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Statement by Legal Empowerment Organisations on the Human Rights Situation in Africa: Justice is Key to Realising the Africa We Want.

[Thank you]

Honourable Chairperson, Honourable Commissioners, State delegates, representatives of National Human Rights Institutions, members of Civil Society Organisations and distinguished participants; the undersigned legal empowerment organisations welcome the opportunity to present this Statement on the state of access to justice in Africa and its implication on Aspiration 3 of the African Union (AU) 2063 Agenda: The Africa We Want. This aspiration envisages among many other things, access to independent courts and judiciary that dispense and deliver justice without fear or favour; affordable and timely access to justice for all. The state of access to justice in Africa also impacts Aspiration 6 of the AU 2063 Agenda, which envisages full gender equality in all spheres of life and the elimination of violence against women and girls.

The undersigned organisations work towards the promotion of people-centred justice and gender justice in Africa. We are cognisant of the strides made at the regional level and by individual states that are members of the AU in promoting the right to access to justice, and specifically the right of women facing violence to access justice, through the normative and institutional steps taken in pursuit of Aspirations 3 and 6 of the AU Agenda 2063. These aspirations strengthen the commitment of AU members who also belong to the United Nations to eliminate violence against women and girls and to promote access to justice in accordance with SDG 5 and 16 respectively.

However, we are concerned that despite the commitments made by member states to the AU and the commendable legal and policy frameworks in respect of the promotion of access to justice and the achievement of gender justice which most members states have adopted, the lived realities of people on the ground, particularly women, have not been sufficiently

impacted by these measures. According to the [First Continental Report on the Implementation of Agenda 2063](#), the continent fell significantly short in realising its 2019 targets in terms of entrenchment of democratic values, practices, universal principles of human rights, justice and the rule of law (Goal 11) and only moderate progress has been made in terms of ensuring full gender equality in all spheres of life (Goal 17). This assessment of the realisation of targets was made prior to the outbreak of the COVID-19 pandemic and the severe strain that was placed on national justice systems from March 2020 onward.

Honourable Chairperson,

1. The COVID-19 pandemic has taught us important lessons about the effectiveness of our existing structures in preventing and addressing violence against women and the responsiveness and flexibility of our national justice systems in times of crisis. The widespread national lockdowns, introduced from March 2020 in order to curb the spread of COVID-19, exacerbated gender inequality and led to a worldwide increase in domestic violence and intimate partner violence against women.¹ In Nigeria, for example, the government collected data which indicated a 149% increase in reports of GBV from March 2020 to April 2020.² A South African national counselling hotline called 'Lifeline SA' reported a 500% increase in the number of GBV cases reported in the first two months of the level 5 lockdown in 2020.³
2. In all the countries which imposed lockdowns, including countries across Africa, these surges of domestic violence and intimate partner violence went hand-in-hand with the temporary closure of, or decreased access to, all the usual avenues for women facing violence to access justice.⁴ While the pandemic raged on, women and girls on the continent were not sufficiently protected against violence.

¹ NJ Dlamini 'Gender-based Violence: Twin pandemic to COVID-19' *Critical Sociology* 47:4-5 (2021) 585; CM Roy, P Bukuluki, SE Casey, MO Jagun, NA John, N Mabhena, M Mwangi & T McGovern 'Impact of Covid-19 on Gender-Based Violence and Response Services in Kenya, Uganda, Nigeria, and South Africa: A Cross-Sectional Survey' *Frontiers in Women's Global Health* Vol. 2 (2022) 2-3.

² UN Women *Gender-based violence in Nigeria during the COVID-19 crisis: The shadow pandemic* (2020) 5, as referenced in CM Roy, P Bukuluki, SE Casey, MO Jagun, NA John, N Mabhena, M Mwangi & T McGovern 'Impact of Covid-19 on Gender-Based Violence and Response Services in Kenya, Uganda, Nigeria, and South Africa: A Cross-Sectional Survey' *Frontiers in Women's Global Health* Vol. 2 (2022) 2-3.

