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Access to justice for survivors of Sexual and Gender-Based
Violence (SGBV) in South Africa and Uganda



ABOUT THE AUTHOR

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Her experiences as an asylum-seeker and a woman of color in the U.S. are the pillars of her commitment to social justice, democracy and human rights. Her goal is to become a human rights lawyer, working locally and transnationally to make the world more equitable and amplify the voices of marginalized communities.

ABOUT POLITICS4HER



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Politics4Her is an intersectional feminist platform & youth-led movement advocating for the inclusive participation of young women and girls in politics. Politics4Her works to broaden dialogue and to bring international human rights into practice through advising policymakers and states by bringing international best ideas. Politics4Her strives to contribute to a more equitably governed world by democratizing national laws and legislations.

ABOUT THE PROGRAMME



The Young Feminist Scholars Programme is meant for any student who is extremely passionate about feminism and gender issues. The goal will be for each scholar to deliver a report specializing on a region in the world covering issues related to gender-based violence and/or women's political participation.

Our two criteria for our scholars are to identify as international feminists (regardless of their gender) and most importantly to be able to showcase leadership. Scholars get to work in research, writing, policy as well as communications advocacy. Our main goal is for them to explore these different fields and see what they are most interested in while offering them guidance and mentorship so that it potentially helps them launch their early career.

TRIGGER WARNING

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Please note that since this policy brief includes words and phrases that should be avoided, you may come across some that you consider discriminatory or that have been used historically to oppress certain people or groups. These may cause distress to people who have experienced discrimination on the basis of their identity. Given the nature of this policy brief, we understand that many of the issues it discusses are personal and emotive for many people. While naming oppressions is necessary to deconstruct them, we recognize that this can take a toll on those directly affected. Please take care in the reading of the policy brief and prioritize your well-being.



EXECUTIVE SUMMARY

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This policy brief will examine sexual and gender-based violence (SGBV) in Uganda and South Africa. It will introduce this issue in the broader context of human rights, gender equality, and international security. It will also provide a brief description of the research methodology and analytical framework. Next, SGBV will be discussed in three points: 1) sociocultural context and gender norms; 2) relevant legal and legislative frameworks; and 3) response of the criminal justice system to SGBV. After providing a summary of the results, policy recommendations for the governments of South Africa and Uganda will be offered.

INTRODUCTION

A number of international human rights instruments, like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, have made it clear that women have a fundamental right to security and bodily integrity. Yet, for the majority of survivors of sexual and gender-based violence (SGBV), justice is far from accessible. Women in South Africa and Uganda, much like other women across the Global South, have encountered serious barriers in the process of seeking redress for violations of their bodily autonomy.

In order to advance the universal goal of sex and gender equality, it is imperative to examine the ways in which criminal justice systems are

failing survivors of SGBV. This is especially the case for women and girls whose other identities place them at the intersection of various systemic inequalities, putting them at greater risk for violations of their bodily integrity—refugee women, LGBTQ+ women, poor and low-income women, women in rural areas or informal settlements, etc.

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In addition to creating a safer and more equitable world for women and girls, addressing SGBV is key to enhancing peace and security at the domestic and international levels. Feminist scholars in International Relations such as Valerie Hudson and Mary Caprioli have already established the relationship between the physical security of women and states' likelihood for conflict. Thus, implementing measures to tackle impunity, promote accountability, and prevent sexual and gender-based violence will ultimately contribute to the overall security of individual countries and the international community as a whole.

METHODOLOGY

In order to assess state responses to sexual and gender-based violence and the extent of survivors' access to justice, this policy brief will employ qualitative and quantitative methods of research. Using Uganda and South Africa as case studies, it will examine reports, research, and scholarship to consider the factors that are contributing to SGBV, the current legal and legislative landscape, and the weaknesses in institutional procedures to address such offenses. It will also use relevant statistical data to support qualitative material, highlighting the incidence of SGBV in Uganda and South Africa, as well as the frequency of reporting, investigation, and conviction. Lastly, this policy analysis will take place from a feminist intersectional standpoint to shed light on the experiences of women in all their diversity who are affected by the intersection of multiple inequalities.

22%

of Ugandan women age 15-49 have ever experienced sexual violence

06

Uganda Demographic and Health Survey, 2016.

