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**INTERNATIONAL COMMISSION OF JURISTS (ICJ) SUBMISSION  
TO THE UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN  
ON ITS CONSULTATION ON THE DRAFTING OF A GENERAL RECOMMENDATION ON  
ACCESS TO JUSTICE**

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**ICJ submission to the Committee on the Elimination of Discrimination against Women**  
**CONSULTATION ON THE DRAFTING OF A GENERAL RECOMMENDATION**  
**ON ACCESS TO JUSTICE**

1. The International Commission of Jurists (ICJ) welcomes the opportunity to provide input to the Committee in the context of its elaboration of a General Recommendation on Women's Access to Justice. In this submission the ICJ will briefly outline the core components of State's obligations to ensure women's access to justice with reference to international human rights law and standards and will provide an overview of some of the main obstacles to justice women continue to face throughout the world. The content of this submission is drawn from recently published, and forthcoming, ICJ reports on women's access to justice in a range of countries.<sup>1</sup> These country reports synthesise the findings from ICJ national level research and consultations with lawyers and activists to identify and explore the obstacles to justice which women continue to face in their contexts.

**I. INTERNATIONAL HUMAN RIGHTS STANDARDS AND WOMEN'S ACCESS TO JUSTICE**

2. Although the provisions of CEDAW and other international human rights treaties do not explicitly use the term 'access to justice' the obligations they impose on States parties to respect, protect and fulfill the rights they enshrine necessitate that the central components of access to justice be ensured at the national level.

**Recognition of rights**

3. International authorities, including this Committee, have repeatedly outlined that human rights, including women's rights to equality and non-discrimination in the enjoyment of rights, must be recognised, incorporated and fully implemented in national law.<sup>2</sup> The legal recognition of rights is a vital component in efforts to enable access to justice in relation to human rights abuses. Simply put, it provides the foundation for individuals to claim their rights as entitlements under the law since, where a right is not recognized in law, an individual may not be able to invoke it or achieve justice at the national level for its breach.

**Legal protection**

4. Similarly, international bodies have specified that *effective* legal protection be available.<sup>3</sup> It is not enough that rights are simply recognized under law. A legal system must also effectively regulate conduct in a range of circumstances so as to protect them. This obligation requires that certain conduct be prescribed, proscribed or restricted. It also requires that procedures and mechanisms be put in place to ensure the enforcement of rights and relevant laws and provide for appropriate accountability, including through criminal or administrative sanction.

**Effective remedies and redress**

5. Furthermore effective, including accessible and prompt, legal remedies for the violation or abuse of rights must be provided along with reparation.<sup>4</sup> Without the availability of an effective

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<sup>1</sup> Women's Access to Justice in Thailand, Identifying the Obstacles and Need for Change (2012), <http://www.icj.org/womens-access-to-justice-in-thailand-identifying-the-obstacles-and-need-for-change/>; Women's Access to Justice in Botswana (forthcoming March 2013); Women's Access to Justice in Kazakhstan (forthcoming March 2013).

<sup>2</sup> See for example: Human Rights Committee, *General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add. 13, 26 May 2004, Para. 13 (hereinafter HRC General Comment No.31); Committee on Economic, Social and Cultural Rights, *General Comment No.9, The Domestic Application of the Covenant*, E/C.12/1998/24, 3 December 1998, Paras. 4-8 (hereinafter CESCR General Comment No.9). See also Article 2 (a)-(g) CEDAW and Committee on the Elimination of Discrimination against Women, *General Recommendation 28, The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of all Forms of Discrimination against Women*, U.N. Doc. CEDAW/C/GC/28, 16 December 2010, Para.31 (hereinafter CEDAW General Recommendation 28).

<sup>3</sup> See for example in general, HRC *General Comment No.31*; CEDAW *General Recommendation 28*.