³ B Metsing 'Gender-Based Violence Cases Rose by 500% Since Start of Lockdown – Lifeline' IOL (2020). Available at: Gender-based violence cases rose by 500% since start of lockdown - Lifeline (as referenced in CM Roy, P Bukuluki, SE Casey, MO Jagun, NA John, N Mabhena, M Mwangi & T McGovern 'Impact of Covid-19 on Gender-Based Violence and Response Services in Kenya, Uganda, Nigeria, and South Africa: A Cross-Sectional Survey' *Frontiers in Women's Global Health* Vol. 2 (2022) 2-3).

⁴ N John, SE Casey, G Carino & T McGovern 'Lessons never learned: Crisis and gender-based violence' *Developing World Bioethics* 20 (2020) 65.

3. During times of strict lockdown, while formal justice mechanisms were not accessible or available to most people, informal justice actors and legal empowerment groups played an indispensable role in mitigating the severe violence and barriers to accessing justice which communities, and women in particular, faced.⁵ Community-based paralegals played a crucial role as first line responders to GBV during the pandemic.⁶ These community-based paralegals, who work directly with communities, lead a significant amount of access to justice work on the continent. They raise awareness of rights, laws, and policies; help clients to navigate legal and administrative processes in the pursuit of remedies; and support citizen engagement in law and policy reform. Many community members, and women in particular, relied on community-based paralegals to provide them with justice service in times of hard lockdown, when state machinery and formal justice structures were by and large inaccessible.⁷
4. Both pre – and post pandemic, the majority of Africans are nevertheless unable to access justice due to a myriad of factors i.e. socio-economic, legal and political. The cost for accessing formal justice is expensive. For example in Kenya, a litigant requires at least USD 80 to access the courts.⁸ There is also a low ratio of advocates to the general population in most African countries.⁹ In addition, most lawyers are too expensive, too specialised, or too far away to serve the millions in need of assistance. A partnership between community-based paralegals and advocates helps to resolve the imbalance between the supply of, and demand for, legal services.
5. Some community-based paralegals are limited in their reach and impact due to the fact that they are not formally recognized by the legal fraternity in their respective countries.¹⁰ The absence of national policies or legislation in some jurisdictions means that community-based paralegals are not legitimised by the state. The work of community-based paralegals is furthermore limited by the capacity and resources of

⁵ See Legal Empowerment Network, THEMIS – Gender Justice and Human Rights, Association for the Emancipation, Solidarity and Equality of Women (ESE), Bangladesh Legal Aid and Services Trust (BLAST) and FIDA Uganda *Gender Justice During and Beyond the COVID-19 Crisis: Institutional Responses to Gender-based Violence and the Role of Legal Empowerment Groups* (2021).

⁶ Legal Empowerment Network, FIDA Uganda & ICJ Kenya *The role of legal empowerment groups in Sub-Saharan Africa in addressing gender-based violence during the pandemic* (Forthcoming – to be published in 2022) 15.

⁷ As above.

⁸ HiIL *Justice needs and satisfaction* (2017) available at [Justice Needs and Satisfaction in Kenya 2017 \[7 MB\]](#)

⁹ The ratio of lawyers to the general population in a few Africa countries are estimated as follows: South Africa 1:2,273; Nigeria 1:2,857; Ghana 1: 7,826; Zimbabwe 1:10,000; Tanzania 1:63,830 and Mozambique 1:80,000. See D McQuoid-Mason ‘Access to justice in South Africa: Are there enough lawyers?’ *Oñati Socio-Legal Series* 3:3 (2013) 565.

¹⁰ Annette Mbogoh ‘Pouring new wines into old wineskins: State capture, contestations and conflicting understanding of paralegalism in Kenya with the advent of the 2016 Legal Aid Act’ *Egerton Law Journal* Vol. 1 (2021) 166.

the non-governmental organisations which train and facilitate them.¹¹ In countries where community paralegals are recognised in law, and where the law allocates funding, the state hardly provides funding to support their work. In this regard, we take cognisance of member states such as Sierra Leone, Kenya, South Africa and Rwanda among others that have enacted legislation that not only recognizes community-based paralegals as legal empowerment actors, but also provides for state financing for the provision of legal aid services. In Kenya, the Legal Aid Act was enacted in 2016. It establishes a national Legal Aid Fund for financing and expansion of the legal aid scheme and it is yet to be operationalised.¹² Without a Legal Aid Fund, there is limited state funded legal aid which does little to bridge the expanding justice gap. In some member states like Uganda, the Legal Aid Bill is yet to be enacted due to lack of funds.¹³