41,739

cases of rape were reported to the South African Police Service in the year 2021

South African Police Annual Crime Statistics 2021/2022

SOCIOCULTURAL CONTEXT & GENDER NORMS




In order to address sexual and gender-based violence in Uganda and South Africa, it is important to understand the context of gender relations in each of these countries.

Uganda is a predominantly patriarchal society, where women are systematically disadvantaged to the benefit of men. The patriarchal norms that result from this system, in turn, produce false, stereotypical and pervasive beliefs about women's consent in sexual relations. Many men and women in Uganda, for instance, hold the perception that a man is entitled to sex with a woman after spending money on her or providing some kind of financial favor. Another persistent myth is that when a woman is voluntarily present in a man's home, it is viewed as "asking for it," and her consent to sexual relations is assumed.

Similarly, in South Africa, patriarchal norms and attitudes about gender roles make violence against women a common occurrence. At the same time, the particular historical context of South Africa reveals that unequal gender relations have also been defined in terms of racial and class oppression. Under Apartheid, when Black women tried to report a rape to law enforcement officers, who were mostly white, they generally were not taken seriously. Moreover, many survivors had to make the strategic choice to not confront Black men who were perpetrators, since the Apartheid state would take any opportunity to divide and further subjugate the Black population.

LEGAL & LEGISLATIVE FRAMEWORKS



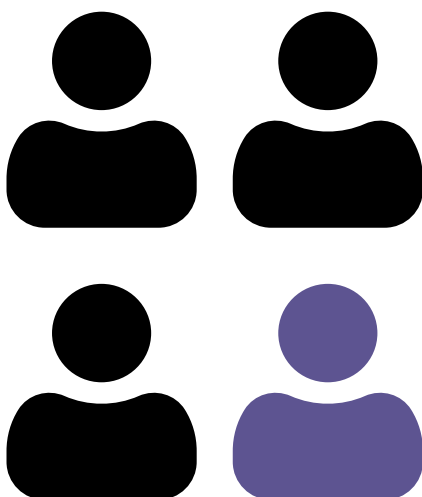
At the international level, both Uganda and South Africa are parties to a number of international human rights instruments that require them to address sexual and gender-based violence. They have ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), as well as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also known as the Maputo Protocol.

At the national level, the Ugandan Constitution does not explicitly address sexual and gender-based violence. However, its provisions do protect the rights to life and human dignity, and more specifically the rights of women. In the case of statutory law, Uganda's Penal Code Act narrowly defines rape as having sexual intercourse with a woman without her consent, and makes it a felony punishable by death. Ugandan legislators have also enacted the Domestic Violence Act in 2010 in hopes that this law would contribute to national efforts to combat this particular form of

violence against women. However, loopholes in the Act's definition of domestic violence and the proposed punishment for perpetrators weaken its effectiveness. In fact, other countries have made comments before international bodies noting that the Act has not yet been fully implemented.

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In the case of South Africa, the Constitution contains a Bill of Rights, located in Chapter 2, that specifically protects the rights to life, human dignity, freedom, security, and psychological and bodily integrity. Additionally, Section 9 of the same chapter prohibits discrimination on the basis of gender and other sociocultural identities. Among the relevant legislation, the Domestic Violence Act of 1998 recognizes a variety of forms of domestic violence. However, being a civil law, the Act does not make domestic violence a criminal offense. Additionally, The Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007 prohibits all non-consensual sexual activity, and provides a brief definition of rape that is centered on consent. Another related piece of legislation is the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 (PEPUDA), whose purpose is to advance equality in the public and domestic spheres. One of its provisions explicitly prohibits violence against women, female genital mutilation, and a number of other practices that undermine gender equality.



One in four ever-partnered South Africa women age 18 or older have experienced physical, sexual, or emotional violence committed by a partner in their lifetime

South Africa Demographic and Health Survey, 2016.



RESPONSE OF THE CRIMINAL JUSTICE SYSTEM

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Barriers to Justice in Uganda

A range of factors impede access to justice for survivors of SGBV in Uganda. For starters, the barriers to reporting faced by survivors are numerous: survivors are traumatized and they lack psychosocial support; their experiences are stigmatized and shamed by their communities; perceptions of government inefficiency and corruption decrease their confidence in the legal system; and the lack of public transport, safe shelter or witness protection.

