



South Africa, 1986: Women Making Links Against Apartheid

Anti-Apartheid Movement, Jan Ray, Offset, United Kingdom, 1986, 43 x 59 cm; www.politicalgraphics.org Poster from the archive of the Center for the Study of Political Graphics, Los Angeles, California

Justice

In courtrooms around the world, women have challenged and overcome gender-based injustices. The 1991 Unity Dow case, in which the Botswana Citizenship Act was found to discriminate against women, or the case of Amina Lawal in Nigeria, whose sentence to death by stoning for alleged adultery was overturned by the Sharia Court of Appeal in 2003, are examples of cases that make the news and change legal history.¹ Women's groups around the world have made domestic violence, lack of inheritance rights, marital rape and sexual harassment public issues, not matters to be resolved in private. As human rights activist Eleanor Roosevelt, wrote:

“Where, after all, do universal human rights begin? In small places, close to home – so small that they cannot be seen on any maps of the world... Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen ac-

tion to uphold them close to home, we shall look in vain for progress in the larger world.”²

Women's contribution to building the accountability of the judicial system to all citizens has come in large part from the insistence that justice starts at home, and that courts and the judiciary have a critical role to play in ensuring that the legal framework is applied fully, justly and evenly to benefit all individuals: rich and poor, young and old, women and men.

The justice system – which encompasses the legal framework, judiciary, ministry of justice, prosecution and investigative authorities, lawyers' associations, traditional systems and customary practices – is of particular importance for accountability to women, for two main reasons. First, the judiciary's essential role as the final arbiter of complaints against other accountability systems (electoral systems, legislatures, public administration) has made it a critical

arena in which abuses against women in the public sphere can be addressed – such as sexual harassment by public officials, a gender-biased distribution of public goods, or flawed electoral processes. Second, because women are more susceptible than men to the arbitrary exercise of power in the family and community, the law and judicial process have proven critical to demonstrating that relationships between women and men are not beyond the reach of justice. The justice system therefore upholds the rule of law as the basis for accountability in the exercise of public authority as well as private power.

This is the ideal. The reality experienced by women – particularly those who are

poor – is often very different. (see Panel: Discrimination against Women). This chapter examines how women have used the justice system, both nationally and internationally, formally and informally, to claim their rights. It shows how both formal and informal justice systems often fail to take gender into account, and how this affects women both in the home and in the public arena. It reviews the three broad directions that have been taken by women to eliminate gender bias and achieve accountability³:

- the *normative* – seeking changes in the remit or mandate of the judicial system in terms of the constitution and legal framework;
- the *procedural* – ensuring the imple-

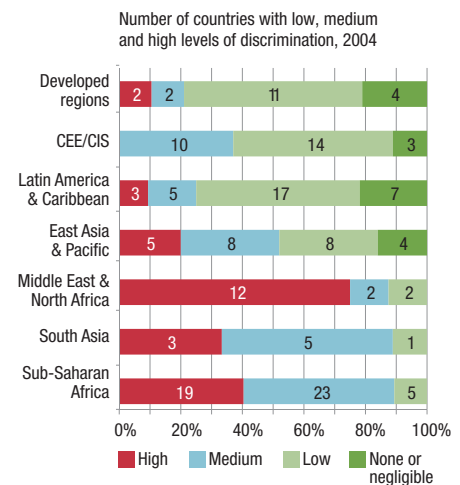
PANEL | Discrimination Against Women¹

Data shows that discriminatory practices prevail in almost all parts of the world. The 2004 Cingranelli-Richards Human Rights Dataset assesses women's social and economic rights, as legally assured and practically enforced. Figure A shows regional disparities in women's *social rights*, which include rights to: equal inheritance; marriage on a basis of equality with men; travel abroad; obtain a passport; confer citizenship to children or a husband; initiate a divorce; own, acquire, manage, and retain property brought into marriage; participate in social, cultural, and community activities; and finally, the right to education.

Figure B assesses discrimination in accessing *economic rights*, which include: equal pay for equal work; free choice of profession or employment and the right to gainful employment without the need to obtain a husband or male relative's consent; equality in hiring and promotion practices; job security (maternity leave, unemployment benefits, etc.); and non-discrimination by employers. Also included are rights to be free from sexual harassment in the workplace; work at night; work in occupations classified as dangerous; and work in the military and the police force. The graph shows that women's economic rights tend to have a firmer footing in the law than social rights.

An enabling legal context is needed for women's empowerment. Cueva's 2006 index of the enabling legal environment for women's empowerment is based on the Cingranelli-Richards scores on government commitment and capacity to enforce women's social, economic and cultural rights with the addition of variables on international rights instruments. Assessed against the Gender Empowerment Measure (GEM), which measures women's economic decision-making, political representation, and female share of income, a significant correlation emerges (Figure C). It shows that the existence of an enabling legal context is a necessary, although not sufficient, condition for improvements in women's economic and political position and empowerment.

FIGURE A | Women Face Discrimination in Accessing Social Rights



Notes: 'High' indicates that there were no social rights for women in law and that systematic discrimination based on sex may have been built into law. 'Medium' indicates that women had some social rights under law, but these rights were not effectively enforced. 'Low' indicates that women had some social rights under law, and the government effectively enforced these rights in practice while still allowing a low level of discrimination against women in social matters. 'None or negligible' indicates that all or nearly all of women's social rights were guaranteed by law and the government fully and vigorously enforced these laws in practice.

Source: The CIRI Human Rights database.

mentation of legal changes through institutions such as the judiciary and the police that enforce those laws, and in their operating procedures, including rules of procedural fairness, evidence and admissibility;

- the *cultural* — changes in the attitudes and practices of those responsible for protecting women from the arbitrary exercise of power.

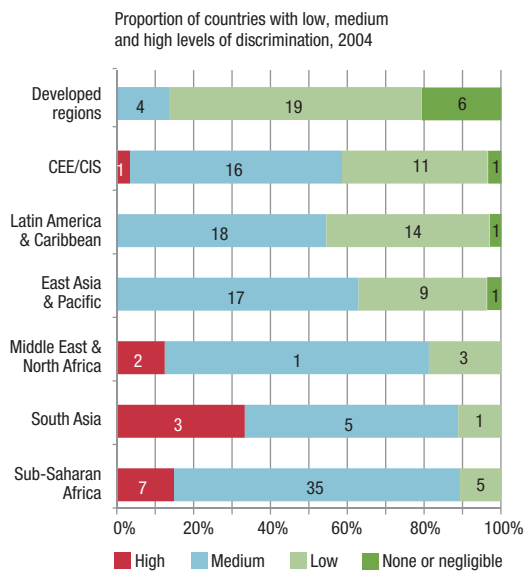
Finally, the chapter raises the question of accountability to women in the context of *informal justice systems*, which represent most women’s experience of justice but where national and international human rights standards may carry little authority.

The chapter concludes with a brief overview of some of the strategies women have used to leverage international human rights norms in order to achieve greater accountability at the national level.

