DIFFUSION OF INTERNATIONAL LEGAL FRAMEWORKS ON WOMEN'S RIGHTS TO NATIONAL LAWS AND LOCAL INITIATIVES

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1. INTRODUCTION

While most Member States have committed themselves to gender equality, there is a disconnect between these commitments, and their implementation. This is exacerbated by the growing global backlash against gender equality.[1] In this era of regression, the implementation of States' obligations to achieve gender equality is urgent.

This paper makes four broad proposals to advance the implementation of States' international obligations. The first relates to empowerment discourse, whereby women are described as vulnerable, and in need of empowerment. This language has the unintended effect of positioning women as weak and in need of rescuing, which in turn works against the aspiration of gender equality. Second, I propose that the broad principles of international human rights law must be broken down into specific steps that States must take in order to be in compliance with their obligations. Third, I describe some of the ways the the minutia of States' legal structures and laws of procedure, including laws of evidence, contribute to the failed implementation of international law. Fourth, I set out some proposals for context-specific transformative measures to achieve gender equality.

[1] Human Rights Council, 'Escalating Backlash against Gender Equality and Urgency of Reaffirming Substantive Equality and the Human Rights of Women and Girls: Report of the Working Group on Discrimination against Women and Girls', A/HRC/56/51(15 May 2024).

I use gender-based violence ('GBV') as a focal point from which I describe each proposal. However, the proposals may be applied to other categories of States' international obligations to achieve gender equality.

2. EMPOWERMENT DISCOURSE

The international discourse around gender equality refers to women as a vulnerable group that must be empowered. Implicit in this discourse are the notions that women are weak, unable to speak for themselves, and in need of rescuing. This entrenches stereotypical narrative about women's diminished capabilities – the 'princess in need of rescuing'.[2] This language thus *sustains* gender differentiation as a natural order of life and inadvertently perpetuates the gender hierarchy, with men at the top of the proverbial ladder, reaching down to give women on the bottom rung of the ladder, a hand up.[3]

The truth is that women are not a group that needs to be empowered and uplifted. Women's power and strength is evident in the myriad ways women resist oppression. Women face violence at home and violence at work; they endure unequal pay while being required to do double work; they bear responsibility for unpaid child-care and are refused social or economic recognition for this role; they are invisible in the workplace and punished if they speak up; they are the first and largest group to suffer the detriment of climate change and food insecurity, and yet are responsible for feeding their families. Black women in particular face the full force of these violations, and yet remain the backbone of family survival. Indigent women are responsible for the care of the ill, providing the 'systematic transfer of hidden subsidies to the rest of the economy.'[4]

Women raise children, bring in an income, balance budgets, and survive the onslaught of violence against them, because they are women. And then women are told that *they* need to be empowered. The irony is stark.

Rather than 'reaching down' to uplift women, States must recognise that those at the top of the ladder have a proverbial boot on the necks of women. It is the release of the 'boot'

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[2] Amartya Sen, 'Gender Inequality and Theories of Justice' in Martha Nussbaum and Jonathan Glover (eds), *Women, Culture and Development: A Study of Human Capabilities* (Clarendon Press 1995) 259, 270.
[3] See Hillary Eisenstein, 'Hegemonic Feminism, Neoliberalism and Womenomics: "Empowerment" Instead of Liberation?' (2017) 91 *New Formations* 35; Sydney Calkin, 'Disrupting Disempowerment: Feminism, Co-optation, and the Privatised Governance of Gender and Development' (2017) 91 *New Formations* 69.
[4] Rania Antonopoulos, 'The Unpaid Care Work – Paid Work Connection', *International Labour Office, Policy Integration and Statistics Department* – Geneva (Working paper No. 86) (2009), 61. See also Bonita Meyersfeld, 'Corporations and Positive Duties to Fulfil Socio-Economic Rights: Developing International Human Rights Law' (2024) *The International Journal of Human Rights*.

– namely structural oppression – that States must address.[5]

There is a second problem that arises because of the empowerment discourse. This is the notion that all human rights violations are experienced by all people in the same way; that there are general principles of international law that relate to 'everyone', and that women – and children or indigenous people for example – are sub-groups that are 'added on' to the general rules of international law. This creates the notion of a generic victim – the idea that all people experience human rights violations in the same way and that the so-called 'general principles' are the generic base line of human rights experiences.

