

Women's Access to Justice: An Overview of Key Concerns

Lee Waldorf

1. INTRODUCTION

When considering the challenges involved with women's access to justice, both the elements of 'access' and 'justice' require equal attention. At the same time that women's ability to call on the protection of the law and obtain redress for harms committed against them has been restricted in a myriad of ways, the legal standards defining the justice they might be entitled to claim have been deficient, discriminatory and, regarding some crimes, simply non-existent. This paper addresses both dimensions of the challenges women face in attempting to access justice. It looks at discrimination, defects and gaps in legal and constitutional frameworks as well as the multiple challenges involved in the administration of justice, including in plural legal systems. In addition, it highlights measures that have been successfully implemented by countries in all regions of the world to overcome some of these obstacles and help bring the ideal of women's access to justice into reality.

The United Nations understands justice as accountability and fairness in the protection of rights and the preventions and punishment of wrongs; and UNDP has characterized access to justice as the ability of people to seek and obtain a remedy through formal or informal institutions of justice, in conformity with human rights standards.¹ The questions of rights – what women's entitlements are and how they should be protected – is central to the exploration of the challenges involved in women's access to justice. Women's rights in the context of access to justice are enshrined in numerous international and regional human rights standards and related protocols, such as the International Covenant on Civil and Political Rights, the Convention on the Elimination of all forms of Discrimination Against Women, the African Charter on Human and People's Rights, the European Convention on Human Rights and the American Convention on Human Rights. The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) is the treaty that addresses the matter of women's rights in the greatest specificity and detail, and its provisions are a particularly useful reference, especially its definition of equality and non-discrimination.

CEDAW moves beyond an older, restricted and abstract 'formal' definition of equality, according to which a state was considered to have fulfilled its obligation to guarantee equality once any overtly discriminatory laws had been repealed. CEDAW instead fully embraces the 'substantive' model of equality, which doesn't just assess the wording of

¹ UN Women, Factsheet on Women's Access to Justice, p.1., [unwomenfactsheet.pdf](#)

laws, but also assesses the actual impact the state is having – for better or worse – on women’s lives. The substantive model of equality is focused on results and clearly places an obligation on the state to take steps to ensure that gender inequality is reduced and finally eliminated.

The key elements of CEDAW that set out this substantive obligation to achieve equality are as follows:

- Discrimination is defined as any act that has “the effect or purpose” of impairing women’s equal enjoyment of their rights. (Article 1)
- States must pursue a policy of eliminating discrimination by “all appropriate means”, and this includes not just repealing discriminatory laws, but also ensuring that no action or practice of the state – or of any private “person, organization or enterprise” – discriminates against women” (Article 2)
- The State shall take “all appropriate measures” in “all fields” to ensure women’s full advancement and the equal enjoyment of their rights. (Article 3)
- “Temporary special measures”, such as quotas, shall not be considered a form of discrimination, because their ultimate goal is to achieve gender equality. (Article 4)
- The State must take “all appropriate measures’ to change social and cultural patterns of conduct and eliminate prejudices and customary practices based on stereotypes or ideas about the inferiority of women. (Article 5)

The agenda for legal and constitutional reform that flows from CEDAW is much more comprehensive and transformative than what was required by the formal model of equality. National constitutions must incorporate CEDAW’s substantive definition of equality and make it applicable throughout the country. All discriminatory legislation must be immediately repealed. New legislation must be introduced to eliminate discrimination and advance women’s rights must be adopted in all sectors in which it may be required. There is no “private” zone into which intervention can be deemed inappropriate. Culture or tradition is no justification for inaction – in fact the discriminatory aspects of culture or tradition must be changed. The adequacy of existing laws and new laws is to be assessed on the basis of their impact. Where laws are ineffective, or have a detrimental effect, all necessary measures – whether legislative, institutional, administrative, or budgetary – must be taken to ensure that they work for the benefit of women. Even if the state chooses to allocate some of its regulatory responsibilities to private sector decision makers (for example within local communities or religious traditions), it continues to be fully responsible for the consequences. It must exercise effective direction and oversight to ensure that women’s human rights entitlements are fully respected in these processes.