The normative level: Gender equality in the law

The past few decades have seen remarkable progress in the number and scope of laws aimed at furthering women’s rights within formal justice systems. A major achievement has been to challenge the barrier between public and private rights, insisting, for example, that the state’s duty to protect extends to protection from

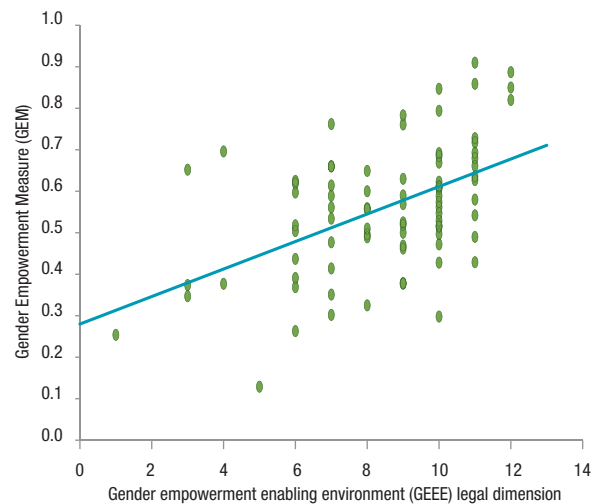
FIGURE B | Women Face Discrimination in Accessing Economic Rights



Notes: See notes for Figure A; in this case classifications are for degrees of codification and enforcement of economic rights.

Source: The CIRI Human Rights database.

FIGURE C | Correlation between an Enabling Legal Environment and Realisation of Women’s Rights



Notes: Includes 83 cases; the GEM corresponds to 2005; data on the legal dimension of the GEEE were constructed using Cingranelli–Richards [CIRI] 2004 and information on variables related to CEDAW and the Beijing Platform of Action for the year 2004. Findings from Cueva 2006 have been recalculated using updated information. For more information, see Cueva 2006.

Sources: Cueva Beteta, H. (2006). UNDAW. (2004) The CIRI Human Rights database; UNDP (2007).

violence in the home and equal rights in marriage (see Box 5A: The Family Code in Morocco).

Implementing international standards and obligations

A universal standard for gender equality has been in existence since 1945, when the United Nations Charter declared the effort to achieve “respect for human rights and for fundamental freedoms for all without distinction as to... sex” as a purpose of the United Nations. The 1948 Universal Declaration of Human Rights and subsequent human rights treaties are also unequivocal about women’s equality with men. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted 1979, provides the definition of sex-based discrimination and sets out the measures required for its elimination and the achieve-

ment of gender equality. CEDAW is a binding source of international law for those states that have become parties. Other important new regional human rights standards, such as the African Charter’s additional protocol on women’s human rights, strengthen the legal framework of women’s human rights entitlements.

The CEDAW Committee, which consists of 23 independent experts assigned to monitor performance in aligning national laws and practices with CEDAW provisions, is empowered to conduct enquiries when there is evidence to suggest a pattern of consistent and gross violations of women’s rights. Countries are required to report to the Committee on their progress every four years and to act on the recommendation they receive from the Committee, including by aligning national legislation and policies with CEDAW (see Panel: Bringing Women’s Human Rights Law Home). The CEDAW Committee can also receive complaints from individuals and groups. Since a complaints procedure was set up under the new Optional Protocol in 1999, the Committee has handed down decisions in five cases.⁴ Figure 5.1 summarises regional patterns in the ratification of CEDAW and the Optional Protocol, and indicates regional patterns in reservations. Figure 5.2 breaks down the reservations to CEDAW by category. In the Middle East and North Africa, UNIFEM has supported an ‘Equality without Reservation’ campaign to help states harmonise national legislation with the Convention through the removal of reservations and to encourage ratification of the Optional Protocol.

Constitutions

A national constitution is a country’s legal ‘birth certificate.’ When the process of adopting a constitution emphasizes the democratic participation of all political and civil society stakeholders, it can yield important achievements for women’s rights.⁵ The 1996 South African Constitution, for example, is widely considered a model of a constitution adopted on the basis of a participatory process.⁶ This resulted in the

BOX 5A | The Family Code in Moroccoⁱ

On January 25, 2004, after several years of intense debate and consultation, the Moroccan Parliament passed a series of sweeping revisions to the *Moudawana*, Morocco’s Civil Status Code that encompasses family law governing women’s status. Treading a fine line between tradition and reform, these revisions amounted to the formulation of a new Family Code, establishing a woman’s equal status within the family. Key provisions include joint responsibility for the family shared by both husband and wife (where previously responsibility rested exclusively with the husband), the removal of legal obligation for the wife to obey her husband, equality between men and women with respect to the minimum age for marriage, and important advances with respect to the state’s obligation to enforce the law and protect women’s rights.ⁱⁱ

The Ministry of Justice has been playing a leading role in the implementation of the Family Code through the modernization of the justice system and often in partnership with women’s networks of crisis centers for women survivors of violence. Implementation has also benefited from the extensive support of other line ministries, notably the Ministry of Finance and the Ministry of Interior. This concerted effort underscores the message that equal rights within the family and before the law require that women have basic resources to support their families and basic access to services. Together, these changes are moving Morocco closer to the ideal of democracy and human rights to which it aspires.

inclusion of important provisions on gender equality, including the prohibition of discrimination on the grounds of gender, sex, pregnancy, marital status and sexual orientation. Similarly, in Rwanda, the Preamble to the 2003 Constitution goes beyond stating the need to ensure respect for equality, human rights and fundamental freedoms to specifically mention equality between men and women, and introduces concrete thresholds for women's political representation.⁷ However, there are still countries across all geographical regions where gender equality is not specified in the constitution, where there are exceptions to the prohibition of sex discrimination, or where it has only recently been included.

The constitution can provide courts with a useful tool for the proactive elaboration of definitions and standards regarding gender equality. For example, in India, the Supreme Court took the groundbreaking step in 1997 of implementing the Constitution in the absence of legislation on sexual harassment in the workplace.⁸ Drawing on the Constitution's guarantee of gender equality, and in recognition of the binding nature of CEDAW,