The truth is that there is no generic victim or generic baseline. Rather, the 'generic' victim is based on the experiences of men. As the dominant drivers of international law, men have made their experience the benchmark for remedial measures. Once this baseline is set, the experiences of anyone else becomes a sub-set of international law. But men, just as women, are a sub-group. As matters stand, current 'generic' approaches to human rights are not actually generic, but specific to the male experience.

This was evident in the context of the development of business and human rights law (BHR). In 2003, the UN Secretary-General appointed the late Professor John Ruggie as his Special Representative to develop principles of BHR in international law.[6] In 2008, five years after the appointment of Professor Ruggie, the UN Human Rights Council instructed him '[t]o integrate a gender perspective throughout his work and to give special attention to persons belonging to vulnerable groups' including women and children.[7] There was confusion and resistance in the BHR community, including those working with the Special Representative. Many assumed that there was a generic baseline, a 'one-size-fits-all' victim of human rights violations.[8] Gender was seen as a discrete, separate issue that could be addressed once the 'main' issues surrounding BHR had been developed. Some maintained that any time spent on issues such as

[5] This is the basis of CEDAW: Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, UN General Assembly resolution 34/180, 1249 UNTS 13, Introduction.

[6] Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises.

[7] Human Rights Council, 'Resolution 8/7: Mandate of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises', A/HRC/RES/8/7 (18 June 2008), para. 4(d).

[8] Florian Wettstein, *Business and Human Rights: Ethical, Legal, and Managerial Perspectives* (2022, Cambridge University Press), 336; Melisa N Handl, Sara L Seck and Penelope Simons, 'Gender and Intersectionality in Business and Human Rights Scholarship' (2022) 7(2) *Business and Human Rights Journal* 201, 208; Penelope Simons and Melisa Handl, 'Relations of Ruling: A Feminist Critique of the United Nations Guiding Principles on Business and Human Rights and Violence against Women in the Context of Resource Extraction' (2019) 31(1) *Canadian Journal of Women and the Law* 113, 134; Beth Goldblatt and Shirin Rai, 'Remedying Depletion Through Social Reproduction: A Critical Engagement with the United Nations' Business and Human Rights Framework' (2020) 20(20) *European Journal of Politics and Gender* 1.

gender, would detract from the 'core' work of BHR. While this has started to morph,[9] the impact of the assumed neutrality remains.

The empowerment discourse distorts the picture of what is really needed to attenuate gender-based discrimination and GBV, namely, consequences. There is a distinction between the *cause* of GBV – what leads one person to harm another; and the *consequences* thereof – the accountability of perpetrators. The *cause* of GBV speaks to human nature and the cultural and social perceptions of women. We may or may not be able to change this. However, what we *can* change, is the institutional responses to such harm. At the moment, legal institutions bypass the needs of women. Changing this approach is firmly within our control, as I demonstrate in the rest of this paper.[10]

Thus, the empowerment discourse should be removed from the lexicon of gender equality, both nationally and internationally. The proverbial spotlight must shift from looking at women as vulnerable and impotent, to the social, legal and economic structures that *oppress* women.

3. SPECIFICITY AND GRANULAR REFORM

The real impediment in the domestication of States' international law obligations, lie in the small, seemingly innocuous court structures, processes, and rules of procedure. Gender equality continues because of the minutiae in legal and social systems that block women's access to justice.

While international standards are traditionally broad to allow States to implement human rights duties according to their own systems, the time is ripe to detail the steps for successful implementation.[11] This was recognised in the Istanbul Convention, which contains a number of specific requirements for State Members to adopt, including a trauma-informed legal system.[12] It is also evident in the Inter-American Model Law on the

[9] Nora Götzmann, Joanna Bourke Martignoni, Bonita Meyersfeld and Harpreet Kaur, 'From Formalism to Feminism: Gender, Business and Human Rights' (2022) 7(1) *Business and Human Rights Journal*. See also Human Rights Council, 'Gender Dimensions of the Guiding Principles on Business and Human Rights: Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises', A/HRC/41/43 (2019) ('Gender Guidance').