A good example of the integration of the substantive equality and non-discrimination into national law can be found in the Philippines Magna Carta of Women, which defines discrimination against women as:

Any gender-based distinction, exclusion, or restriction 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. It includes any act or omission, including by law, policy, administrative measure, or practice, that directly or indirectly excludes or restricts women in the recognition and promotion of their rights and their access to and enjoyment of opportunities, benefits, or privileges.²

It should also be noted that CEDAW takes an intersectional view of the meaning of discrimination against women. This is articulated in General Recommendation 33, where the Committee stresses the importance of attending to the ways that intersecting forms of discrimination – including discrimination based on race, ethnicity, indigenous or minority status, socio-economic status, caste, language, religion or belief, national origin, age, disability, or identity as a lesbian, bisexual, transgender or intersex person – can cause some women to be affected more severely and make it more difficult for women from certain groups to gain access to justice.³ The Committee adds that there are further factors which (while not necessarily forms of discrimination in themselves) can also interact with discrimination against women to make it more difficult for certain groups of women to access justice. These include concerns such as: trafficking, armed conflict, statelessness, migration, living with HIV, illiteracy, being a female head of household, widowhood, illiteracy, deprivation of liberty and criminalization of prostitution.⁴

2. LEGAL FRAMEWORKS

The two primary ways in which laws frameworks can discriminate against women and perpetuate gender inequality are through direct legislative discrimination and through the failure to extend the protection of the law.

Direct discrimination against women

Directly discriminatory laws either deny women rights that men are entitled to enjoy or impose disadvantages on them that are not imposed on men. They are often rooted in

² The Crucial Role of Legal Frameworks in Advancing Gender Equality (UN Women, 2024), p. 8

³ General Recommendation No. 33 on women's access to justice (2015), CEDAW/C/GC/33, par.8

⁴ Ibid., par. 9

harmful traditional stereotypes about the subordinate role women should play in the family and in the wider society. While laws that openly impose discrimination against women are unacceptable according to any theory of equality – either formal or substantive – it still has not always been easy to overturn them and many remain in place. One area in which such laws have predominated is the criminal law’s response to sexual violence: there are still laws on the books in some countries that allow men to avoid punishment for rape if they marry their victims, reduce the criminal penalties for assault if it can be characterized as a ‘crime of passion’, allow reduced or no penalties where it is claimed that the violence was inflicted to defend familial ‘honor’, or give the woman’s testimony lesser weight than the man’s in criminal proceedings. Family laws and personal status codes also frequently discriminate against women by granting them lesser rights than men in areas such as property settlement, land rights, inheritance, dissolution of marriage and child custody, and the CEDAW Committee has repeatedly call for such laws to be reformed. They have further recommended that where this discrimination is imposed through separate religious, customary, indigenous or civil law systems, that a unified, non-discriminatory family law system be created and women be given the right to choose between the systems.⁵

Another area in which overt discrimination remains chronic is the entitlements conferred by the State relating to nationality and citizenship: it remains common for laws or constitutions to allow only men, and not women, to transfer their nationality to their foreign spouses, or to have their foreign-born children granted citizenship rights. In some countries, the law goes even further and deprives women of their own nationality once they marry foreigners. Similarly, women’s legal capacity may be restricted through laws that deny them equal rights to be recognized a head of the household, to obtain an identity card or passport, choose where to live or chose their profession. LBTQI+ women may be subjected to criminal prosecution for sexual relations, be prohibited from marrying each other, or prohibited from legally changing their identities. Abortion may be criminalized. As well, direct legal prohibitions still exist against women engaging in certain forms of employment, such as night work or other work deemed too dangerous or demanding for women.

As UN Women reported in 2024, direct legal discrimination continues to be a challenge.⁶ In 18% of countries, women do not have equal rights to confer citizenship to their spouses or children.⁷ In 20% of countries, there are various forms of restriction on women’s legal capacity.⁸ In 51% of countries there is at least one restriction preventing

⁵ CEDAW, General Recommendation 33, pars. 45 & 46.

⁶ The Crucial Role of Legal Frameworks in Advancing Gender Equality (UN Women, 2024).

⁷ Ibid., p. 9.

⁸ Ibid., p. 7

women from performing the same work as men.⁹ 54% of countries do not base the legal definition of rape on the basis of freely given consent.¹⁰ According to the World Health Organization, as of 2023 only 51 countries did not criminalize abortion and make it available upon request with no requirement for justification.¹¹

The trend, however, is towards greater success for the women's rights advocates within government and civil society who are arguing for the elimination of such laws. Examples of legal reform include:¹²