FIGURE 5.2 Reservations to CEDAW

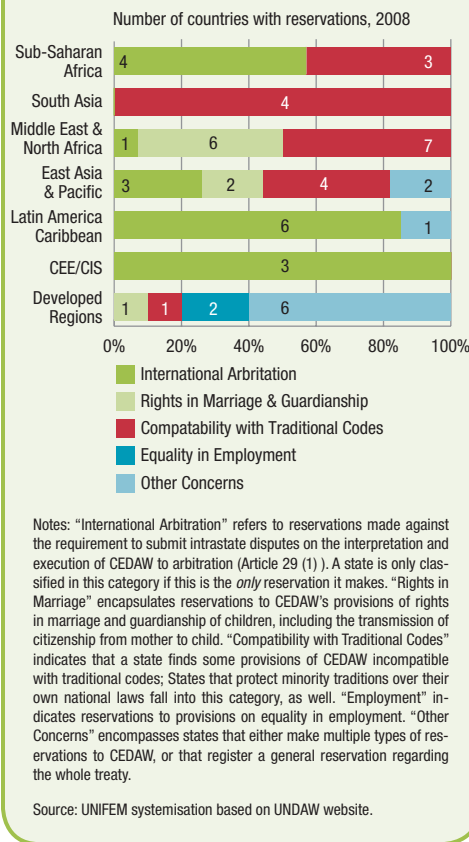
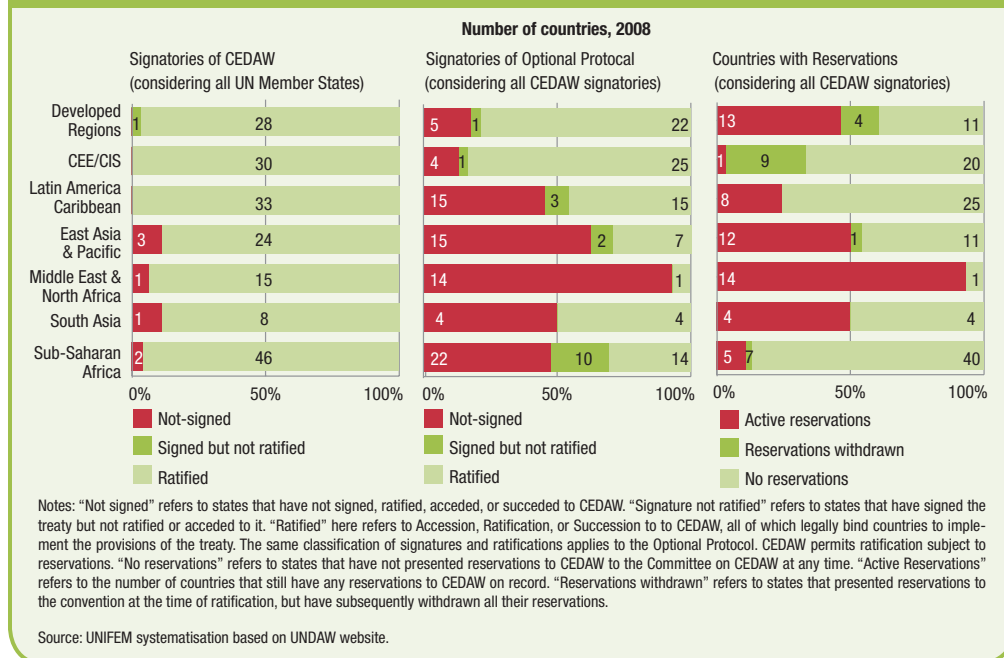


FIGURE 5.1 Strong Endorsements but Multiple Reservations



the Court outlined definitions and standards for monitoring and sanctioning harassment in the workplace.⁹

Legislation

A substantive approach to gender equality requires legislative frameworks to be restructured in order to ensure that constitutional commitments are reflected in national legislation. For example, in criminal law, provisions that allow for the impunity of perpetrators of rape within marriage must be repealed,¹⁰ while new laws that criminalise rape within marriage must be passed, as some countries have done. As Figure 5.3 shows, laws on sexual assault and marital rape, as well as laws on sexual and domestic violence, are greatly in need of development across all geographic regions.

Women's groups across the world have played an important role in lobbying for reform of the legal system. In Turkey, women's groups lobbied for a new Penal Code, passed by the Turkish Parliament in 2004, which introduced higher sentences for sexual crimes, criminalised marital rape, addressed 'honour

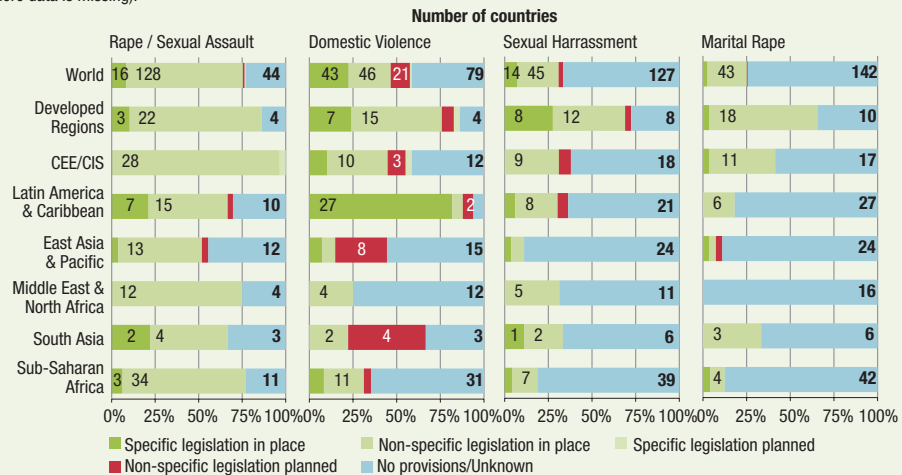
killings,' and criminalised sexual harassment in the workplace. Women's groups also played an important role in shaping the Domestic Violence Law in Mongolia (2004),¹¹ the Protection from Violence Act in Spain (2004)¹² and the Maria da Penha Law (2006) in Brazil, which represents the culmination of a prolonged campaign by women's organisations involving domestic, regional and international bodies, such as the Inter-American Commission on Human Rights.

The procedural level: Implementation and enforcement

Changing laws is not enough to bring justice for women. *De facto* impunity for abuses of women's rights is often set within a context of a failure of accountability in public institutions across the board. For women in many parts of the world, the experience of the justice system is therefore likely to suffer from all the problems associated with poor service delivery, including corruption and lack of access, which can

FIGURE 5.3 Few Countries have Specific Legislation on Sexual Harassment and Marital Rape

A 2003 UNIFEM study shows that rape and sexual assault are widely recognised as crimes, although in 44 countries legislation is yet to be developed or data is missing. The legal situation for domestic violence is similar, but more laws are needed in Sub-Saharan Africa and the Middle East. Sexual harassment and marital rape show a very different scenario, with a high proportion of countries with no provisions (or where data is missing).



Notes: Legislation information at a country level was taken from appendix 1 of UNIFEM (2003); this information was organised according to the regional groupings used in this report.

Source: UNIFEM (2003).

One of the first obligations states parties to CEDAW undertake – as required under Article 2a of the Convention – is to reform their constitutional and legal systems to entrench women's human rights. Some of the key steps that the CEDAW Committee has recommended include:

1. Enshrining specific gender equality guarantees in the national constitution and translating constitutional provisions into new legislation: Many constitutions around the world provide general rights to 'equality,' and general prohibitions against 'discrimination.' However, against a backdrop of widespread gender-based discrimination, general guarantees often fail women. A 'gold standard' for constitutional reform therefore requires that women's rights be entrenched directly into national systems by including explicit gender equality guarantees in the nation's constitution. This is the practice that in 2007-8 the Committee commended Luxembourg, Belize, Brazil, Mozambique and Serbia for adopting.ⁱ

In light of this standard, the CEDAW Committee has recently advised several countries to review their constitutions in order to explicitly include a guarantee of equality between men and women, as well as a definition of discrimination against women that is aligned with Article 1 of the Convention. According to Article 1, "Discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."ⁱⁱ

2. Moving from 'formal' to 'substantive' equality: Many legal systems around the world still operate with an older definition of discrimination, based on what is known as 'formal' equality. This means that discrimination is only said to occur where the law singles out a particular group for inferior treatment. Accordingly, where the same laws are being applied to all groups, equality is said to be achieved. By contrast, 'substantive' equality, as defined by CEDAW, requires an approach focused on outcomes, not merely equal processes.