When cases *are* reported, other issues can then affect the effectiveness of investigations, which are typically led by the Child and Family Protection Unit (CFPU) or the Criminal Investigations Directorate (CID). In addition to having insufficient capacity and limited resources, Uganda police forces lack adequate competence on how to handle cases of SGBV. Moreover, law enforcement is overwhelmingly dominated by men, and gender biases shape police perceptions and treatment of such cases.

As cases move along in the legal process, they are heard in the general magistrates' courts along with other types of criminal offenses. However, community perceptions can make their way into the court process and shape judicial interpretations of a sexual encounter between a man and a woman. As a result, the same patriarchal myths about rape and consent that are prevalent in Ugandan society can be detrimental to the outcome of a case by determining the survivor's credibility as witness.

In 2022, a total of 1,623 cases of rape were reported to the Uganda Police Force.

By the end of 2022, only 557 cases were taken to Court, out of which a mere 3 cases secured convictions. Meanwhile, 554 cases are still pending in Court.

Ugandan Police Force, 2022 Annual Crime Report

Barriers to Justice in South Africa

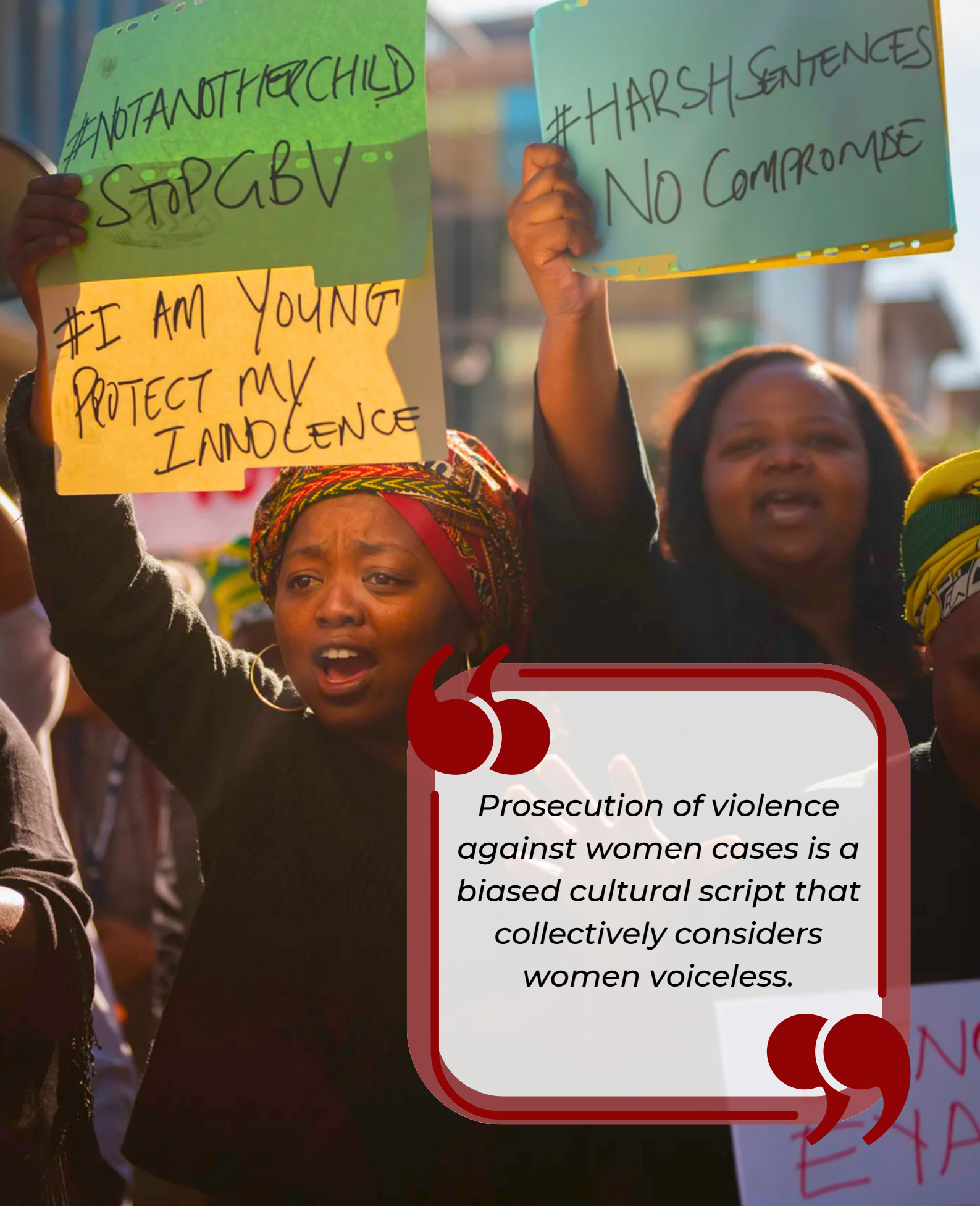
Similar obstacles stand in the way of survivors of SGBV in South Africa as they attempt to seek justice. Massive underreporting of these violent acts is due to a variety of reasons. For example, such incidents are viewed as a private matter; survivors usually have to coexist with their perpetrator in their communities; and they may fear reprisal or stigmatization from others in their environment. While the government operates care centers for survivors across the country, their number is insufficient and the quality of service delivery varies due to funding difficulties.

