



INTERNATIONAL WOMEN'S RIGHTS ACTION WATCH
ASIA PACIFIC

Justice delayed, justice denied

THE COVID-19 PANDEMIC AND
WOMEN'S RIGHT TO ACCESS
JUSTICE

NOVEMBER 2020

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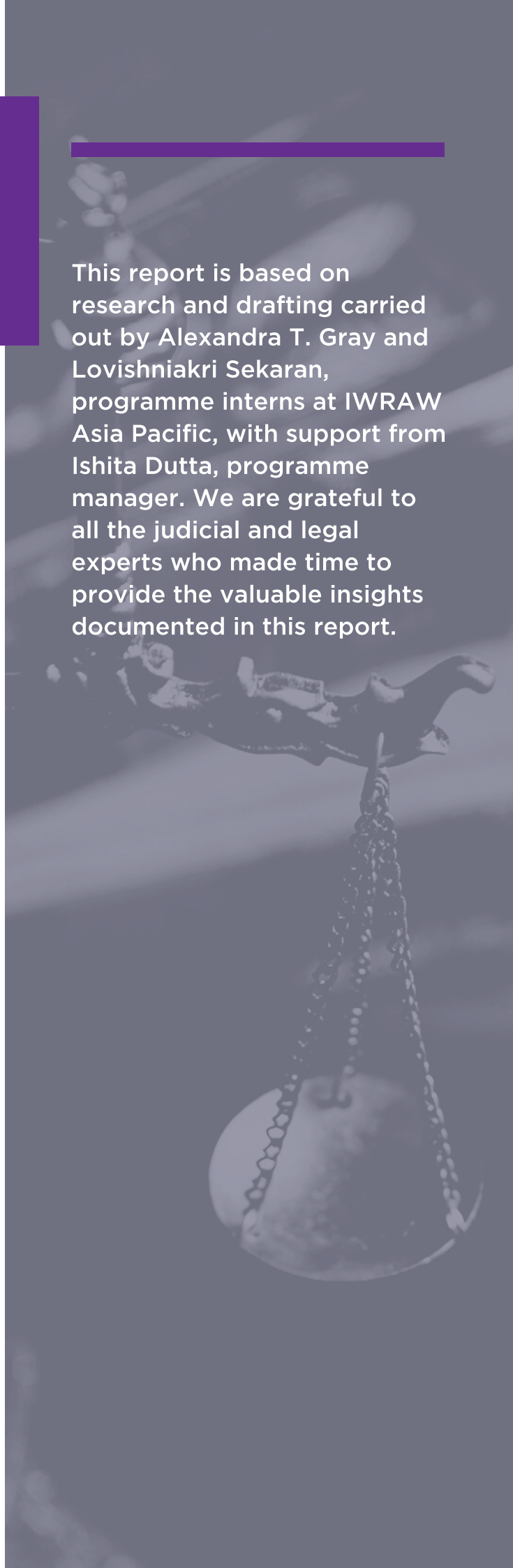
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This report is based on research and drafting carried out by Alexandra T. Gray and Lovishniakri Sekaran, programme interns at IWRAW Asia Pacific, with support from Ishita Dutta, programme manager. We are grateful to all the judicial and legal experts who made time to provide the valuable insights documented in this report.



INTRODUCTION

Marginalised communities have been directly and disproportionately affected by policies in response to the COVID-19 pandemic. According to the UN Women report [From Insights to Action](#), in the wake of the outbreak, the number of people living in extreme poverty will increase by 96 million in 2021 - of whom 47 million are women and girls. It also approximated that 243 million women and girls between the ages of 15 to 49 were subjected to sexual and/or physical violence by an intimate partner in the last year. Emerging data shows that violence against women and girls has escalated since the outbreak of COVID-19. In other words, the pandemic has exacerbated much of the discrimination and challenges faced by women. This raises the question of access to justice during the pandemic, how gender-based violence cases are treated, and the extent to which institutionalised efforts have aided in addressing human rights issues. It is essential for nation states to consider the needs and implement measures to ensure that the rights of women and children are protected during the pandemic, because the impact and disparities will be felt even after the outbreak - and potentially undo years of progress.

This paper aims to better understand how the COVID-19 pandemic has impacted justice systems around the world, with a focus on access to justice for women on issues related to gender-based violence and rights in the family. It forms part of a broader inquiry into the gaps in rights protection being experienced by women at local, national, and international levels due to the limitations or non-functioning of institutional mechanisms mandated to protect human rights, owing to the COVID-19 crisis and consequent movement restrictions and confinement measures. Additionally, it attempts to determine how courts and public services can better adapt should the COVID-19 pandemic persist for longer, or should a similar situation arise in the future.