[10] Jackie Dugard & Bonita Meyersfeld 'Sexual Harassment and Violence: Higher Education as Social Microcosm' in C Ballantine, K Erwin & G Mare (eds) *Living Together, Living Apart?: Social Cohesion in a Future South Africa* (2017) 153.

[11] Many other international or UN bodies are approaching other international obligations with a similar move towards more detailed and practical steps that States must take to implement international standards. See, for example: the Gender Guidance; Human Rights Council, 'Nexus between gender equality and the right to development: Report of the Special Rapporteur on the right to development, Surya Deva, A/HRC/60/25 (2025); General Recommendation No. 37 (2018) on Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change, CEDAW/C/GC/37, para 68.

[12] The Council of Europe Convention on preventing and combating violence against women and domestic

Prevention, Punishment and Eradication of the Gender-related Killing of Women and Girls.[13] The model law was developed as a tool to support States in the implementation of their obligations under international human rights law.[14]

Thus, States' obligations to ensure gender equality should be broken down into specific steps that respond to the daily minutia of women's experiences. These are often mundane and seemingly irrelevant factors but collectively they show how systems impede States' fulfilment of their equality duties.

Unveiling the prejudicial stereotypes reveals that seemingly neutral and 'fair' procedures are neither fair nor neutral when it comes to cases of GBV. This is necessary to move from policy to precision. The next section describes some of these procedures.

4. THE HARM OF LAW OF PROCEDURE

In most States, the adoption of legislation has done little to alleviate gender-based discrimination and GBV. This is because legal process, the rules of procedure and evidence, and even the design of court houses - the 'bones' of States' legal systems – are infused with the perspectives, realities, and imperatives of men.[15] This is where we see the breakdown in the domestication of international law: it is within the granularity of the daily minutia of the legal system that impede gender equality.

Procedural law – such as court processes and rules of evidence – regulates the manner in which substantive legal principles are enforced in courts. The rules of procedure were created by men, from the male perspective. This is particularly evident in the criminal justice systems. Such systems were never built to serve women and they were never designed from the perspective of women. We see this in (i) the discriminatory approaches of judges and lawyers; (ii) the rules of evidence; and (iii) the very structure of the courtroom itself.

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violence (Istanbul Convention), CETS No. 210, 2011. For a discussion of some of these specific proposals, see Bonita Meyersfeld & Francesca Sironi De Gregorio, 'Article 25: Support for victims of sexual violence' in Sara De Vido & Micaela Frulli (eds.), *Preventing and Combating Violence Against Women and Domestic Violence* (Elgar Publishing, 2023) 311.

[13] Inter-American Model Law on the Prevention, Punishment and Eradication of the Gender-Related Killing of Women and Girls (Femicide/Feminicide). III. Series: OEA/Ser.L/II.7.10 MESECVI/CEVI/doc.240/18. IV. Series. OEA/Ser.L/II.6.21.

[14] See also the Gender Guidance (n 9), which drills down into specifics of how businesses and states must implement their human rights obligations.

[15] Bonita Meyersfeld, 'Sexual Harassment and Disciplinary Procedures: Never the Twain Shall Meet', (2020) 10 *Constitutional Court Review* 301.

i. Discriminatory adjudication

When States adopted gender equality legislation, they do not address the hidden problems and prejudices within the system. Legal procedures remain imbued with beliefs about the inferiority, duplicity, and infantilising nature of women. Victim-survivors must seek help, report cases, and give their evidence against the backdrop of social conditioning that demeans women and female sexuality, depicts them as untrustworthy and unreliable and that all too often blames women for the violence wrought upon them. For example, during apartheid, judges spoke about women having 'a deceptive facility for convincing testimony';[16] that their complaints are based on 'flights of fancy';[17] or that 'women are habitually inclined to lie about being raped';[18] as that women tend to lay false charges of rape if they become pregnant.[19]

Demonising and discriminatory beliefs infuse the rules and procedures of the criminal justice system, infecting judicial deliberation, notwithstanding formal principles of equality.[20]