For instance, according to a purely formal understanding of ending discrimination, a government would have successfully eliminated discrimination against women in political participation once it has repealed laws prohibiting women from voting or running for office. However, under CEDAW, the government would not have fulfilled its obligations until comparable numbers of women and men are actually voting and being elected.ⁱⁱⁱ The constitutions of South Africa, Rwanda and Canada operate on the basis of substantive equality.^{iv} UNIFEM is currently supporting the integration of CEDAW provisions to new or reformed constitutions in Serbia, Kosovo, Bosnia-Herzegovina and Montenegro.^v

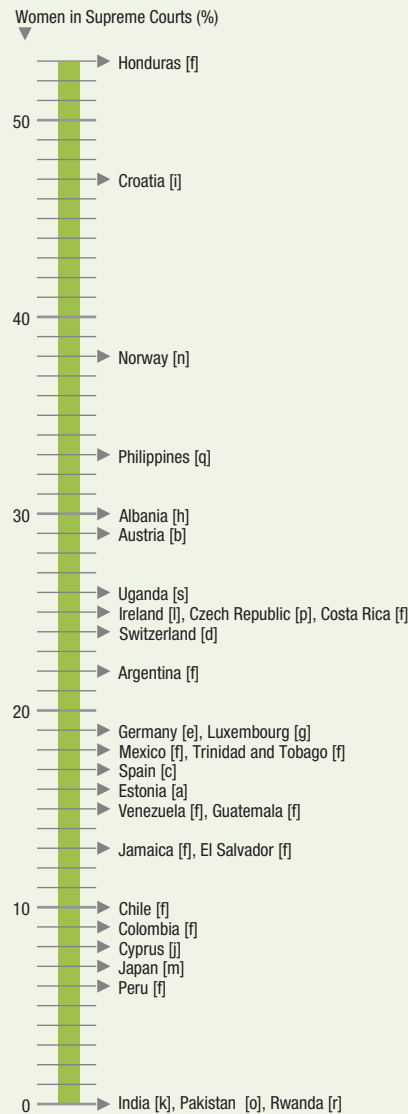
3. Building understanding about international and national laws on gender equality. The CEDAW Committee has underlined that local officials, particularly in rural areas, should be included in outreach programmes, and that special efforts be made to reach the most disadvantaged groups of women, including members of racial minorities and indigenous populations. UNIFEM's work in seven countries of Southeast Asia is an example of advocacy to build both the capacities of governments to implement CEDAW and the capacities of civil society organisations (CSOs) to use CEDAW in order to achieve better accountability for women. For example, in Viet Nam, UNIFEM organized a training in 2006 for a network of 20 local non-governmental organisations (NGOs) known as GenComNet. This network subsequently prepared the first-ever shadow report on CEDAW implementation to emerge from Viet Nam.^{vi}

4. Providing the necessary financial and human resources: While CEDAW requires that constitutions and laws be aligned with the Convention, this does not complete the state's obligation. CEDAW requires their effective implementation. The implementation status of new laws and policies is therefore a major focus for discussion in the CEDAW Committee's dialogue with states parties.

A major constraint is often a state's failure to provide the necessary financial and human resources for implementation. To address this challenge in Cambodia, UNIFEM advocacy related to CEDAW in 2006 contributed to the Prime Minister issuing a directive for all line ministries to implement the Convention's Concluding Observations. The directive assigned concrete tasks for each ministry and provided budgetary allocations for the dissemination of the CEDAW Committee's Concluding Observations to all provincial governments.^{vii} In Nigeria, UNIFEM supported a study reviewing CEDAW's impact on the national legal system in order to identify and overcome challenges related to providing the appropriate legal and policy frameworks for full implementation and application of the provisions to protect and promote women's rights.^{viii}

FIGURE 5.4 Female Judges on Supreme Courts

Over two thirds of the selected countries have Supreme Court benches on which fewer than 25% of judges are women.



Notes: For Latin American countries, data refers to the percentage of women among magistrates, Ministers and Judges on Supreme Courts of Justice. For Africa, Asia, Europe and CIS data refers to percentage of women among Supreme Court Judges, including the Chief Justice.

Sources: [a] Civil, Criminal, and Administrative Law Chambers of Estonia website (accessed June 2008); [b] Constitutional Court of Austria website; [c] Constitutional Court of Spain website; [d] Federal Tribunal of Switzerland website; [e] First and Second Senates of German Constitutional Court website; [f] Formisano, M. & Moghadam, V. (2005) website; [g] Luxembourg Conseil d'État website; [h] Supreme Court of Albania website; [i] Supreme Court of Croatia website; [j] Supreme Court of Cyprus website; [k] Supreme Court of India website; [l] Supreme Court of Ireland website; [m] Supreme Court of Japan website; [n] Supreme Court of Norway website; [o] Supreme Court of Pakistan website; [p] Supreme Court of the Czech Republic website; [q] Supreme Court of the Philippines website; [r] Tripp, A. M. (2005).

make a mockery of *de jure* guarantees of equal rights.

Women seeking justice

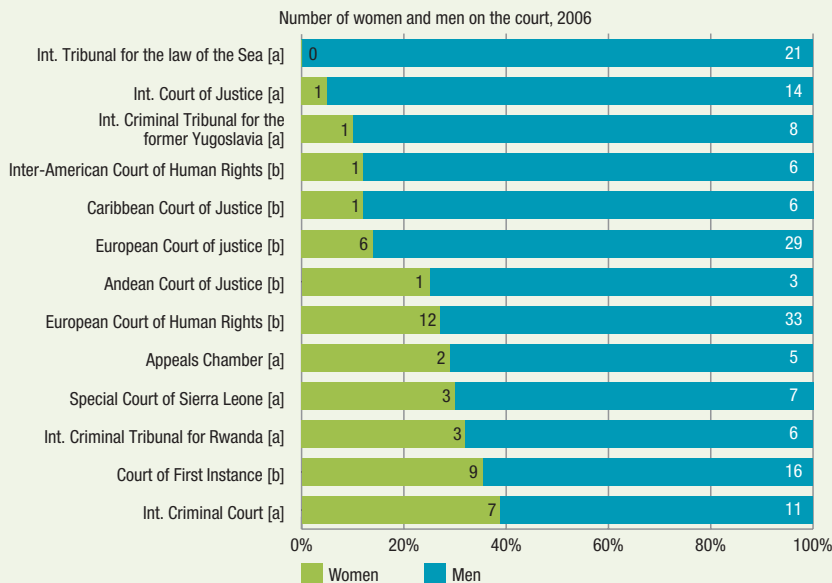
For women, several factors compound the barriers in seeking justice commonly encountered by the poor and by disadvantaged groups. A woman may have difficulty using the courts because her evidence does not have the same weight as a man's; she may face time limits for bringing a case forward; she may fear retribution for standing up against perceived male prerogatives; or she may not be able to reach the courts because of the distances involved or because the costs may be prohibitive. As a result of these access barriers, it is difficult for women to bring cases to formal courts.