6. It is crucial for African states to acknowledge the vital role played by community-based paralegals in closing the access to justice gap for the poor and particularly for women facing violence. This important role of community-based paralegals is also highlighted in the fact that accused perpetrators of serious crimes are provided with state-funded legal representation, yet the survivors of severe domestic violence and other forms of GBV are not afforded the same courtesy.¹⁴ In order to tackle the scale of injustices coupled with lack of access to justice mechanisms faced by thousands of Africans each and every day, states need to take action and allocate resources in order to facilitate the work of these grassroots justice actors.¹⁵
7. During the pandemic, Legal Empowerment Groups also faced challenges in that there is a lack of state-funded economic support as well as shelters for women facing GBV. While this has been a pre-pandemic challenge, the GBV crisis exacerbated by the lockdowns, accentuated the urgent need to address this lack.¹⁶ Regrettably, for many countries, it took a severely exacerbated GBV crisis to take urgent and decisive steps toward the addressing an ongoing pandemic of violence against women.¹⁷

¹¹ As above.

¹² <https://www.the-star.co.ke/news/2021-02-24-senators-in-push-for-operationalisation-of-legal-aid-fund/>

¹³ <https://www.parliament.go.ug/news/3537/legal-aid-bill-set-back-financial-implications-%E2%80%93-oulanyh>

¹⁴ United Nations Office on Drugs and Crime Handbook on improving access to legal aid in Africa Criminal Justice Handbook Series (2011) 10-11.

¹⁵ See lawyer to country population ratio in 6 African countries, McQuaid-Mason, n 9 above.

¹⁶ As above.

¹⁷ The Ministry of Gender, Labour and Social Development supported the Uganda Network on Law, Ethics and HIV & AIDS (UGANET) to open a GBV shelter in Kampala, Uganda as an emergency response measure to the rising GBV cases in the country after the outbreak of the COVID-19 pandemic. See Legal Empowerment Network, FIDA Uganda and the Kenyan section of the International Commission of Jurists

8. The entrenchment of human rights, justice and the rule of law and the achievement of gender equality can only occur where state financing is prioritised and allocated to strengthen institutions and fund programmes aimed at achieving Aspirations 3 and 6.

We call on the African Commission to Urge African States to:

1. Explicitly include a target towards promoting people centred justice in the next 10 year plan of the AU 2063 agenda, under Aspiration 3 and the promotion of gender justice in order to eliminate violence against women, under Aspiration 6. This can also include the development of model standards on the functions, roles and recognition of community-based paralegals in Africa and pay special attention to their role in addressing GBV at the grassroots level. These model standards could also reiterate the importance of ensuring autonomy and self-regulation of these actors, while legitimizing their indispensable role in society. The first 10-year plan of the AU 2063 agenda comes to an end in 2023.
2. In accordance with Article 8 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), hasten the development and implementation of legal aid laws that recognise and finance the work of community-based paralegals where absent. States must strengthen recognition and support for the role that community paralegals play in ensuring access to justice through national and regional legislation. This legislation, however, must protect the freedom and flexibility of community-based paralegals and refrain from over-regulating and stifling the effectiveness of these grassroots justice actors. It is recommended that legislation and policies recognizing community-based paralegals should allow for their self-regulation through Non-Governmental Organisations and paralegal networks.

The role of legal empowerment groups in Sub-Saharan Africa in addressing Gender-Based Violence during the pandemic 23-25 (forthcoming). Kenya's President Uhuru Kenyatta has decried the rise in GBV as a result of the pandemic during a panel discussion at the opening of the 2021 Generation Equality Forum. See President Republic of Kenya 'President Kenyatta decries surge in Gender Based Violence in Africa' 30th June 2021 available at <https://www.president.go.ke/2021/06/30/president-kenyatta-decries-surge-in-gender-based-violence-in-africa/>. South Africa's President Cyril Ramaphosa addressed the stark increase in femicide and GBV during the early stages of the pandemic in an address to the nation. See COVID-19 Online resources and news portal 'President Cyril Ramaphosa: South Africa's response to the COVID-19 Coronavirus Pandemic' 17th June 2020 available at <https://sacoronavirus.co.za/2020/06/17/president-cyril-ramaphosa-south-africas-response-to-the-covid-19-coronavirus-pandemic/>