<sup>4</sup> For a general account of what constitutes effective remedy and reparation see for example Article 2(3) ICCPR and HRC *General Comment No. 31*, Paras. 15-20; Article 2 CEDAW and CEDAW *General Recommendation 28*, Paras. 32,34,36; CESCR *General Comment No. 9*, Para. 9 et seq. See also the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted and proclaimed by GA resolution 60/147 of 16 December 2005.

remedy, access to justice is impossible. The right to an effective remedy entails that the law must provide individuals with recourse to independent and impartial authorities with the power and capacity to investigate and decide whether an abuse has taken place and order cessation and reparation. In order to be effective, a remedy must not be theoretical or illusory but meaningful in practice. It must be affordable and timely. In a wide range of circumstances access to a judicial remedy must be provided and even in situations where access to a judicial forum is not required at first instance, an ultimate right of appeal to a judicial body will be necessary.<sup>5</sup> Meanwhile, ensuring the right to *reparation* to redress harm caused by a violation requires a range of available reparative measures, including restitution, rehabilitation, satisfaction, guarantees of non-repetition and compensation. The stated needs and wishes of the victims are paramount in determining the appropriate forms of reparation. For example, in practical terms, appropriate reparation may involve bringing the perpetrators of the abuse to justice, public recognition of wrongful conduct and apologies, the taking of measures to address the cause of the abuse and the systematic reform of laws, policies or practices.<sup>6</sup>

### **Empowerment to seek protection and remedies**

6. International law and standards also require States to enable the practical realization of rights, including through taking effective implementation measures to ensure the ability of individuals to actually access these protective and remedial frameworks in practice.<sup>7</sup> This will give rise to different requirements in different contexts. However, in a general sense, it requires effective steps to address and remove practical barriers that impede access to justice. For example, international authorities have outlined that States must find ways to make legal processes affordable for ordinary people including through providing viable and accessible legal aid services to those without financial means.<sup>8</sup> In addition, they bear the responsibility to address language barriers through ensuring interpreters and translators are provided when necessary.<sup>9</sup> Moreover, they must identify and implement measures designed to provide individuals with good quality legal information and knowledge so that they know about their rights and the content of relevant laws and procedures.<sup>10</sup>

### **Women's access to justice**

7. When each of these requirements are read in light of the obligation to ensure women's enjoyment of their rights on a basis of equality and non-discrimination they give rise to a range of particular responsibilities for States in terms of women's access to justice.<sup>11</sup> In general terms they necessitate that when taking the necessary proactive legal and practical measures to ensure the recognition of rights, the availability of legal protection and legal remedies and reparation, States must specifically take account of and address the particular justice needs of women and the obstacles to justice they face.

8. Ensuring the **legal recognition** of women's human rights not only entails recognizing women as equal rights bearers, but also ensuring that the definition of legal rights takes account of

<sup>5</sup> HRC *General Comment No. 31*, Paras. 15-20; CEDAW *General Recommendation 28*, Paras. 32,34,36; CESCR *General Comment No. 9*, Para. 9 et seq. *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted and proclaimed by GA resolution 60/147 of 16 December 2005.

<sup>6</sup> *Ibid.*

<sup>7</sup> HRC, *General Comment 3, Implementation at the National Level*, HRI/GEN/1/Rev.1, 1981 (hereinafter HRC General Comment 3); CEDAW, *General Recommendation 28*; CESCR, *General Comment 16*, Para. 21; CESCR, *General Comment 9*, Paras. 2-3.

<sup>8</sup> CEDAW, *General Recommendation No. 28*, Para. 34; HRC *General Comment No. 32, Right to Equality before Courts and Tribunals and to a Fair Trial*, Para. 10 (hereinafter HRC General Comment No. 32). Also see CESCR *General Comment No. 19, Right to Social Security*, E/C.12/GC/19, 4 February 2008, Paras. 77-78.

<sup>9</sup> See for example, HRC *General Comment No. 32*, Paras. 13, 32 & 40.

<sup>10</sup> See for example, HRC *General Comment No. 3*; CEDAW *General Recommendation 28*, Para.2; CEDAW, *General Recommendation 26, Women Migrant Workers*, U.N. Doc. CEDAW/C/2009/WP.1/R (2008), Para. 26 (hereinafter CEDAW General Recommendation 26).