Survivors may also lack access to a police station, or they simply lack trust in the police and the criminal justice system. Some police officers, indeed, do not believe survivors and will mistreat them. The chances of discrimination by police are even greater if survivors have disabilities, are LGBTQ+, sex workers, refugees and/or undocumented migrants.



Cases that are undertaken are handled by Family Violence, Child Protection and Sexual Offences units. Aside from lack of training, these units' performance is undermined by issues like mismanagement, understaffing, low morale and burnout. Like the shelters, these specialized units are inaccessible to survivors in rural areas and informal settlements.

When a case does reach the courtroom, gender stereotyping by magistrates results in leniency towards perpetrators. At the same time, the evidentiary process of these cases—a confrontational question-answer approach—lends itself to secondary traumatization for survivors. In the words of Ramadimetja S. Mogale, “[survivors of SGBV] are required to re-live violent acts through re-telling their stories about the violent incidents” during the prosecution of these cases. Altogether, these factors produce low conviction rates, although the establishment of specialized courts has shown promise in addressing some of these issues.



Prosecution of violence against women cases is a biased cultural script that collectively considers women voiceless.

Dr. Ramadimetja Mogale is an Associate Professor at the University of Pretoria in South Africa. Her research centers on the transdisciplinary management of violence against women by the state, with a special focus on the prosecution of violence against women in South African courts.

In both Uganda and South Africa, the patriarchal systems that produce unequal gender relations are responsible for entrenching stereotypical beliefs about women, rape and consent. This has made SGBV a common occurrence for women of diverse identities and backgrounds. Both countries are parties to CEDAW and the Maputo Protocol, two international human rights instruments that require states to address violence against women. Moreover, Uganda and South Africa each have their own set of constitutional and statutory laws that not only specifically prohibit violence against women but require the government to play an active role in the promotion and achievement of gender equality.

Yet, the response of the criminal justice system has been insufficient and inadequate. First, the barriers to reporting incidents of SGBV are numerous and diverse, from the stigma surrounding these issues to lack of resources and protection for survivors. Second, a range of issues within law enforcement, like the undertraining of police units or gender bias among officers, decrease the quality and effectiveness of investigations, further undermining survivors' access to justice. Lastly, the infusion of gender stereotypes in the courtroom favors perpetrators, and the confrontational character of the proceedings causes secondary traumatization for survivors. Clearly, justice remains inaccessible for survivors of SGBV.



POLICY RECOMMENDATIONS

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To the Government of Uganda:

- Establish specialized entities that focus on SGBV, such as:
 - ◎ Specialized police units to respond to and investigate these incidents. Such police teams should receive comprehensive and continuing training on SGBV, and their performance should be monitored on a regular basis.
 - ◎ Specialized prosecutorial units that can be trained extensively on SGBV and develop the skills necessary to successfully prosecute these crimes.
 - ◎ Specialized courts that are solely dedicated to hearing such cases, and in which judges and courtroom staff possess expertise on SGBV.
- Ensure that judicial authorities do not allow harmful gender stereotypes to undermine survivors' credibility and the adequate sentencing of perpetrators.
- Reform judicial proceedings to incorporate survivor-support measures and prevent secondary traumatization.
- Increase the number of women in law enforcement and establish specialized courses to combat gender bias among police officers.
- Create shelters and adequately maintain shelters that can serve as a safe and secure environment for survivors of SGBV.
- Establish accessible and affordable counseling services that can provide survivors with psychosocial support.
- Work in partnership with non-governmental organizations who are already supporting survivors of SGBV in Uganda.