A survey was conducted with individuals and organisations who previously engaged with IWRAW AP through the [Judges for Gender Justice](#) initiative. They were contacted for information about the COVID-19 situation in regard to access to justice in their respective countries.

SUMMARY OF FINDINGS



Nation states are still recuperating from the impacts of the pandemic and some countries are yet to gain control of the situation, with rising numbers of COVID-19 cases daily. Most countries imposed a full lockdown, each one taking effect distinctively from the others in terms of economic restrictions and social operations - positioning them at various levels of recovery from the pandemic. Although States and judiciaries sought to bridge the justice gap by piloting hybrid models involving

physical and virtual courts, there were delays in enacting these measures, along with a lack of oversight and coordination efforts that in many instances did not include the justice system as part of the pandemic response. Together with the digital divide, these factors posed a threat to the right of access to justice, particularly exacerbating the vulnerability of marginalised communities as a result.

METHODOLOGY



For this report, a mixed methodology was utilised in which primary information was sourced through an online survey and a one-on-one interview. The same questionnaire was maintained to ensure conformity in gathering information. The sample size of the query was 14 legal and human rights experts from seven different countries. The survey questionnaire discusses the current COVID-19 situation in the respective country, changes to court operations, and the approach to gender-based violence cases both by the state and judiciary.

RESULTS

Despite the small sample size, three key patterns can be traced from the responses which are consistent with statements from various social activist organisations, legal experts, and public outcry. Some of the patterns identified are lack of oversight and coordination efforts in the pandemic response from state institutions; failure of the justice sector's response to human rights issues; and growing disparity of technology which further places a burden on marginalised groups. These patterns can be illustrated through the exploration of the current operational status of courts, treatment of gender-based violence cases, and accessibility of filing a complaint.

Court Operation during COVID-19

Since the COVID-19 pandemic began, courts have been operating with a hybrid model of proceedings, as in Australia, India, Lebanon, the Philippines, Sri Lanka and Uganda. The pandemic has led the judiciary to reprioritise cases and constrict the types of courts operating during the lockdown. For example, in Lebanon, only some courts, such as criminal courts and urgent matters courts, were in service. By contrast, the Supreme Court of the Philippines selected pilot areas for video-conference hearing (VCH) and electronic filing of complaints, pleadings and bail applications through these courts' Philippine Judiciary Office 365 accounts. Currently, all courts are either physically or virtually open.



India

Indian courts, including family courts, transitioned from physical to virtual after a spike in COVID-19 clusters. Urgent cases pertaining to the pandemic were initially prioritised and towards the end of April, criteria were eased in regards to cases being heard at the courts. In the months of June and July, the criteria were alleviated further for other cases, but plaintiffs had to prove the urgency of the cases being heard. Bail applications were heard on humanitarian grounds but bail matters were not designated as urgent by many High Courts. Separately, the Supreme Court of India took suo moto cognisance of the situation of internal migrant workers and passed orders requiring provision to them of shelter, healthcare and transportation during the lockdown. With prisons emerging as hotspots for infection, [the Supreme Court of India ordered a High-Powered Committee \(HPC\) in each state](#) to be tasked with reviewing individual prisoners' cases regarding their potential to be released on interim bail (if undertrial) or parole (if convicts) amid lockdown in order to reduce overcrowding in prisons and limit the probability of COVID-19 transmission. The Commonwealth Human Rights Initiative compiled data from media reports to track the number of positive cases (including inmates and staff) and the number of prisoners being released for the decongestion process. [An estimated 466,084 prisoners have been released](#) to date, but imposing a requirement to post bail will prevent many from being released.

Unfortunately, this has not curbed the spread of the infection, and Jo Becker, an advocate at Human Rights Watch, said the releases [“have been too few and too slow, contributing to preventable suffering and death.”](#) An upsurge of cases in prisons globally has been documented, and with some countries arresting or detaining people for violating quarantine and COVID-19 emergency measures, overcrowding remains a concern. In the case of India, the number of released prisoners did not reduce or solve the overcrowding in prisons because they were [significantly over capacity](#) to begin with. The Delhi High Court passed an order ending bail extension of undertrial persons - which has been [stayed by the Supreme Court](#). This raises concerns about a potential resurgence in covid cases with the return of prisoners. To resume physical hearings, the Delhi High Court and Trial Courts established a roster system of judges to attend courts, which proved to be ineffective since people can choose not to attend without facing repercussions. As lockdown measures eased in Delhi, the Delhi High Court began hearing a few cases physically, but most of these cases were adjourned because often lawyers did not attend.