Legal standing: Courts are one of the most important spaces in which to evaluate the accountability of the justice system to women. But they can also be the place where enforcement stops, or the reason that it never starts, because women may lack the same legal rights as men. Rules of legal standing, for instance, can prevent women from litigating against their spouses in cases of domestic abuse. An important aspect of legal reform for women has been recognition of their *locus standi* – their right to take a case to court – a reflection of their legal personhood under the law. In Bolivia, for example, it was not until 1995 that wives could press charges against husbands for domestic violence, because Section 276 of its Criminal Procedure Code provided that “no penalty will be applied when injuries... were inflicted by the husband or wife.”¹³ In terms of rules of procedure and evidence, it is still the case that, in some countries, courts weigh a woman's testimony as equivalent to one half of a man's.¹⁴

Time limits: Another barrier embedded in many legal systems is the imposition of time limits for bringing a case to court. This can discriminate against women who seek to prosecute cases of sexual abuse that may have happened long ago, but where it has taken the survivor time to overcome the psychological, social or financial costs involved

FIGURE 5.5 | Women Judges on International Courts

Women are under-represented in international and regional courts, with only one third having percentages higher than 30%.



Notes: Figures for European Court of Justice include both judges and advocates general. Court of First Instance is an independent court attached to the European Court of Justice. [a] denotes international courts and [b] regional courts.

Source: Terris, D., Romano, C., & Schwebel, S. (2007).

in naming perpetrators and coming to court. Research suggests, for example, that rape survivors often do not seek justice until years after the assault, when evidence is more difficult to obtain and courts may be barred from hearing the case. Women's rights activists have therefore argued that justice systems should recognise rape as a crime for which there is no time limit, similar to murder and kidnapping cases.¹⁵

Risk of suffering further violence: The specific constraints that women face when reporting and then seeking prosecution for crimes of sexual violence have attracted progressive protection measures. The International Criminal Tribunals for Rwanda (ICTR) and the former Yugoslavia (ICTY), for instance, have witness protection measures for survivors of sexual attack that include the use of pseudonyms, private hearings, scrambling victims' voices and withholding their names from alleged attackers. These measures are meant to prevent women from having to choose between justice and

personal safety.¹⁶ Speaking out against perpetrators can nevertheless be difficult. Women rights' activists in the Democratic Republic of the Congo, for example, face death threats and intimidation for gathering evidence about sexual violence to relay to international courts and tribunals.¹⁷

Physical access: Key justice institutions such as courts, registries, police and prosecution services tend to be concentrated in urban areas and are therefore difficult to access. To address the problems of access to justice for women and the poor in South Africa, the *Thuthuzela* Care Centres – a Xhosa word for 'comfort' – provide 24-hour one-step services to survivors that include police, counselling, doctors, court preparation and a prosecutor.¹⁸ In India at least two states have founded mobile courts – buses complete with computers, records and seating that are stationed in remote towns on a rotating basis.¹⁹ In Indonesia, mobile courts have also been used in the wake of the 2004 tsunami, which destroyed the

state's capacity to deal with routine tasks like land ownership claims.²⁰ In China, mobile courts are increasingly being used to improve access to the formal justice system in rural areas.²¹

It bears repeating that men must be advocates for change and reform with regard to accountability for women. Male dominance of judicial and law enforcement positions can intimidate women. More women in the judiciary will not necessarily solve this problem if they are not gender-sensitive, but evidence suggests that increased female representation tends to make courts more accessible to women.²² Both men and women judicial personnel require training and skills upgrading in gender equality to implement new women's rights legislation. UNIFEM has supported the efforts of the International Association of Women Judges (IAWJ) to train 1,400 women and men judges on jurisprudence for gender equality in Southern Africa, and in the process, has sought to encourage more women to enter the legal profession. As Figures 5.4 and 5.5 show, however, justice systems still have much progress to make in recruiting women at all levels.

Gender-responsive law enforcement

For gender-responsive laws to be implemented and enforced, law enforcement institutions may need to be reformed to eliminate gender bias. If the police do not internalise changed perspectives on women's rights, particularly in relation to domestic and sexual violence, obstacles to effective investigation and prosecution of crimes against women may be reinforced. Such obstacles include under-reporting by victims and witnesses, pressure to treat instances of violence against women as domestic disputes which should be settled outside the criminal-justice system, and the tendency to blame, shame or isolate the victim. When it comes to domestic or intimate partner violence, police sometimes fail to respond or are hostile to the women who report such incidents. Worse, the police themselves may perpetrate crimes

against women, ranging from sexual harassment on the streets to sexual assault in police cells. These problems have spurred innovations in gender-responsive institutions to reform law enforcement systems (see Panel: Police Reform and Accountability to Women).

Little investment in justice for women

Gender-responsiveness in the implementation and enforcement of the law requires concrete efforts to facilitate women's access to the courts and to legal advice, sensitivity to the social and physical risks they face, and changes in the ways crimes are prosecuted and laws enforced. Some of these changes imply significant costs, such as providing adequate legal aid, family courts, enabling physical access, setting up family units in police stations, and recruiting and retaining women personnel. Accountability to women in the justice sector should therefore include efforts to provide adequate resources to improve women's access to justice and gender-responsive police services.

State-funded legal aid, including paid paralegal officers to assist with simple procedures, such as filling out standard forms that do not require a lawyer, can go a long way in supporting women's efforts to claim legal entitlements, such as child support. In the United States, some cities like New York and Washington, DC provide government funds to support free or subsidized day care services close to court premises to enable mothers to attend court and facilitate women's access to justice.²³ In Egypt, until 2004 domestic disputes were heard by criminal courts. To create a more family-friendly environment, accessible and non-threatening for women and children, UNIFEM assisted in launching specific Family Courts, whose staff include social workers.²⁴

No systematic global analysis of funding to the 'rule of law' sector from a gender perspective is available. However, an analysis of World Bank's rule of law projects may be indicative of funding priorities. Figure 5.6 shows that World Bank lending for ac-

tivities that mention rule of law as a theme comprises a small share of total lending. An analysis of the World Bank lending project database shows that gender is listed as a sub-theme in less than one per cent of the total lending for projects with a rule of law theme.²⁵