This is exacerbated by many victim-survivors' (misplaced) sense of blame or self-accusation. These doubts are entrenched by the cavalier indifference of the perpetrator and state officials. Defence lawyers point to the person's dress, level of sobriety, public displays of affection, or previous sexual history. This eclipses the perpetrator's responsibility, creating a fiction of acquiescence.[21]

In 2012, Frances Andrade gave evidence in the United Kingdom against her former music teacher for indecent assault.[22] Under cross-examination, she was told that she was 'indulging in the realm of fantasy'.[23] She texted a friend to say that she felt that she had been raped all over again. She then killed herself.[24]

It is no wonder that the criminal trial has been described as the 'second rape'.[25]

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[16] *S v Snyman* 1968 (2) SA 582 (A) at 585 C-H.
[17] *R v J* 1966 (1) SA 88 (S R, A D) at 92 A-D.
[18] *S v Jackson* (35/97) [1998] ZASCA 13; 1998 (4) BCLR 424 (SCA); [1998] 2 All SA 267 (A) at paras 10-11.
[19] *R v W* 1949 (3) SA 772 (A) at 780 and 781.
[20] Nancy Fraser, 'Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy' (1990) 25/26 *Social Text* 56, 64.
[21] For a discussion about these phenomena see Redi Tlhabi, *Endings and Beginnings* (Jacana Media 2013).
[22] https://www.theguardian.com/society/2013/apr/13/rape-sexual-assault-frances-andrade-court.
[23] Id.
[24] In the case of *Tunikova*, the complainant was attacked by her ex-husband after a custody hearing outside the courtroom: *Tunikova and Others v. Russia*, 2021, Applications nos. 55974/16, (ECHR 14 December 2021) para 25.
[25] Mala Htun & Francesca R. Jensenius 'Fighting Violence Against Women: Laws, Norms & Challenges Ahead' (2020) 149 *Dædalus, the Journal of the American Academy of Arts & Sciences* 114, 153. Nataly Woollett & Kirsten Thomson, 'Understanding the Intergenerational Transmission of Violence' (2016) 106(11)

Thus, women have to engage a legal system which, equality legislation notwithstanding, continues to minimize and delegitimize the violations women experience.[26] The result is that seemingly neutral principles of procedural law create a number of barriers that impede women's access to justice, safety and equality.

ii. Rules of evidence

a. Sources of evidence

In most gender-based violence cases, there are only the words of the victim-survivors. These words are difficult to speak as they describe acts that are deeply personal and intimate and, in most cultures, not openly discussed. The criminal justice process demands that victims narrate, and therefore re-experience, these intimate episodes in the most public fora and in the presence of the perpetrator.

Contrast this with murder or armed robbery, where the evidence is objective – there is a corpse to examine, stolen goods that are recovered, or surveillance footage to watch.

This is compounded by the neurological response of victim-survivors of GBV. The trauma of rape is compounded by a physical inability to resist the attack. This triggers a range of flight, fight or freeze responses, all of which will have an impact on the victim-survivor's brain and her recollection of the event. Typical neurological responses to GBV include dissociation, tonic immobility (temporary paralysis) and collapsed immobility, such as fainting.[27]

Dissociation is 'the process of the brain protecting itself from overwhelming stimulus by splitting some aspect of the experience away from consciousness.'[28] Fear 'focuses one's attention on a few details at the expense of a lot of others.'[29] As a result, victim-survivors may have a scattered and delayed recollection of events.[30] They might remember the time of day when the event occurred, but not the date or day of the week; they might remember a colour, smell, or image, but not the details leading up to or during the rape. This is anathema to the legal process, which links believability to certain and detailed

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South African Medical Journal 1068, 1069.

[26] Mala Htun & Francesca R. Jenseniun, 'Fighting Violence Against Women: Laws, Norms & Challenges Ahead' (2020) *Journal of the American Academy of Arts & Sciences* 147, 152.

[27] See Lori Haskell & Melanie Randall, 'The Impact of Trauma on Adult Sexual Assault Victims' (2019) *Report Submitted to: Justice Canada* ('Justice Canada'), 15-16

[28] Id.

[29] Ibid, 21.

[30] Id.

evidence.