Sri Lanka

Litigants in Sri Lanka were dissuaded from attending courts as part of measures to prevent transmission of COVID-19 prevention. As a result, cases were subject to postponement. Mostly only commercial courts have incorporated online facilities or virtual hearings, and some Magistrate Courts have shown their interest to conduct activities by electronic means (i.e. Skype and WhatsApp) especially for urgent matters such as bail and remand orders. This procedure was later followed by some other High Courts. But the apex courts, namely the Court of Appeal and the Supreme Court, could not function. No new complaints were entertained by these courts and police officers were instructed to handle some minor offences. Selected criminal courts in Sri Lanka did take on bail applications via Skype, and thereby contributed to upholding the fundamental right to liberty of the detainees. This pandemic may be considered as an exceptional circumstance to grant bail.



Uganda

On 19 March, a specific [directive](#) was given by the Chief Justice of the Uganda Supreme Court to all judges and magistrates regarding the situation which led to open sessions court being closed and public transport stopped as a result of the movement control order in Uganda. Family court was closed but the criminal court was open but had no hearings. If an accused did not plead guilty, they were remanded and reprimanded in prison until a hearing or trial could be scheduled. Criminal courts and magistrates were open in certain districts to address urgent cases, which included robbery and domestic violence. Under the Civil Procedure Code, litigants can apply for a certificate of urgency for a hearing of urgent matters - a process often utilised during court vacations. Procedures such as these could potentially have been utilised to provide remedies in cases concerning violations of women's human rights - yet such solutions were [not considered](#) in the response to the societal impact of the pandemic. Although the judiciary was listed as an [essential service](#), only remands, urgent mentions, bail, and other very pressing interlocutory applications were heard.

Gender-Based Violence (GBV)

It is reported that cases of domestic violence have increased during the pandemic. This also means that demand for legal services and support exceeds what is currently in place - which risks delays for victims to receive protection orders, divorce, and ruling on their cases.

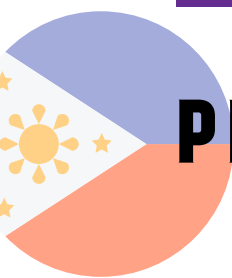


Various High Courts such as those in Delhi, Karnataka and Andhra Pradesh have directed state governments and police to appropriately handle these cases and to provide effective relief to the aggrieved persons. An organisation called SAMA filed a writ petition before the Delhi High Court to categorise women's health and sexual and reproductive health services as high-priority essential services. In another public interest litigation filed by a NGO, the Delhi High Court directed that domestic violence matters be categorised as urgent matters during the lockdown, prompting domestic violence cases to be taken up on a priority basis in India. During this period the training programmes were held in judicial academies on virtual platforms for sensitisation of judicial officers on the subject of domestic violence, to increase their awareness and to enhance their capacity to deal with these issues on an urgent basis. Due to the pandemic, imposed lockdown restrictions, and limited mobility, husbands of certain households were unable to pay monthly maintenance amounts to wives and children.

Australia



Australian courts have given priority to gender-based violence cases and there are ongoing processes to reform court systems to address gender-based violence. But no change has been made to the provision of legal aid to recognise the exacerbated challenges encountered by marginalised women and children during the pandemic. Community legal centres, particularly specialised legal services for women ordinarily too do not receive adequate resources, which further contributed to constraining their responses to cases taking place during the pandemic. This further places the burden of obtaining access on disenfranchised women by virtue of the failure to acknowledge systematic discriminatory issues. Consequently, older and aboriginal women face more barriers to access legal services and assistance to bring forward issues to courts.