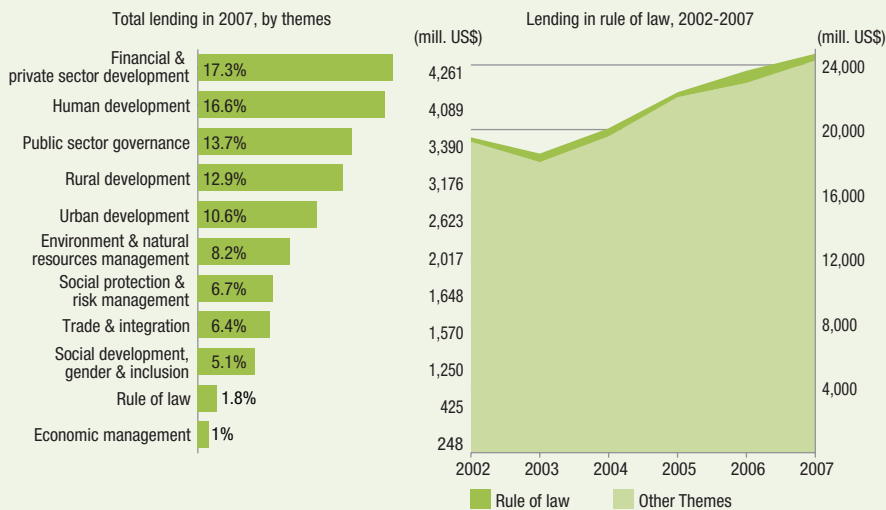
Informal justice systems

In some countries, particularly in the developing world, most women will never come into contact with the formal justice system. Their experience of justice will be through traditional or informal mechanisms, which often present women with a difficult dilemma. On the one hand, they tend to be closer, cheaper and often more efficient than formal justice systems, and decisions may also enjoy greater legitimacy among the local community.²⁶ On the other hand, the common perception of informal justice institutions is that they are barely, if at all, answerable to women. Too often, their approach to upholding women's rights is rooted in traditional views of gender roles that may, in fact, perpetuate discrimination.

Informal justice and gender equality

The term 'informal or traditional justice institutions' describes a continuum of customary or religious forums that deal with a wide range of issues, including resolving disputes, recording marriages, and allocating land ownership and land-use rights. At one end of the continuum are community-initiated systems that have little or no visible relationship with formal state structures. Examples include mediation processes within and between families, such as the *shalish* in Bangladesh, which means literally 'the practice of gathering village elders for resolution of a local dispute,' where the village elders and the influential members of the community are in charge of delivering a verdict after listening to both sides.²⁷ At the other end of the continuum are 'quasi-judicial' forums that are sponsored or created by the state, but empowered to apply rules such as customary or religious law rather than laws enacted by the national parliament. The officials serving on these forums are usually appointed by the state, perhaps in consultation with the community. An

FIGURE 5.6 | World Bank Lending by Themes



Notes: The total lending amount combines commitments of the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA). Lending is organised by either sectors or themes (the left side of this figure shows the eleven major themes used). Projects can have up to five major themes assigned; this information corresponds to the Annual Report of the World Bank, where percentages were calculated avoiding duplication.

Source: World Bank (2007a).

example of this are land adjudication committees in Kenya that mediate title disputes and are made up of local village elders and a government land adjudication officer.²⁸

How can informal justice institutions be held to account for protecting women's rights? In the case of state-sponsored or state-created forums, it can be argued that constitutional principles of gender equality and non-discrimination apply to the informal justice institutions as well. In Uganda, for example, Local Council Courts (LCCs) that apply customary law are operated by elected councilors.²⁹ This means that they fall under the jurisdiction of both the ministry responsible for local government and the judiciary. However, the search for a mandate for gender equality gets more complicated the closer we get to the community-based forums with a more tenuous connection to formal state structures.

Accountability to women in informal justice systems

Informal justice systems in some contexts are responsive to changing community circumstances in ways that sometimes enable departure from rigid rules that exclude women. For instance, in the Akamba community in Eastern Kenya, the seemingly entrenched rule that daughters are not entitled to a share of family land has given way (in the face of a new social reality of the fragility of marriages) to a practice of setting aside a portion of the family land for daughters who might return after a marriage breaks up.³⁰ On the other hand, informality also allows greater room for the subjective prejudices of decision-makers, while the exclusion of women challenges the ideal of reaching not merely just decisions but just decisions through a just process. In most countries, traditional justice

PANEL | Police Reform and Accountability to Women

In early 2007, the Government of India sent over 100 women police officers to Liberia, as the first all-female Formed Police Unit in the United Nation's peacekeeping history. Early reports suggest that their presence in Liberia is encouraging women to engage with the police, both to register their complaints and to join the Liberian police service.ⁱ In Timor-Leste, the government established Vulnerable Persons Units within the National Police that are responsible for receiving and investigating allegations of gender-based violence. Working closely with women's groups that provide counseling, legal assistance, shelters and judicial escorts, the presence of these Units has led to marked increase in women reporting gender-based violence cases.ⁱⁱ In Kosovo, the creation of a gender unit in the Kosovo Police Force helped bring human trafficking and forced prostitution – major problems in post-conflict Kosovo – out into the open and made them priority areas for the police.ⁱⁱⁱ

These are examples of how law enforcement can become more accessible and accountable to women. Having a police force that “answers to women” means that police personnel recognize that women and men may be affected differently by violence and discrimination, and that specific social roles, behaviors, status, as well as asymmetrical access to power and to resources, may create vulnerabilities or sources of insecurity that are specific to women.^{iv} To name just one important difference: crimes against men occur predominantly in public areas, while women are often assaulted in private, a realm that some public institutions consider beyond their mandate.^v In the United States 92 per cent of victims of sexual assault in the workplace are women, while 78 per cent of firearms victims are men.^{vi} The types of abuse to which women are disproportionately subjected often remain off the agenda of the mainstream media and the security sector.

Increasing the number of women in police forces has been one way of addressing these challenges, though much progress is needed in this area, as shown in Figure A.

Beyond recruitment of women, gender issues must be systematically integrated into all aspects of police training. Training must be reinforced by changes in standard operating procedures, concrete incentives to motivate and reward changed practices, and sanctions for non-compliance. For example, a visible change in operating practices around the world has involved setting up dedicated police units – such as Women's Police Stations, Family Support Units and Women's Desks – in order for female survivors of violence to feel

mechanisms are made up of male elders, and reflect their interpretation of customary law, which often favours men.³¹

Some innovations by women’s rights groups working with informal justice forums have created room for women to engage in the decision-making process and even take up leadership roles. In Eastern Nigeria, for example, the advocacy of women’s groups has ensured the appointment of women as ‘red cap chiefs’ who engage in local dispute adjudication.³² In Timor-Leste, Centro Feto, a local NGO in the province of Oecusse, works with informal systems on “finding good solutions for women.” It seeks to educate villagers on issues related to gender-based violence, such as rape, domestic violence and forced marriage. The group also lobbies for women rather than their families to be compensated directly when they are victims of domestic violence.³³