In reality, the victim-survivor is not the only person who can speak to the violence of the accused. The term whisper network is typically associated with informal communication. Such networks are often used as a private channel between women to warn other women about the dangers of the offender, filling the gaps in formal reporting systems.[31] States should consider whether there are ways to admit anonymous statements from whisper networks as evidence in support of the allegation. This will entail resculpting procedures to be responsive to the realities of the victim-survivors. Obviously, this proposal departs from some of the principles of procedural justice, including the right to face your accuser. But the accused and judicial officers could be given an opportunity to interrogate the anonymous written testimony via written questions to the witness, who would then be required to respond in writing. The weight and probative value of anonymous evidence may be lower than direct evidence but it should be admissible.

b. The 'good' and 'bad' witness

The laws of evidence generally provide parameters for judges when assessing whether a witness is believable. A 'good' witness is clear and articulate, does not hesitate or fumble, recalls facts clearly and consistently. A 'bad' witness is furtive, speaks softly, is insecure in recollection of events, avoids eye contact, appears unconfident and agitated.[32] Thus, a 'good' witness (i.e. a believable witness) is one who will look her audience in the eye, be clear and concise and consistent in her testimony, and who is unshaken under cross-examination.

GBV victim-survivors do not make 'good' witnesses. Victim-survivors may speak in a low and unconfident voice. They may appear nervous and reluctant to discuss all the details of what happened, especially under cross-examination. Victim-survivors may refrain from looking people in the eye when giving testimony; they may look down and speak softly; they may use language that is euphemistic or vague.

These are all hallmarks of a non-credible witness. However, if one understands the neurological impact of rape and trauma, then it becomes clear that, rather than being an indicator of falsehood, such reactions are actually potential evidence of truthfulness.

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[31] Comments by Caitlin Rybko, Whisper Networks, at the African Centre for Epistemology and Philosophy of Science, 14 July 2925, https://www.uj.ac.za/wp-content/uploads/2021/10/2025-07-14-whisper-netorks-dr-caitlin-rybko.pdf. See also Carrie Ann 'The Purpose of Whisper Networks: A New Lens for Studying Informal Communication Channels in Organizations' (2023) 8 *Frontiers in Communication*.

[32] A Blumenthal 'A Wipe of the Hands, a Lick of the Lips: The Validity of Demeanour Evidence in Assessing Witness Credibility' (1993) 72 *Nebraska Law Review* 1157, 1164.

Therefore, credibility should not be measured according to the benchmark of public crimes.[33] Witness reliability in GBV cases should be assessed with reference to the neurological science that explains that a scattered recollection is not an indication of duplicity but a response that is in keeping with the trauma of GBV.

c. The system as a battlefield

From this perspective, we see that the legal system becomes part of the violence – and not the solution.[34] Because if a victim-survivor is not believed; if she is interrogated about facts and information that her brain has subconsciously blocked; if she is forced to rehash the details of the event such that the recollection of details is undertaken before she is physically and mentally prepared for the onslaught of the details; if she forced to look at her attacker in a closed courtroom; if she is forced to share details about the most intimate and greatest trauma before strangers, and repeatedly fend off attacks on her veracity and integrity; if all of these are catapulted at the person from an array of different directions, in a constant and unrelenting barrage of destruction rather than support, surely she will leave the battlefield that is the justice system.

iii. Structure of the courtroom

Courts are intimidating places for most people. For women who are coming to seek protection from those who have harmed them, it is terrifying. Seeing the perpetrator triggers an array of realities, including: the fear that he will harm her again either in that moment or later; the re-experiencing of the harm; or the shutting down of the mind and body. All of these factors impede the victim-survivor from meaningful engagement with the legal process.

Victim-survivors often sit in the same corridor as their attacker, which can be terrifying and further compromise the victim-survivors' ability to testify. Add to this the insensitivity, prejudice, blame, coercion, intimidation and disbelief of state actors throughout the process – from reporting to testifying – it becomes clear why the courtroom is the location of the secondary rape, creating a net negative.[35]

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[33] Patricia Easteal & Kerri Judd "'She Said, He Said": Credibility and Sexual Harassment Cases in Australia' (2008) 31 *Women's Studies International Forum* 336, 337.

[34] Bonita Meyersfeld, 'Business, Human Rights and Gender: A Legal Approach to External and Internal Considerations' in Surya Deva and David Bilchitz (eds), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect* (CUP 2013) 193, 201.