Philippines

On 5 April 2020, while the country was still on enhanced community quarantine, the Supreme Court in the Philippines issued OCA Circular No. 90-2020, or 'Designation of Commercial Court and Family Court Judges as Judge-On-Duty'. The Office of the Court Administrator responded to reports about a sudden increase in cases of violence against women and children (VAWC), and ordered Executive Judges in **multi-sala stations** to designate a Family Court on Duty each day. The FCoD was the one who acted on urgent matters that arose in a family court station, such as bail applications, petitions for habeas corpus, and applications for protection orders. Conducting hearings for pending cases became increasingly challenging as not all women seeking legal relief have reliable internet connection, or even a computer or phone device with connectivity. Moreover, the confidentiality of proceedings in a family court began to be an issue. Violations under Republic Act 9262 (Anti-VAWC Law) are bailable offences, so these cases are often heard with in-court appearances of plaintiffs because video-conferencing hearing is only mandatory in cases involving detained accused or respondents. In compliance with COVID-19 health guidelines, social distancing, and standard operating procedures, protective barriers were installed in the courts. To clearly hear and record the proceedings, a system was also installed. Air-conditioning systems were required to be turned off and doors to the courtroom to remain

open for proper ventilation. In spite of parties called to the courtroom one case at a time, the use of a sound system and open door compromises the confidentiality of proceedings - posing a potential risk for victims of violence. In VAWC cases where the parties opted for video-conferencing hearings (VCH), the family court struggled to deal with the peculiar dynamics, because, as one family court judge observed, there is a sense of "artificiality, coldness, and impenetrable detachment" in a virtual hearing. Hearing all cases in physical court presents a concern in itself too, as the rise in the number of COVID-19 cases limits the number of cases heard each day - directly infringing and halting one's access to justice in a timely manner. Not all family court judges automatically renew a soon-to-expire temporary protection order (TPO), resulting in the provision of child support being halted on the grounds that the respondent can argue that the protection order directing him to provide support has already lapsed. The only tangible responses are the issuance of OCA Circular No. 90-2020 and directing the conduct of video-conference hearing (VCH) through to the Philippine Judiciary Office 365 - but there are still some jurisdictional issues compounded by internet connectivity problems. While an upsurge of GBV cases was reported during the pandemic, the number of cases reaching the family courts drastically

multi-sala stations:
stations with multiple courtrooms

decreased, despite the VCH and electronic filing capability of most courts. This can be explained by the fact that first responders are preoccupied with COVID-19-related duties. Police officers are tasked with arresting community quarantine violators, while social workers are busy distributing social amelioration to identified beneficiaries.

The Department of Social Welfare and Development introduced helplines for online counselling. Registered social workers, through the United Registered Social Workers of NASWEI, provide free confidential telephone and online psychosocial support and psychological first aid to those experiencing seasonal anxiety, fear, and stress on account of the pandemic. The Commission on Human Rights created a monitoring response to GBV during enhanced community quarantine in the Philippines. GBV victims were provided with a reporting link through which they could immediately report and seek assistance.

Accessibility to File a Complaint

Since in most nation states, police stations remained the only place one could file a complaint, women faced two barriers: in general, police do not take GBV cases seriously, and during the pandemic, police were busy enforcing pandemic regulations, so GBV cases were not a priority for them. However, Jammu and Kashmir High Court [passed guidelines](#) designating informal space such as grocery stores and pharmacies to file complaints with staff working there. Helplines and booths were established in the state to create more access for women to file complaints. It eventually extended its order and asked the Social Welfare Department to also take steps to [address other marginalised groups](#) who have been made more vulnerable due to the pandemic, including older persons, children, persons with disabilities and trans persons.

In tandem with an increase in reported

GBV cases was the use of COVID-19 by husbands as a reason to restrict the movement of women and children and their association with family members, effectively cutting off support from others and inducing greater dependency. Despite the lack of specific court rules acknowledging the situation, certain positive steps were taken to prioritise victims of domestic violence and justice sector responses during the pandemic. For example, the Attorney General's Department in Sri Lanka issued guidelines to the Acting Inspector General of Police with regard to the granting of bail to reminders of offences - the Prevention of Domestic Violence Act was included among the three categories identified. The Presidential Task Force for Essential Services provided a sum of LKR 5,000 to women receiving maintenance through courts, due to curfew and the initial closure of courts. Several governmental and non-governmental

services and referral systems were made available for victim support. For example, the Women's Helpline of Ministry of Women and Child Affairs and Social Security, Childline for National Child Protection Authority, and the Hotline for Sri Lanka Police Child and Women Bureau provided assistance and referrals. NGO service providers such as Women In Need and Sisters At Law provided remote legal aid and assistance to victims who contacted their helplines.

A [rise in teenage pregnancy](#) during the lockdown was highlighted in a local newspaper in Uganda. In one district there was an estimate of 400 defilement and 800 sexual abuse cases between the months of February and May. To date, it's not known whether police took any action in the district to register complaints in these cases. The lockdown created impunity, with a lack of access to file a police report and a lack of incentives for the police to follow up with the case or file the appropriate paperwork. In some instances, police were using the pretext of enforcing covid regulations to assault women.