3. Strengthen partnerships between governments, civil society and legal sector actors (bar associations, judiciary, legal education providers, mediation/Alternative Dispute Resolution /Alternative Justice Systems) with regard to legal empowerment in Africa. This also includes improved engagement through multi-stakeholder initiatives such as the Open Government Partnership. Through these partnerships, civil society stakeholders can also create awareness on the complementary role of paralegals to the work of professional lawyers in order to diminish the hostility that community paralegals tend to face.
4. Fulfil their commitment in accordance with the Sustainable Development Goal 16.3 whose achievement is partly measured by the proportion of victims of violence (physical and sexual assault), who have reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms.¹⁸
5. Demonstrate their political will for legal empowerment of their poor and vulnerable citizens, and women in particular, by committing resources that will fund sustainable legal empowerment models that recognise the central role of community-based paralegals in delivering affordable and timely access to justice for all. States should simplify requirements that community-based paralegals are to meet in order to qualify for state funding to undertake their community justice work and should ensure a flexible and user-friendly reporting format for community-based paralegals who make use of such funding. Government funding should not affect the independence and autonomy of legal empowerment organisations.
6. Increase state financing to strengthen institutions and fund programmes aimed at promoting access to justice, such as small claims courts and community justice centres. States should scale up investment in meaningful, cost-effective and impactful justice and rights awareness to ensure that people adequately understand their rights

¹⁸ See <https://unstats.un.org/sdgs/metadata/?Text=&Goal=16&Target=16.3> Reporting to competent authorities is the first step for crime victims to seek justice: if competent authorities are not alerted they are not in a condition to conduct proper investigations and administer justice. However, lack of trust and confidence in the ability of the police or other authorities to provide effective redress, or objective and subjective difficulties in accessing them, can negatively influence the reporting behaviour of crime victims. As such, reporting rates provide a direct measure of the confidence of victims of crime in the ability of the police or other authorities to provide assistance and bring perpetrators to justice. Reporting rates provide also a measure of the 'dark figure' of crime, that is the proportion of crimes not reported to the police. Trends in reporting rates of violent crime can be used to monitor public trust and confidence in competent authorities on the basis of actual behaviours and not perceptions. Competent authorities include police, prosecutors or other authorities with competencies to investigate relevant crimes, while 'other officially recognized conflict resolution mechanisms' may include a variety of institutions with a role in the informal justice or dispute resolution process (e.g. tribal or religious leaders, village elders, community leaders), provided their role is officially recognized by state authorities.

and the remedies available to them within the prevailing legal and justice systems in order to ensure they can solve their most pressing justice problems.

7. In accordance with Article 4(2) of the Maputo Protocol, adopt administrative and economic measures to ensure the prevention, punishment and eradication of all forms of violence against women; to punish the perpetrators of violence against women and to implement programmes for the rehabilitation of women victims. In particular, States are recommended to increase state financing to strengthen institutions and fund programmes aimed at promoting justice and other essential services to women facing GBV, particularly through the establishment and maintenance of shelters and cash transfers to survivors.

Thank you.

1. African Centre of Excellence for Access to Justice
2. Paralegal Services Institute- Malawi
3. Kituo cha Sheria - Legal Advice Centre- Kenya
4. Legal Empowerment Network
5. Kenyan section of the International Commission of Jurists
6. Uganda Association of Women Lawyers (FIDA) – Uganda
7. Legal Resources Foundation- Zimbabwe
8. Women Safe House Sustenance Initiative – Nigeria
9. Sonke Gender Justice – South Africa
10. Centre for Rights Education and Awareness – Kenya
11. Informal workers Organisation – Sierra Leone
12. Uganda Network on Rights, Ethics and HIV & AIDS – Uganda
13. Women’s Legal Aid Centre – Tanzania
14. Kenya Human Rights Commission
15. Strategic Initiative for Women in the Horn of Africa (SIHA)