[35] Lauren Bennett Cattaneo and Lisa A. Goodman, 'Through the Lens of Therapeutic Jurisprudence: The Relationship Between Empowerment in the Court System and Well-Being for Intimate Partner Violence Victims' (2010) 25 *Journal of Interpersonal Violence* 481, 482-3.

The courtroom itself may become a site of further physical violence. In the case of *Tunikova and Others v. Russia* before the European Court of Human Rights,[36] one of the applicants was assaulted by her abusive husband *in the courtroom* during a child custody hearing.[37] The police refused to open an investigation into the event.[38] The courtroom literally became the location of violence, rather than the haven of justice.

Ideally, States should have separate entrances, separate waiting areas, to prevent any contact between the accused and the complainant. Some States have developed victim-friendly courts (VFCs). An important innovation is the opportunity for victim-survivors to make their statements in private. So-called separation rooms allow victim-survivors to give their testimony in a separate room, where the perpetrator is not present. The testimony is then relayed to the courtroom through closed-circuit television.[39] Questions may be asked by the judge rather than defence lawyer, alleviating the trauma of cross-examination.[40]

There is a need to identify and remedy these seemingly unimportant and neutral aspects of legal process. This is more 'than simply incorporating 'women' as a homogenous 'vulnerable' or 'marginalized' group into existing, unequal institutions and structures.'[41] It is about the restructuring of law and legal procedure by women based on their knowledge of how the system needs to be fixed.

5. INNOVATIONS

i. Specialised lawyers providing direct legal services

The fault lines in the legal system are remediable with direct, integrated, and specialised legal services. I use as a case study an organisation called Lawyers against Abuse (LvA) in South Africa. The organisation emerged from this author's theory on domestic violence and international law.[42] It is founded on four pillars. The first is that victim-survivors of GBV need lawyers who service them directly and professionally throughout the span of their case. The second is that law and psychology are inextricably linked in ensuring that the justice system works for victim-survivors of GBV and therefore lawyers should work

[36] *Tunikova* (n 24), para 25.
[37] Ibid, para 23.
[38] Id.
[39] https://www.unicef.org/zimbabwe/stories/victim-friendly-courts-empower-sexual-and-gender-based-violence-victims.
[40] https://thecourtmanager.org/articles/trauma-informed-courthouse-design-33-1/.
[41] Nora Götzmann and Mathilde Dicalou, 'Towards a Feminist Energy Justice Framework', 10(1) *Business and Human Rights Journal* (2025) 56, 64.
[42] Bonita Meyersfeld, *Domestic Violence and International Law* (Hart Publishing, 2010, 2012).

hand in glove with psycho-social specialists. The third is that state institutions which are mandated to provide protection and justice for victim-survivors of GBV, must be held to account when they fail to do so. The final element is that the integrated services must be provided from a localised office that services a contained geographical area. For the purposes of this note, I focus on the importance of direct, specialised and integrated services.

It is striking that one of the greatest social ills receives the least resourced and under-specialised services. For the most part, GBV services are provided by non-governmental organisations, operating on tight budgets, funded by donor organisations and, at times, by government. The people doing the work will be underpaid and, for the most part, will do this work because of their dedication to a form of social justice. Their offices will range from modest to run down. The queues will be long and the lawyers will be able provide limited services. Once the client has been seen, a case file will be opened and she will be advised to go to the nearest court for a protection order or police station to file a complaint or to the hospital to get a medical examination. She will then leave the small office and have to find the time and wherewithal to implement the advice she has just received. She will have to find someone to look after her children; ask for additional leave from her job; ensure that the abuser does not know that she is pursuing legal intervention; and manage her own indescribable physical and mental trauma.

Contrast this to, for example, a large commercial law firm. The clients of private commercial law firms will be some of the wealthiest and most empowered members of a society. If a corporation wishes to undertake a commercial transaction, they will come to the pristine offices of the law firm. The firm's top lawyers, each with their own area of expertise, will be in attendance. They will listen to the client's needs and talk about the various ways in which the deal could be implemented. They will discuss the steps that must be taken, including ensuring compliance with the array of regulatory bodies, such as the anti-trust regulators; the tax authorities; and stock exchange rules. They then begin the process of meeting with and representing their client at every step of the way in the execution of the transaction. They certainly do not say: here is the address of the competition tribunal, the tax authorities, the stock exchange authorities – go and ask them to assist.