RECOMMENDATIONS

EVEN IN 'ORDINARY TIMES' ACCESS TO JUSTICE FOR WOMEN WAS DIFFICULT TO OBTAIN AND THE PANDEMIC SIMPLY EXACERBATED SOME OF THESE BARRIERS.

Prior to the pandemic, the courts and justice systems faced challenges such as backlogs, and women litigants were faced with gender stereotypes, lack of access to legal aid, and having to travel long distances to seek counsel. Therefore, even in 'ordinary times' access to justice for women was difficult to obtain and the pandemic simply exacerbated some of these barriers. Practices discussed above enacted by some nation states are some efforts and standards that can be institutionalised to ensure access to justice. But it is also imperative to recognise systematic issues in order to reevaluate how the justice system can be better equipped to ensure access to justice for marginalised groups of women and children. A gender-sensitive response and gender-responsive interventions are critical to protecting the rights of women and children. Enactment of these principles is more urgent now than ever, to cease the growing gender disparities globally.

Considering the physical accessibility concerns arising for women litigants during ordinary times, greater attention is needed to expand the reach of the judicial system, including having courts in remote and hard-to-reach areas. Video evidence should be made admissible and cases should be heard in camera with no access granted to the media or public due to the sensitivity of gender-based violence. Free access to legal counsel is essential, and many girl and women victims come from the poorest segments of society.

There is a burgeoning consensus that virtual courts should be part of the court process, though these will not completely replace physical courts, especially in countries with populous rural areas such as India and the Philippines. Demand for virtual courts will grow as the parties involved are more well-to-do - which will inevitably hinder accessibility for disenfranchised people as can be observed during the pandemic. A critique across all the surveys is that the transition to virtual court and implementations of new measures occurred abruptly: understandable given the constraints of learning about a new virus, but a protocol for such a crisis should have already been drafted and modified accordingly to ensure a smooth or gradual transition to virtual courts, alleviating judges from being overworked as they have to pass orders on cases regardless of whether or not the lawyers show up. There is a pattern of 'fast justice' due to the backlog of cases and lack of infrastructure. A more gradual process also better equips everyone to handle the situation; trial court judges in India were hesitant to accept cases virtually as they did not have the resources and infrastructure

to conduct virtual courts. For instance, the Delhi High Court recommended CISCO Webex for use as a virtual court, but it requires a specific amount of bandwidth and internet connection, which cannot be accessed by all devices. Courts are struggling to issue summons, as they want an opportunity for the accused to be heard in court, but the accused could evade the court claiming lack of access to virtual court, resulting in cases being halted until the accused can attend. It is imperative to note that digitisation is not complete and connectivity is not accessible for everyone. The technological disparity needs to be addressed to ensure that it does not impact access to justice.

A judge from our survey noted that there should have been a categorisation for prioritising cases, instead of assuming importance exclusively for cases pertaining to the pandemic and healthcare-related issues. Excluding all cases except for 'urgent' cases only compounds the problem. Measures to expedite family disputes and GBV cases, especially the provision of protection orders, should have been outlined by the state and judiciary. A lawyer from the survey calls for an updated review of the procedures pertaining to court proceedings, as some cases are not allowed to accept evidence online now even though there are ways to do so without compromising it.

Representation must urgently be ensured both in legal sectors and policy-making committees if any form of progress is to be sustained. For instance, the Indian Bar as of right now consists of mostly upper-caste Hindu males, and the Australian Supreme Court is predominantly comprised of

white justices, which raises the question of their ability to understand the intricacies and intersectionalities of marginalisation. Also, judicial sensitisation to re-victimisation and state-sponsored or -supported complaints during the judicial process must be implemented. Judges, especially from family courts, should be trained on how to immediately respond to petitions for protection orders. They need to understand the urgency of these petitions and the peculiar power dynamics within GBV cases. There has been a lack of institutional effort to coordinate a response to the pandemic; all departments of the parliament and state should have been mobilised to comprehend the repercussions of the situation. Essential services or sectors should not exclude one's access to justice or means of protecting victims of GBV or any violence. There was no incentive for states to take measures for gender-based violence as they were preoccupied with combating the pandemic from solely a health framework - convening to fight against the pandemic but not to fight for human rights issues.