- Jordan: in 2017 abolished the law that allowed a rapist to avoid prosecution by marrying his victim.
- Solomon Islands: in 2009 abolished the Evidence Act's requirement that a female victim's testimony be corroborated by another person in cases of sexual assault.
- Sweden: in 2018 the definition of rape was changed to sex without consent.
- Liberia: in 2022 the nationality law was amended to give men and women equal rights to confer nationality to their children.
- Rwanda: the 2016 Law Governing Matrimonial Regimes, Donations and Successions grants equal inheritance rights to girls and boys.
- Kenya: amendment of the Land Succession Act, 2018 recognizes the legitimacy of both girls and boys in property inheritance and land rights.
- Sierra Leone: the Prohibition of Child Marriage Act 2024 criminalizes marrying girls under 18 years of age.
- Morocco: in 2004 a new Family Code was adopted, creating greater legal equality between men and women, and further reforms were under consideration in 2025.
- Pakistan: passed multiple laws in 2019 to protect women's inheritance and property rights.
- Sri Lanka: the 2022 Land Development (Amendment) Act contains provisions to ensure equality in land inheritance, removing preference for the eldest male child.
- Thailand: the 2024 Marriage Equality Act recognizes the marriage rights of people with diverse sexual orientations.

⁹ Ibid. p. 11.

¹⁰ Ibid. p. 10

¹¹ Review and appraisal of the implementation of the Beijing Declaration and Platform for Action and the outcomes of the twenty-third special session of the General Assembly (UN Secretary General, 2024) E/CN.6/2025/3, p.52

¹² Country examples are drawn from national reports submitted for the Beijing +30 review process, the concluding observations of the CEDAW Committee and UN Women 2024 (above).

- Bhutan: the Penal Code (Amendment) Act of 2021 decriminalized same-sex relations.
- Denmark: legal reform in 2024 permits free abortion until the 18th week of pregnancy.
- Finland: legal reform in 2022 permits free abortion until the 12th week of pregnancy.
- Pakistan: in 2021 lifted restrictions on women's ability to work at night
- Viet Nam: replaced the previous labour code in 2019, eliminating restrictions on employing women in jobs deemed dangerous.

Failure to legislate

The failure to legislate in contexts where the absence of law causes greater harm to women than it does to men is another important form of legal discrimination. Women are being denied the equal protection and benefit of the law. There has been a marked tendency to consider as 'private' (and therefore off-limits for state intervention) precisely those areas in which women are most vulnerable to the exercise of male power, such as the home or the workplace. The pattern repeats in legal frameworks around the world of failures to criminalize domestic violence, marital rape, early marriage and sexual harassment in public and the workplace, for example, or to provide labour law protections for every form of employment in the country except domestic and informal employment. The law's refusal to intervene poses an absolutely fundamental challenge to achieving gender equality. Not only are protection and remedies being denied for violations of women's rights, but the state's inaction effectively sends the message that these kinds of violations of women's rights are acceptable. As a result, many men continue to believe they are entitled to abuse and exploit women within areas that are considered to be private, such as the family, employment and – increasingly – digital space.

It's also important to keep in mind that, under CEDAW, states have an obligation to take positive steps to advance gender equality. Temporary special measures, including quotas, may need to be imposed by the state in order to improve women's representation and achieve a better gender balance in areas such as politics or the administration of justice. The failure to adopt temporary special measures where they are needed can be considered as a further form of legal discrimination against women.

The failure to pass legislation that will protect and advance women's rights has been a widespread problem. According to World Bank data, as of 2018 only 144 of 189 countries surveyed had adopted specialized laws on domestic violence. A small group of countries did have penalties in the criminal law for violence against spouses, but 36

countries had no legal mechanisms that seriously addressed domestic violence.¹³ Only 29 countries – mostly in Latin America and the Caribbean – explicitly criminalize femicide.¹⁴ A large majority of countries have adopted legislation prohibiting sexual harassment in employment, but only 79 of the 189 countries surveyed by the World Bank imposed criminal penalties. Sexual harassment was less frequently prohibited in the area of education (42.9 of countries) and in public spaces (42.9 % of countries).¹⁵ According to UN Women’s 2024 report, 14% of countries do not criminalize marital rape or entitle a woman to file a complaint of rape against her husband or partner.¹⁶ 72% of countries have not set the minimum age of marriage at 18 years or higher without exception for both men and women.¹⁷ 44% of countries have not passed laws requiring equal remuneration for work of equal value.¹⁸ 35% of countries have not passed laws requiring maternity leave or parental leave for new mothers.¹⁹ According to the WORLD Policy Analysis Centre, as of 2021 a substantial majority (93%) of countries prohibited at least some form of employment discrimination against women, but less than half of these laws cover the full course of work life (hiring, pay, terminations, promotions and training).²⁰ As of 2020, just under half of the world’s domestic workers were legally entitled to some form of social protection.²¹ A 2024 UN Women review of legal frameworks for 193 countries found that only 103 had legislated quotas for women’s representation in national or local legislatures; however this was a significant increase over the 64 countries that had legislated quotas a decade earlier.²²

Examples of laws that have been recently passed to remedy these deficits include:²³

- Trinidad & Tobago: the Sexual Offences Act, 2019, explicitly criminalizes rape between persons in marital relationships.
- Jamaica: the Sexual Harassment (Protection and Prevention) Act was passed in 2021, and the Domestic Violence (Amendment) Act was passed in 2023.
- St. Lucia: the Domestic Violence Act No.11 of 2022 increased the scope of domestic violence offences.