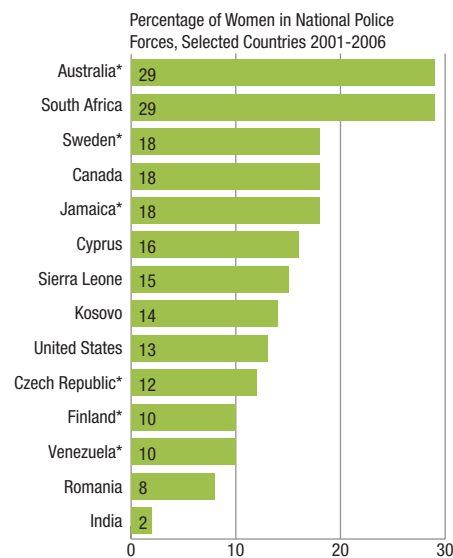
However, because it is so difficult to apply constitutionally recognised human rights standards to informal justice systems, such systems rarely guarantee women’s right to substantive equality. In Zambia, Zimbabwe and elsewhere, the application of customary and religious law in matters of family, whether by formal courts or informal forums, is officially exempt from constitutional scrutiny.³⁴ Even in countries like Kenya, Tanzania, India or Uganda where customary and religious forums are subject to constitutional principles, in practice it can be difficult for the constitution’s reach to extend to those forums. In recent years, there have been several landmark decisions in these countries that have invoked international and constitutional human rights standards against customary practices to justify rulings in favour of securing women’s property, inheritance and

safer registering their complaints and taking steps to prosecution.^{vii}

In Rwanda, when a distraught mother discovered that her daughter had been repeatedly raped by her guardian, the Gender-based Violence Desk at Rwandan National Police Headquarters provided the help that was desperately needed. Officers, trained in sensitive handling of sexual violence survivors arranged for the girl’s free medical treatment, in the course of which evidence was preserved. The case was then sent to the Ministry of Justice to initiate proceedings; the accused was arrested and taken into custody. Referrals to two non-governmental organisations secured free legal advice to the victim and her family. Court statistics highlight the UNIFEM and UNDP-supported Gender Desk’s effectiveness: in 2006, Rwandan Police referred 1,777 rape cases to the prosecution, resulting in 803 convictions. In each case, the Gender Desk helped to investigate and ensure that proper evidence was before the court. According to Deputy Commissioner of Police Mary Gahonzire, this technical support “has facilitated quick reporting and response, and increased awareness among the police and community of gender-based violence as a human rights issue.”^{viii}

FIGURE | National Police Forces Are Male-Dominated

In a sample of 13 countries shown in this figure, only 2 have police forces with female participation greater than 25%. The rest have less than 20% participation of women.



Notes: Information corresponds to 2006 except for: Sweden, Jamaica and Czech Republic (2001), Venezuela and Australia (2002), Finland (2004) and Romania (2005). Information for the United States was reported originally as ranging from 12% -14%; an average of 13% was used for this graph.

Source: Denham (2008).

marriage rights,³⁵ but there are few if any mechanisms for ensuring compliance with these decisions. Appeals to higher courts by women dissatisfied with the decision of informal forums are often the only avenue for inviting constitutional scrutiny.

In some post-conflict states, the urgent need to prosecute the massive number of human rights abuses and the limited capacity of the formal justice system has led many governments to rely on informal or traditional justice systems. Traditional dispute resolution systems like *Mato Oput* in Uganda, *Gacaca* in Rwanda, or *Bashinga-*

taye in Burundi, all of which primarily handle lower level crime, such as property disputes and theft, and were never meant for trying crimes of such severity as manslaughter, torture or sexual violence, nevertheless offer the justice system much needed help in identifying cases for the formal system and in adjudicating less complex cases. They also provide something invaluable: truth-telling and elements of reconciliation which are critical elements of restorative justice. These mechanisms can however have ambiguous outcomes for women. On the one hand, engagement in public truth-telling

BOX 5B | *Gacaca* and Transitional Justice in Rwanda

Gacaca, Rwanda's traditional, community-based conflict resolution system, was used historically to adjudicate local property crimes and civil disputes. In the aftermath of the 1994 genocide, the Rwandan government revived and revised this indigenous mechanism to assign jurisdiction over some genocide crimes. While controversial because it does not adhere to international legal standards, particularly with regard to the rights of the accused, *Gacaca* is seen by many as an imperfect but necessary response to the challenges of post-genocide transitional justice. Conducted outdoors in more than 10,000 local jurisdictions that meet weekly for hearings, *Gacaca* handles thousands of cases that the regular judicial system cannot process. With an emphasis on truth telling, *Gacaca* is designed to establish individual accountability and promote reconciliation.

As the majority of survivors and witnesses, women's participation has been an important element of the *Gacaca* system. For example, although in the past women were not permitted to serve as *Gacaca* judges, the government has required that at least 30 per cent of the judges be female. According to one scholar, "The community basis of *Gacaca* allows women to participate on various levels, recognizes their role in the reconciliation process, and gives them an identity beyond that of victims."ⁱ

Local and international activists have also been successful in calling attention to the pervasive use of sexual violence as a tool of genocide. While the exact numbers may never be known, it has been estimated that "almost all" girls and women who survived the genocide were either "direct victims of rape or other sexual violence, or were profoundly affected by it."ⁱⁱ The United Nations Special Rapporteur on Rwanda found that during the genocide, "rape was the rule and its absence the exception."ⁱⁱⁱ

Recognising the brutality, frequency, and genocidal intent of these crimes, the government classified sexual violence as a Category One crime under *Gacaca* law, along with the other most serious violations, including planning the genocide. Concerns have been raised about whether the elevation of rape and sexual violence to Category One has improved accountability to women. Though initial testimony and evidence is collected in community *Gacaca* hearings, prosecution of Category One crimes takes place in the formal judicial system. Although these courts deliver official rulings and hand down more severe sentences than *Gacaca* courts can, they are slower moving and more difficult for victims to access, in terms of both travel time and expense. By elevating Category One crimes to the formal judicial system, their seriousness is recognised, but the local community is cut out of deliberations about sexual violence, the responsibility to protect, and accountability.

Survivors' and human rights groups have documented cases of witness intimidation across the country, and there have been reports of reprisal killings of those who testify.^{iv} Social and cultural norms, as well as fear, continue to prevent women from testifying about rape and therefore from accessing justice. In Rwanda, there have not been – as there were during South Africa's Truth and Reconciliation Commission – special all-women hearings to focus on gender-based violence. Such hearings, if they were conducted before the end of the transitional justice process, could effectively highlight the challenges of ensuring accountability.

can enable women to take on new public roles as well as demand redress for gender-specific war-time atrocities.³⁶ On the other hand, if special arrangements to protect women survivors (and witnesses) and to include women as judges are not consistently made, women are unlikely to take advantage of this opportunity. For example, the very process and principles of informal justice systems –public confrontation and conciliation between the victim and the offender– inherently challenge principles that are essential for the safety and dignity of sexual violence survivors. Box 5B details these ambiguities in perhaps the best known of these informal transitional justice mechanisms, the *Gacaca* courts in Rwanda.