**THERE HAS BEEN A
LACK OF
INSTITUTIONAL
EFFORT TO
COORDINATE A
RESPONSE TO THE
PANDEMIC.**

APPENDIX

Survey Questionnaire

SURVEY ON WOMEN'S RIGHTS, JUSTICE SECTOR RESPONSES & COVID-19

IWRAW AP is conducting a survey to better understand how the COVID-19 pandemic has impacted justice systems around the world, focusing particularly on access to justice for women on issues related to gender-based violence and rights in the family. The survey is being conducted with individuals and organisations who have engaged with IWRAW AP through the 'Judges for Gender Justice' initiative. It forms part of a broader inquiry into the gaps in rights protection being experienced by women at the local, national and international levels due to the limited or non-functioning of institutional mechanisms mandated to protect human rights, due to the COVID-19 crisis and consequent movement restrictions and confinement measures. The findings of this survey are likely to be shared with the UN CEDAW Committee, relevant UN agencies such as the Office of the High Commissioner for Human Rights, UN Women and other international organisations working on issues concerning women's access to justice. The identity of individual respondents will be kept confidential at all times.

We thank you for your time and thoughtful responses.



Name:

Email address:

Country:

1. Since the COVID-19 pandemic began, have courts been physically open (i.e. not virtual) and fully operational (i.e. all services are available) in your country?

(a) Yes

Feel free to elaborate (optional): _____

(b) No

Feel free to elaborate (optional): _____

(c) Only some courts

If only some courts are physically open and fully operational, which? (required) _____

2. Since the COVID-19 pandemic began, has your country's court system adapted in some way such that it is still accessible to those wishing to file a complaint (e.g. by switching to an online model)?

(a) Yes

If yes, please explain how they have adapted and your evaluation of the quality of these adaptations (required): _____

(b) No

(c) Only some courts

If only some courts have adapted, please explain which and how (required): _____

3. If at least some of your country's courts are NOT physically or virtually open, are you aware of plans for those courts to either reopen or create a virtual court system?

(a) Yes

If yes, explain those plans and your evaluation of the quality of the planned changes (required): _____

(b) No

(c) Only some courts If only some courts plan to adapt, please explain which and how (required): _____

(d) n/a (all courts are physically or virtually operational)

4. Have family courts remained open in some form during lockdown (in accordance with the [Colombo Declaration](#), para 16)?

(a) Yes If yes, explain (required): _____

(b) No

5. Are you aware of any changes to new and ongoing cases related to gender-based violence or rights in the family? (e.g. volume of complaints, hearings, outcomes, enforcement of judgements, etc.)

(a) Yes

If yes, explain (required): _____

(b) No

(c) n/a (no courts are physically or virtually open)

6. Since COVID-19 became prevalent, have court rules considered gender-based violence cases essential or otherwise treated them with priority?

(a) Yes

If yes, explain how these cases are treated (required): _____

(b) No

(c) Other

If other, explain (required): _____

7. Has legal aid and/or other forms of victim support been available for women during the pandemic?

(a) Yes

If yes, please explain (required): _____

(b) No

8. To what extent have judicial officers been able to apply/utilise international human rights law standards in the discharge of their functions during the COVID-19 crisis? (Required) _____

9. Has the current pandemic induced your country's courts to think about making permanent changes to the processes, practices and procedures of future pre-trial and trial/in court proceedings 'to create a conducive, friendly environment that enables access to justice for women and girls and avoid re-victimisation in cases of gender based violence against women', in accordance with the [Bellagio Declaration](#), p. 14? (Required) _____

10. Do you have any recommendations for how courts in your country should adapt if the COVID-19 pandemic persists for longer, or if a similar situation arises in the future, particularly to account for the needs of women generally and/or women with intersectional identities? (Optional) _____

11. Would you be willing to participate in a follow-up discussion with IWRAW AP?

(a) Yes

(b) No

(c) Maybe

INTERNATIONAL WOMEN'S RIGHTS ACTION WATCH ASIA PACIFIC

International Women's Rights Action Watch Asia Pacific (IWRAP Asia Pacific) is an independent, non-profit NGO in Special Consultative Status with the Economic and Social Council of the United Nations. IWRAP Asia Pacific has gained expertise, experience and credibility from over 20 years' work of mobilising and organising women's groups and NGOs to support the work of the State in fulfilling its obligations to respect, protect and fulfill women's human rights under CEDAW, through capacity building, advocacy and knowledge creation initiatives aimed toward development of effective national women's rights advocacy strategies.



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