<sup>11</sup> Article 2, CEDAW; Articles 2,3 & 26 ICCPR; Article 3 ICESCR; CEDAW, *General Recommendation 28*; CESCR, *General Comment No. 16*; CESCR *General Comment No. 20*; HRC, *General Comment No. 28*; *VK v. Bulgaria*, Communication No. 20/2008, 25 July 2011, Para. 9.9 and 9.11-9.16; CEDAW, *Vertido v. Philippines*, Communication No. 18/2008, 16 July 2010, Paras. 8.5-8.9; See also CAT *General Comment No. 2*.

the particular needs of women as women, arising for example from biological differences as well as social and culturally constructed differences.<sup>12</sup>

9. Ensuring **effective legal protection and remedies** for abuses of women's human rights means ensuring the administration of justice responds fully and effectively to the lived experiences of women. It requires the exercise of due diligence to prevent, investigate, hold responsible persons accountable and ensure access to remedies in respect of abuses of women's human rights by public and private actors.<sup>13</sup> This means that laws, regulatory frameworks and law-enforcement and justice procedures must effectively prohibit and safeguard against human rights abuses which women face as women or which affect women in distinct or disproportionate ways. Effective and appropriate adjudicatory processes, sanctions and remedies must be established and be brought to bear in practice. In respect of certain abuses, such as gender-based violence, States are obliged to carry out an effective investigation with a view to instigating criminal proceedings to bring the perpetrator to trial and imposing appropriate penal sanctions.<sup>14</sup> Administrative and judicial processes must be gender sensitive. Relevant legal procedures, including courtroom procedures and investigative processes, should be responsive to the particular needs of women.<sup>15</sup> Meanwhile, reparations and forms of redress must be able to respond to the particular needs of women.<sup>16</sup>

10. **Enabling and empowering women** to claim their rights as legal entitlements requires States to address the practical and social factors that can often impede women's ability to claim their rights, including women's lack of access to adequate financial resources, the status of women in a society and the operation of gender-based stereotypes, prejudices and norms.<sup>17</sup>

## II. OBSTACLES TO JUSTICE FACED BY WOMEN

11. Despite the clear obligations assumed by States parties, under CEDAW and other international treaties, to enable women to claim their rights and seek legal protection and remedies, across the world women continue to face extensive and entrenched barriers to justice.

12. Although the following analysis is drawn from recent ICJ national-level research and consultations with lawyers and activists in three specific countries, each of the barriers highlighted are also at play in numerous jurisdictions. Although every legal system and society is different, significant obstacles to justice that faced by women in multiple jurisdictions.

13. The preceding paragraphs simply present an overview of some of these barriers. They focus on inadequate and inappropriate laws and regulation and the exclusion of certain groups of women from justice seeking possibilities. They do not address the significant obstacles women face within plural justice systems or those that are posed by the responses of justice sector officials, the lack of system reform and insufficient infrastructure and capacity. Nor do they address the significant implications that lack of financial resources can have on women's ability to seek justice. Detailed analysis of each of those issues can be found in the relevant ICJ country reports.<sup>18</sup>

<sup>12</sup> CEDAW, *General Recommendation 25, On article 4, paragraph 1, on temporary special measures*, U.N. Doc. HRI/GEN/1/Rev.7 at 282 (2004) (hereinafter CEDAW General Recommendation 25).

<sup>13</sup> CEDAW, *General Recommendation 19*, Para. 9; CEDAW, *General Recommendation 28*, Para.19; CAT, *General Comment 2*, Para. 18; Article 4(c), *UN Declaration on the Elimination of Violence Against Women*, 20 December 1993, General Assembly, Resolution A/RES/48/104; CEDAW, *Vertido v. The Philippines*, Communication No. 18/2008, 16 July 2010, Para. 8.4; *Şahide Goekce v. Austria*, Communication No. 5/2005, 6 August 2007, Para. 12.1.4; *Fatma Yildirim v. Austria*, Communication No. 6/2005, 6 August 2007, Paras. 12.1.2. and 12.1.5. See also, Report of the UN Special Rapporteur on Violence Against Women, its Causes and Consequences, Yakin Ertürk, *Violence Against Women: The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, U.N. Doc. E/CN.4/2006/61, 20 January 2006, Para. 29. See also, HRC, *General Comment 31*, Para.8 (regarding private actors generally).

<sup>14</sup> CEDAW, *General Recommendation 19*, Paras. 24(b) and 24(t); CEDAW, *General Recommendation 28*, Para. 34; CAT, *General Comment 2*, Para. 18; HRC, *General Comment No.31*, Para. 8. See also, Concluding comments of CEDAW, for example: *Myanmar*, U.N. Doc CEDAW/C/MMR/CO/3, 7 November 2008, Para. 23; *Vietnam*, U.N. Doc CEDAW/C/VNM/CO/6, 2 February 2007, Para. 17; *Cambodia*, U.N. Doc CEDAW/C/KHM/CO/3, 25 January 2006, Para. 16.