Every lawyer working in the field of GBV must have a specialisation in that area of law. They should be trained to understand the nuances of the client's needs, emotionally, financially and physically. She should be offered food and nourishment and be able to wait for her appointment in a dignified location. There should be a facility where her child can play while waiting for their mother. Most importantly, the first person to see the client should not be a lawyer but rather a psycho-social specialist such as a social worker or a psychologist. And like the lawyers, that professional must have a specialisation in GBV

in much the same way that commercial lawyers may have a specialisation in corporate law or tax law or anti-trust law.

Victim-survivors of GBV are the most vulnerable and receive the least support. This is a perverse inversion of need versus services. In order for States to implement their international obligations, they must facilitate specialised and well remunerated GBV.

ii. Publicly naming of perpetrators and defamation

Following the #metoo movement, women have increasingly identified their perpetrators in public. Men who have been named as perpetrators are turning to a variety of legal mechanisms to quash the allegations made against them. These include defamation suits, injunctions against further speech, and protection orders based, *inter alia*, on allegations of domestic violence or harassment. Perpetrators therefore use the very laws designed to protect women, to silence their accusers, discredit victim-survivors and misappropriate victimhood.

These orders can be capricious. At times, they prohibit the speaker from ever speaking about her rape to anyone at all, even if she omits the name of the complainant. Defamation claims often demand either that the speaker pay exorbitant damages, or issues an apology. The result is that such cases are effectively SLAPP suits (strategic litigation against public participation).

It is necessary to understand why these publications are justifiable, and not defamatory or harassing. The enforced silencing around GBV is asphyxiating and isolating, making healing impossible to achieve. As Pumla Gqola demonstrates, silence is part of the 'the female fear factory'. Social structures silence victim-survivors, thereby normalising and legitimising GBV.[43] The continuation of GBV 'depends on secrecy, fear and shame.'[44] Thus, when women name their perpetrators, they are not trying to spread salacious gossip. They are breaking silence, to be heard, to find healing and to protect others from suffering the same fate;[45] to recreate the social response to GBV and challenge institutional barriers;[46] to find community, to speak their truth, and to heal.[47]

These contextual factors demand that, where women name their perpetrators publicly, courts must choose an interpretation of the law that allows women to speak freely. Communications identifying perpetrators should be presumed to be

[43] Pumla D Gqola *Rape: A South African Nightmare* (2015, MF Books Joburg) 79.
[44] *Levenstein v Estate of the Late Sidney Lewis Frankel* 2018 (8) BCLR 921 (CC) para 56.
[45] Ibid 129(5).
[46] *LW v KCA* 2023 ZAGPJHC 1154, South Africa, para 129(d).
[47] Ibid 129(5).

reasonable and in the public interest, ensuring that women should not be silenced.[48]

6. CONCLUSION

Legal processes are moored in assumptions and stereotypes that make it almost impossible for victim-survivors to navigate the legal system. Patriarchal stereotypes about women have infused the law, legal institutions, administrators of justice, judges, prosecutors, and lawyers. The stereotypes about women, therefore, much like the stereotypes around race, underpin law and legal procedure.

The result is that legal institutions, at the most banal level, are not fit for purpose. States may change their laws, but they do not change the male-orientated rules of procedure.

International law speaks in grand terms. It calls for the end to gender-based violence and the liberation of all women from oppression. But these grandiose sentiments are set up to fail unless the minutiae of structures of justice – both physical and procedural – change.

There are ways of developing investigative and adjudicatory procedures that are responsive to the nuanced nature of gender-based discrimination and GBV and the gendered structures in which it occurs. The propositions made in this paper serve as examples or case studies that demonstrate the need for greater specificity as to how states should implement their international obligations. They also provide examples of how more detailed or prescriptive mechanisms may better ameliorate the disjuncture between states' commitments under international law, and their failure to implement these commitments at the domestic level.

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[48] Ibid 129(c).