of protocols for judging from a gender perspective, from a childhood perspective, from a SOGIESC perspective, and from a human mobility perspective. Guatemala has implemented a similar system of open justice, and Colombia has a complex system that allows the Constitutional Court to reform laws.

4. Use of technology.

The implementation of case management systems and online platforms has improved the efficiency and transparency of the judicial system. This allows for more effective case tracking and reduces waiting times.²⁴

In the wake of the global emergency caused by the pandemic, Latin America has made significant advancements in the use of technology for case management and in transparency and accountability systems. Since the introduction of criminal justice reforms in 2008, computerized case management systems have been implemented across the region. These systems enable direct consultation of files, reducing the costs of transfers and the risks of corruption due to the disappearance of files, as they are digitalized.

On the other hand, while progress has been made in the area of transparency and accountability, it has been slower than that seen in the justice case management sector. In this area, for example, there are human rights commissions (Ombudspersons) that have not yet achieved the level of consolidation that would be expected, and in some cases have experienced setbacks where democratic processes have been disrupted.

The use of technology is also pertinent to the fields of criminal investigation, organized crime, and the safeguarding of personal data. This remains a significant challenge in the global south particularly problematic in vulnerable communities where gender-based violence is more prevalent, thereby exacerbating the problem²⁵.

5. Mandatory codes of ethics.

The Murad Code is a recent global initiative that aims to promote ethical conduct among individuals involved in the investigation of sexual crimes in situations of serious violence. As one of the first global exercises of its kind, it is crucial to consider its adoption in all countries to ensure ethical, respectful, and empathetic management of information and investigations on sexual violence, particularly in the context of security and criminal justice systems that are highly revictimizing. This is particularly relevant in the context of Latin America, where the distinction between armed conflict and urban conflict is becoming increasingly blurred²⁶.

²⁴ <https://justicia-abierta.org/>

²⁵ <https://cidh.oas.org/pdf%20files/Informe%20Acceso%20a%20la%20Justicia%20Espanol%20020507.pdf>

²⁶ <https://www.muradcode.com/>

Enabling factors

What must nations do to enhance access to justice for victims and survivors of crime?

1. Funding for victims.

There are various funding mechanisms in place to support the operation of justice systems. It is also essential to have in place financing mechanisms for victims, with a particular focus on victims of gender-based violence (GBV). In 2019, Bolivia, with the support of the Inter-American Development Bank, piloted a guide to integrate gender violence funding into the general budget. Additionally, Mexico and Ecuador have implemented similar mechanisms. However, there is a discrepancy between theory and practice. Best practices include comprehensive and specialized programs funded at the national level such as the United States Victims of Crime Act (1984) and the United States Violence Against Women Act and its reauthorizations.

2. Use of technology.

Technological advancements have enabled a more comprehensive understanding of criminal activities, driven the creation of innovative security solutions, and highlighted the importance of a multifaceted approach to justice that extends beyond incarceration. This approach is essential for reducing violence and crime, and it should be aligned with the rights of victims. This includes intelligence for prevention, facilitating identification and access to services, promoting remote access to counseling and support, open justice, accountability, and facilitating training and awareness on trauma-based models, with the objective of improving care in security and justice institutions.

3. Create national level Ombudspersons for victims of crime or Victims' Commissioners in order to hold governments accountable for their obligations.

This office differs from general Ombudspersons offices in that they address matters of serious human rights violations. In cases of human rights violations, victims of crimes are frequently overlooked, becoming lost within the institutional structure. These offices also play important roles in policy making and review, public outreach and education efforts and advising governments on emerging or legislative issues. Best practices include Ombuds/Commissioners' offices in: Canada, the United Kingdom, City of London, England, Northern Ireland and Australia.

4. Violence Prevention Offices.

All cities, states and nations should create Violence Prevention Offices, in order to implement, monitor and evaluate programs targeting populations that are disproportionately affected (i.e., people with limited resources, indigenous, and black

people) or to reduce gender based violence through programs such as SNAP, YAAACE and bystander intervention as well as others directed to youth and families in difficulty, caseworker assistance to victims of gun violence, curricula-enhancing life skills, and proactive policing partnerships. Best practices: In the United States: the White House Office of Violence Prevention. In Canada: the National Action Plan to End Gender-Based Violence with significant federal investments.

5. Enforce national legislation similar to the EU Directive for Victims of Crime (2017) where assistance and support is guaranteed for all survivors, regardless of whether they are engaged with the justice system.

It is therefore essential that evidence-based legislation is accompanied by a robust financial and institutional structure that allows it to be effectively implemented. This also requires a political commitment and the backing of civil society. Best practices include comprehensive and specialized programs funded at the national level such as the United States Victims of Crime Act (1984) and the United States Violence Against Women Act and its reauthorizations.

6. Update the UN Handbook on Victims of Crime.

There have been significant developments since the initial manual was published. This includes institutional responses and the knowledge base regarding the forms of victimization at a global level. Technological advances now make it possible to identify and disseminate best practices that can assist governments in implementing more effective public policies in the context of increasingly complex challenges, including transnational organized crime.

Updated U.N. publications are needed which specifically respond to the challenges of implementing and resourcing access to justice programs and policies. With the support of international experts, publications should address data collection and data enhancement, lessons learned and best practices relating to a more expansive notion of access to justice issues.

It is also recommended that these updated publications and any related training materials should address other Sustainable Development Goal indicators related to violence; including 16.1 - Significantly reducing all forms of violence and death rates. As well as, SDG Goal 16.2 – End abuse, exploitation, trafficking and all forms of violence against children.