<sup>15</sup> CEDAW, *VK v. Bulgaria*, Communication No. 20/2008, 25 July 2011, Para. 9.9 and 9.11-9.16; CEDAW, *Vertido v. Philippines*, Communication No. 18/2008, 16 July 2010, Paras. 8.5-8.9.

<sup>16</sup> See in general Article 2 CEDAW, Article 3 & 26 ICCPR, CEDAW *General Recommendation 28*, CEDAW, *VK v. Bulgaria*, Communication No. 20/2008, 25 July 2011, Para. 9.9 and 9.11-9.16; CEDAW, *Vertido v. Philippines*, Communication No. 18/2008, 16 July 2010, Paras. 8.5-8.9; CAT *General Comment No. 2*.

<sup>17</sup> Article 5 CEDAW and see in general CEDAW *General Recommendation 28*.

<sup>18</sup> Women's Access to Justice in Thailand, *Identifying the Obstacles and Need for Change* (2012), <http://www.icj.org/womens-access-to-justice-in-thailand-identifying-the-obstacles-and-need-for->

**Inappropriate and inadequate laws and regulation**

14. In a range of contexts women's access to justice is often impeded by the continued operation of discriminatory laws, and by deficient and/or inadequate legislative frameworks. These persist even in countries that have sought to take meaningful steps to improve women's access to justice.

*Absent or inadequate legal and remedial frameworks for gender equality and non-discrimination*

15. In multiple jurisdictions across the world significant gaps persist in the extent of the legal protection against gender discrimination that is available to women. In many, no legislative framework exists. In many others, even where some form of legislative or constitutional prohibition of gender discrimination exists, the protection and remedies it offers women are not effective. Where only constitutional guarantees are applicable, they are not often not adequate or their scope is unclear. The complexities and resources necessary for constitutional litigation can make it a remote or inaccessible possibility for many women. Legislative or constitutional guarantees of equality and non-discrimination are often subject to substantial limitations and exceptions.

16. For example, in Botswana, as in many other countries, no gender equality legislation exists, while constitutional guarantees of non-discrimination are subject to extensive exceptions. Among other things, these appear to exclude personal status laws and customary laws from the scope and remit of non-discrimination provisions. In other countries, such as Kazakhstan, gender equality legislation exists but does not clearly define relevant sanctions or remedial mechanisms. Such deficiencies can significantly impact the ability of women to seek justice when they face discrimination in public and private spheres.

17. At times, remedial avenues are simply not available. Protection gaps or ambiguities in remit can also force women to commit significant resources to legal claims in relation to which the outcome is highly uncertain. Women are therefore often unwilling to pursue legal remedies. In turn, this further hinders change as low numbers of legal claims are brought perpetuating legal uncertainty and undermining accountability. For example, in Botswana, a common law jurisdiction, there appear to have been only three constitutional claims of sex discrimination in over 20 years. In Kazakhstan, it appears that in the four years since its adoption there have not been any applications made by women invoking the gender-equality legislation. Nor were stakeholders we consulted in Kazakhstan aware of any constitutional claims of discrimination.

*Deficient legal frameworks prohibiting sexual assault*

18. Over the past decade a number of countries have undertaken important reforms in their criminal laws and procedures dealing with sexual violence. Yet in many of these countries, despite these reforms, the relevant legal framework continues to fall short of what is necessary to discharge the international obligations and continues to pose obstacles to justice for women survivors of sexual violence.

19. For example in Thailand and Kazakhstan, as in many other jurisdictions, despite recent important improvements in the definition of sexual assault, the criminal law continues to treat sexual assault that occurs in private, and does not involve use of a weapon or result in grievous bodily harm or death, as a compoundable offence which can be subject to an out of court settlement. Laws of criminal procedure specify that in such cases an official investigation cannot be initiated unless the victim makes an official complaint. They also provide that where the State initiates an investigation and prosecution, it must bring them to an end if the victim withdraws the complaint and/or decides to reach a settlement with the alleged perpetrator. Those we consulted in these countries expressed the view that this system places a significant onus on women to seek out and request State investigation and prosecution, rather than situating the responsibility firmly on the shoulder of State officials. They specified that this legal regime serves to perpetuate the impression that such instances of sexual violence are personal matters and are of less importance than other crimes. They also indicated that it can make women particularly vulnerable to pressure from perpetrators and family members to withdraw complaints.