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To the Government of South Africa:

- Increase the frequency and quality of the training of police on the response to and management and investigation of SGBV cases.
- Monitor the performance of police officers and provide them with anti-discrimination instruction to prevent the mistreatment of survivors with intersecting identities.
- Ensure that different sectors of the criminal justice system, from police units to prosecutorial offices, have the adequate staffing and funding to handle cases of SGBV efficiently and effectively.
- Expand the geographical distribution of specialized police units into rural areas.
- Allocate the appropriate amount of public funds to care centers for survivors to improve the quality of service delivery.
- Increase the number of care centers and specialized courts to make them accessible to survivors in rural areas and informal settlements.
- Deliver mandatory instruction to magistrates and other judicial personnel on SGBV and the harms of gender stereotyping.
- Reform judicial proceedings to ensure that survivors are treated fairly in the justice system and to avoid revictimization.

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- Jamil Ddamulira Mujuzi. "The Ugandan Domestic Violence Act: The Drafting History and Challenges to Its Implementation."
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- Uganda Police Force. "2022 Annual Crime Report."
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- Vahida Nainar. "Breaking down obstacles to justice for gender-based violence in Africa."

ADDITIONAL RESOURCES

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The following non-governmental organizations are working directly with survivors of SGBV on the ground in Uganda or South Africa:

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| ◆ Saartjie Baartman Centre for Women
 and Children | ◆ MIFUMI
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| ◆ Masimanyane Women's Rights
 International | ◆ Center for Domestic Violence
 Prevention (CEDOVIP) |
| ◆ Rape Crisis | ◆ Raising Voices |

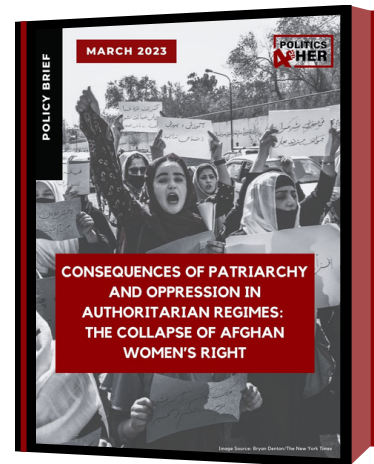
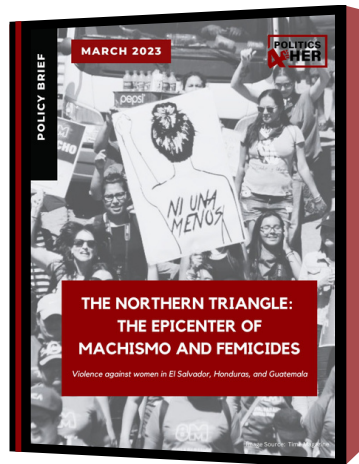
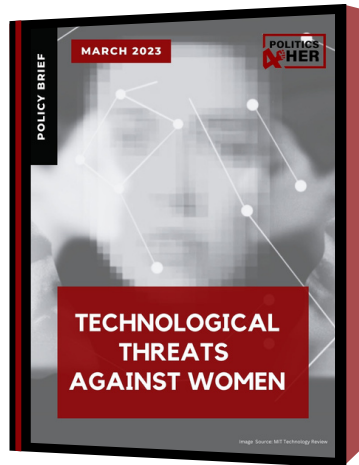
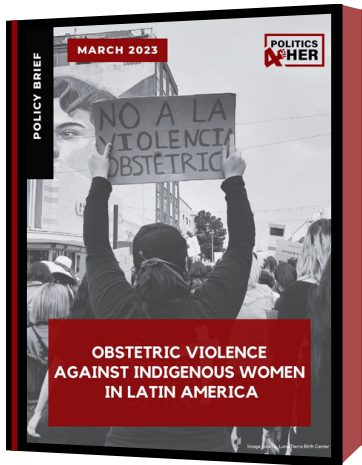


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OUR OTHER POLICY BRIEFS





We are committed to assisting and providing resources for young women to become active participants of politics, international affairs and diplomacy. **Ideas matter, they shape the world we live in.** So, we strive to build a community to allow us to raise our voices, promote our ideas and share our vision, empowering women to be part of the change.



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