Watching the watchdog: Holding the justice system to account

When domestic justice systems have failed to provide a remedy for their grievances, women have sometimes brought them to the attention of regional or international human rights bodies. The disappearance and murder of more than 300 women in Ciudad Juarez, Mexico, since 1993, for example, came to the world’s attention thanks to the actions of women’s rights NGOs that took up the matter before the regional Inter-American Commission for Human Rights and the United Nations CEDAW Committee. The CEDAW Committee made recommendations for action to be undertaken by the Mexican Government, giving the government six months to report back on progress. In 2005, the Mexican Government put various accountability mechanisms in place, including the ‘Victims’ Support House,’ a Trust Fund to assist relatives of the victims, and the Special Commission for the Prevention and Eradication of Violence against Women to investigate the murders.³⁷

In the case of *Maria da Penha v. Brazil*, decided on April 16, 2001, the Inter-American Commission of Human Rights held that the Government of Brazil was account-

able for its judicial tolerance of domestic violence. The Commission stressed, “The failure to prosecute and convict the perpetrator under these circumstances is an indication that the state condones the violence suffered by Maria da Penha, and this failure by the Brazilian courts to take action is exacerbating the direct consequences of the aggression by her ex-husband... The condoning of this

BOX 5C | The International Criminal Court

The bloodiest century in human history culminated in adoption of a treaty to create the world’s first permanent International Criminal Court (ICC).ⁱ When national courts are unable or unwilling to prosecute individuals accused of genocide, war crimes or crimes against humanity,ⁱⁱ the ICC provides a forum for defending the rights of victims – such as women and children – who have rarely had recourse to post-conflict justice.

The Rome Statute codifies crimes of sexual violence based on international legal instruments, such as the Geneva Conventions, and the case law of the International Criminal Tribunals for the former Yugoslavia and Rwanda. Currently, almost half of all individuals indicted by the Tribunals are charged with sexual assault, either as perpetrators or superiors.ⁱⁱⁱ As a measure of progress, the transformation of rape from “an atrocious detail” of war, as the Prosecutor at the Nuremberg Trials famously called it, to an illicit *tactic* of war, can be expected to migrate into national military manuals worldwide. Every state that has ratified or acceded to the Rome Statute is obliged to harmonise domestic law with its standards, and never grant asylum or amnesty for alleged perpetrators. As the net of international jurisdiction can only catch the most egregious perpetrators, this step should bolster the capacity of national courts to indict the lower-ranking ones.

The NGO Women’s Initiatives for Gender Justice works on sexual violence with women’s groups in every country on the ICC docket. Its Gender Report Card ‘grades’ implementation at the national level – on the Rome Statute generally and gender mandates in particular – to ensure these provisions are not ‘lost in translation’ to domestic settings.^{iv} The Report also monitors victim participation – which it has deemed “partial and unsatisfactory – thus creating the illusion of participation and justice without the experience of it”.^v This evidence suggests that the Rome Statute is merely one stage in an ongoing struggle against impunity. In the words of one woman activist, “The gains that have been made for victims of sexual violence have been hard fought by a small number of local and international women’s NGOs every step of the way. Continued pressure will be needed to ensure the ICC follows through on this progress.”^{vi}

situation by the entire system only serves to perpetuate the psychological, social, and historical roots and factors that sustain and encourage violence against women.”³⁸ The *Maria da Penha* Law, which creates multiple mechanisms, including specialised tribunals and psychosocial assistance for victims, was subsequently passed in 2006 and represents one of the most advanced examples of domestic violence legislation.

International courts have pushed the boundaries of the law in relation to war crimes, notably in the serious treatment of sexual violence as a war crime in the Rome Statute of the International Criminal Court. (See Box 5C.)

Conclusion: Accountability and gender justice

Women have shown that judicial accountability for women requires that so-called ‘private’ crimes become matters of public concern. Yet there are continual difficulties for courts and legislators in plugging the transmission gap between international human rights and constitutional provisions on equality, and entrenched ideas about dispute resolution that tend to reflect traditional gender roles. For justice systems to work for women, they must provide a forum where women can secure accountability whenever and wherever their rights are infringed. This means addressing gender biases in the normative, procedural, and cultural dimensions of justice systems, both formal and informal.

- *Normative, substantive law reform* in both formal and informal justice systems is needed to establish that rights are guaranteed to women without discrimination, and to rescind contradictory laws or practices. Even when states have harmonized national legal frameworks with human rights principles, vigilant monitoring must ensure that these laws are implemented at the national level.

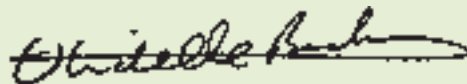
Procedural changes must ensure that:

- *Courts are accessible to women socially,*

physically and financially. The justice system fails a woman whenever she is less likely to gain access to a court than a man. Legal literacy training, “barefoot” community lawyers, childcare services, mobile courts and legal aid can minimize the economic, social and physical distance between women and the legal system.

- *Promoting more women to positions in the judiciary and police is an important way of improving accountability to women.* Women-specific recruitment days can encourage more women to apply to join the police force, creating a less threatening environment and challenging the assumption that security is ‘men’s work.’ In the same way that the Inter-Parliamentary Union (IPU) monitors the number of women in national parliaments, gender parity on the benches of national courts and in traditional justice settings should be tracked and regularly reported.
- *Institutional changes in law enforcement (police, prisons, and national human-rights offices, equality commissions and other complaint bodies) are needed to eliminate gender bias in their structure and practices.* Standard operating procedures must be reviewed to ensure that everyday practices of law enforcement bodies institutionalise efforts to assess and address women’s security situation. Law enforcement officials need training in how to support women survivors of crime and to eliminate gender biases in the investigation and prosecution of crimes. Support should be given to women’s units to respond to domestic violence and other crimes against women.
- *The cultural dimension of justice systems requires efforts towards long-term change in social attitudes, including a firm commitment to eliminate violence against women in the home.* Public education campaigns are important because legal advances that outpace social values can generate backlash. Community-

“ In 2006 I was granted the great honour of being the first woman to be elected President of Chile. I remember the day I took office: hundreds of thousands of women took to the streets wearing a presidential sash, symbolizing that political power, up to now almost exclusively in the hands of men, was now shared by all. One of my main objectives on coming to office was to stop placing 'women's issues' as a subfield of public policy. In all we have done as a government, in education, pre-school care, health, housing, domestic violence, and certainly in our historic pension system reform, we have incorporated a gender sensitive approach across the board, adopting specific measures that benefit women. In so doing, women's policy has become transversal and part of a larger goal – the struggle for greater equality. Moreover, we have worked for a greater inclusion overall. We need more women in politics, more women in business, more women participating in social organizations, and more women in the labour force. To that end we have worked consistently and made sustained progress. This has not been easy, but we have not let that stop us. I am confident that, in the end, we will have induced a great cultural shift, which will translate into more justice and greater welfare for the citizens of Chile.”



Dr. Michelle Bachelet
President of the Republic of Chile

based monitoring projects that track judgments in formal and traditional systems and their impact on women's lives could fill an important analytical gap in comparative law and help move towards a jurisprudence of equality. While customary law practices remain in effect in many jurisdictions, there are increasing examples where courts clearly found customary laws do not apply in cases where they discriminated against women, notably in a range of recent cases from the Pacific Islands.³⁹ Global research to better understand the challenges and opportunities formal and informal justice systems present for women should be financed. Such mapping and monitoring provides a concrete platform for women to 'watch the watch-dog.'

To paraphrase Dr. Martin Luther King, Jr., "The arc of history is long, but it bends towards justice." In recent years, women's

legal activism at the national and international levels has helped bend history. The idea that justice is possible, that the rule of law can be re-established in the wake of conflict or crisis, that brutality will be punished and victims vindicated, is an idea that creates hope and bolsters confidence in public institutions, and is at the heart of accountability.