20. Meanwhile, in many other jurisdictions legislative exceptions explicitly provide that marital rape is not subject to criminal prohibitions of sexual assault. However, in some countries, even where such legislative exceptions do not exist, the persistence of judicial practice and common assumptions effectively exclude a man's rape of his wife from criminal sanction. For example in

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change/; Women's Access to Justice in Botswana (forthcoming March 2013); Women's Access to Justice in Kazakhstan (forthcoming March 2013).

Botswana serious confusion persists as to whether it is a crime for a man to rape his wife and the prevailing view in legal circles and across society is that it is not. Yet no legislative exception exists. Instead it seems that an old precedent from British common law, which held that marital rape was not a crime, is still considered to be applicable, even though it was overruled by courts in Britain itself 20 years ago.

21. Another legal gap that is common across jurisdictions is the absence of legislative provisions, regulations or guidelines for prosecutors and the judiciary regarding the applicable rules of evidence in cases of sexual assault. In many jurisdictions, often as a result of judicial practice, corroboration requirements continue to be applied and evidence of a woman's sexual history continues to be introduced. The way in which medical evidence is handled perpetuates stereotypes around virginity, prior sexual activity and sexual assault. Members of the judiciary continue to look for evidence of a struggle and physical injury when assessing consent.

*Lack of sexual harassment prohibitions*

22. A particular legislative gap that persists in numerous jurisdictions relates to sexual harassment. Many countries simply lack adequate prohibitions of sexual harassment. For example in Thailand, as in many other countries, sexual harassment prohibitions only apply to certain employment contexts and to civil servants. Moreover the relevant laws do not define what such harassment entails. In Botswana, sexual harassment prohibitions only apply as between public officials. In Kazakhstan prohibitions are also lacking. As a result, women and girl students are not protected from harassment in educational contexts, nor are women protected from harassment in the context of the provision of goods and services and protection in employment contexts is uneven. Where sexual harassment constitutes sexual assault, although this will often be covered by the relevant criminal prohibitions depending on the circumstances and context, such legal protection is insufficient, as it does not cover many kinds of sexual harassment. As a result, in a range of jurisdictions women who face sexual harassment appear to be left without adequate legal protection and a clear basis on which to seek justice and remedies.

*Flawed domestic violence frameworks*

23. Although over the past decade a number of countries have enacted domestic violence legislation, providing for a range of important positive measures such as systems of civil protection orders, simultaneously such legislation has sometimes entrenched problematic approaches to domestic violence. For example, although the Thai Domestic Violence Act introduces several positive elements into Thai law, it specifies that domestic violence is a compoundable offence. It also specifies that when dealing with cases courts should work towards a case settlement that promotes the peaceful cohabitation of the family. It provides that courts should be guided by four principles: the rights of the victim, the prevention of separation or divorce by cohabiting men and women, the protection and assistance of the family, and the provision of assistance which can enable married couples and family members to cohabit in harmony. It further specifies that in order to promote the settlement of cases, state officials and judges may appoint a mediator who shall endeavor to work with the parties to settle the case. Such mediators may include fathers, mothers, brothers or sisters of the parties. The overriding view of those we consulted in Thailand was that the Act does not challenge the prevailing notion that violence against women is a private matter. Instead, in their view, it conveys the impression that the priority is to preserve the family at the expense of women's human rights. Concerns were outlined that in its preference for settlement, the regime may place those facing domestic violence at risk of continued violence and abuse.

**Certain groups effectively excluded from justice by parallel criminal laws and bias**

24. Through the enactment of new legal provisions, the repeal or expansion of existing laws, and the adoption of policy and practical measures, many States have taken a number of recent steps to advance the legal protection of women's human rights and access to remedies. However, for certain groups of women laws recognizing rights and providing legal protection and avenues to justice may be largely irrelevant due to the simultaneous existence of other criminal and administrative provisions.

*Undocumented migrants*

25. Those we consulted in Botswana, Kazakhstan and Thailand again and again highlighted that in practice for undocumented migrant women, most avenues to justice are largely inaccessible and effectively illusory, as the women fear bribery, arrest and/or deportation if they make contact with the authorities. Indeed in these, and many other, jurisdictions, in accordance with immigration law undocumented migrants brought to the attention of the authorities should be arrested and

deported. In many instances, the terms of the law often do not specify that undocumented migrants who have faced human rights abuses in the jurisdiction may be enabled to remain, even for the duration of relevant legal proceedings or investigations. As a result, most undocumented migrant women do not seek legal protection and remedies for human rights abuses. As a number of organizations throughout the world have documented, this places undocumented women in an extremely precarious situation, continuously at risk of serious violence and human rights abuses. In the words of one organization working extensively with migrant communities in Thailand, many undocumented migrant women live "in a constant state of insecurity in all aspects of their lives: in public spaces, in the workplace, and in the home."<sup>19</sup>

26. Addressing this situation requires the establishment of legal 'firewalls' between immigration, law enforcement and rights protection mechanisms. For example these should involve measures to ensure through relevant safeguards, including law-reform, government regulations and directives, that where an undocumented woman seeks protection or remedies for human rights abuses her immigration status will not come under scrutiny by officials and authorities and she will not be subject to arrest or deportation. They should also involve the introduction of provisions that provide undocumented women migrants (pursuing legal protection and remedies in respect of human rights abuses) with the right to receive short-term residence and work permits and to pursue longer-term regularization of status. In addition, measures should include steps to ensure women can obtain independent residence permits that do not tie the legality of their migration status to employment with a specific employer or to certain cohabitation or inter-personal relationships.

#### *Sex workers*

27. Similarly, reports indicate that sex workers typically will not report violations or abuses they suffer or seek justice due, among other things, to fears of detention, prosecution and fines under a range of criminal prohibitions. For example those we consulted in Thailand regarding sex workers' ability to access justice explained that they will almost never report the abuses they face or seek legal protection or justice due to fear of being fined or prosecuted under relevant Thai laws prohibiting solicitation and living off the proceeds of prostitution. Many expressed the view that ultimately sex workers are left in a *de facto* vacuum, where legal protection and remedies are essentially unavailable to them and that a general climate of impunity exists for severe violence against sex workers. In their experience, this creates a permissive climate in which anything goes and sex workers are regularly subject to human rights abuses and violations by employers, clients, and state officials, including serious crimes such as rape, gang rape and other sexual violence and physical assault, without any prospect of protection and redress. These experiences are also reflected in other jurisdictions and the commentary of UN bodies and agencies and human rights experts. For example, the UNAIDS Advisory Group has specified that where criminal laws apply, "sex workers who suffer violence or abuse at the hands of clients or other persons are too fearful to report these offenses to the police. They have little reason to expect that the police would help them. The application of criminal law to sex work is often associated with heinous abuses of the rights of sex workers. They are highly vulnerable to sexual and physical abuse."<sup>20</sup> Meanwhile, the United Nations Special Rapporteur on the Right to Health has stressed that, "the criminalization of sex work often means that sex workers feel unable to enforce their basic rights, as their status and work are illegal. They "live in fear" of police and clients, and feel unable to report crimes against them due to fear of arrest."<sup>21</sup>

#### *Lesbian and trans women*

28. Lesbian and trans women will also often not seek to enforce their rights through legal remedies. This is particularly true in countries where same-sex sexual activity is criminalized, which can result in the widespread perception that being lesbian or gay is illegal, and/or where non-discrimination provisions do not protect sexual orientation and gender identity, as well as where legislation does not provide a means for trans women to change sex markers on their birth certificates and identity cards. For example, in Botswana, those we consulted explained that fear of discrimination and bias by justice sector officials and fear and broader social stigma facing lesbians

<sup>19</sup> *Stepping Into the Light*, Report on Women Migrant Workers, Migrants Assistance Programme, p. 82 (advance copy shared with ICJ & JPF). See also Human Rights Watch, *From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand*, 2010.

<sup>20</sup> UNAIDS, *The Report of the UNAIDS Advisory Group on HIV/AIDs and Sex Workers*, 15 December 2011, p. 7.

<sup>21</sup> *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, U.N. Doc. A/HRC/14/20, 27 April 2010, Para. 42.

and trans women prevents them from seeking justice when they face an infringement of their rights. Not only do they refrain from seeking legal remedies in relation to discrimination on grounds of sexual orientation and gender-identity, but also lesbian women in particular may not file reports or legal claims more generally due to considerable fears in relation to their sexual orientation being made public.

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