¹³ Mala Htun & Francesca Jensenius, “Fighting Violence Against Women: Laws, Norms and Challenges Ahead”, *Daedalus* Vol. 149 (Winter 2020). p. 148.

¹⁴ UN Secretary General 2024, p. 64.

¹⁵ *Ibid.*, p.150.

¹⁶ UN Women 2024, p.10

¹⁷ *Ibid.* p. 12

¹⁸ *Ibid.* p. 11

¹⁹ *Ibid.* p. 12

²⁰ Jody Heymann, Aleta Sprague & Amy Raub, *Equality Within Our Lifetimes: How Laws and Policies Can Close—or Widen—Gender Gaps in Economies Worldwide* (2023, University of California Press), p.33

²¹ UN Secretary General 2024, p.33.

²² *Ibid.*, p.74.

²³ Country examples are drawn from national reports submitted for the Beijing +30 review process, the UN Secretary General’s Report on Beijing +30, the concluding observations of the CEDAW Committee and UN Women 2024.

- Barbados: the Employment Sexual Harassment Prevention Act was passed in 2017.
- Singapore: the Online Criminal Harms Act came into force in 2024.
- Republic of Korea: the 2019 Framework Act on Prevention of Violence Against Women enables the government to respond to digital sex crimes.
- Georgia: 2020 amendments to the Labor Code included the prohibition of direct and indirect discrimination and the introduction of the principle of equal pay for equal work.
- Jordan: the Labour Law No.14 of 2019 introduced the principle of equal remuneration for work of equal value.
- Brazil: the Law on Equal Pay Between Women and Men was approved in 2023.
- Costa Rica: the Law on Salary Equality Between Women and Men was passed in 2019.
- Burundi: the Labour Code was extended in 2020 to apply to the informal sector, including domestic work.
- Mexico: in 2019 federal laws were amended to include domestic workers under mandatory social protection coverage.
- Vanuatu: the 2015 Municipalities Amendment Act No. 5 established a quota system for women's seats in local government.
- Moldova: the 2023 Electoral Code requires candidate lists to respect a minimum quota of 40% for both sexes.

Constitutional Inequality

While constitutions are themselves laws – and so can suffer from all of the challenges detailed above in the discussion of legal discrimination – they are particularly influential laws that merit separate and dedicated attention. A country's constitution is the highest law of the land, setting out the framework for the operation of state power. Authorities and responsibilities are allocated and balanced between the executive, the legislature and the judiciary, and between national and sub-national jurisdictions. Modern constitutions also create extensive rights entitlements for individuals, by placing a wide range of requirements and restrictions on the use of state power and often also private power. Constitutions can therefore matter a great deal for the progress of women's rights. The specific way in which a country's constitution shapes each aspect of state power will either facilitate or limit the opportunities for advancing gender equality – a good constitution opens many doors, while a constitution steeped in discriminatory, patriarchal values keeps them locked tight. Constitutional rights entitlements guide the development of the nation's laws, are powerful tools in the hands of the judiciary in efforts to combat discrimination, and help shape societal understanding of the meaning of justice for women. As well, the comprehensive guarantees of women's human rights that are set out in international and regional law can only become real when they are

embraced – and made actionable – at the national level. Constitutional entrenchment of women’s human rights standards provides the best, and most lasting, assurance that the future laws, policies and decisions of the state will work to eliminate discrimination and proactively advance women’s rights.

The most critical issue from the perspective of women’s rights is whether a constitution contains guarantees of gender equality and non-discrimination on the basis of sex, and, more specifically, whether these guarantees are based on the substantive model of equality. It is only the substantive equality model that requires engagement with underlying hierarchies of power to achieve equality of results, rather than simply requiring equal treatment.²⁴ Only 54% of constitutions adopted before 1970 contained guarantees of gender equality or non-discrimination on the basis of sex.²⁵ However this situation has changed significantly in recent decades, and all constitutions adopted between 2000 and 2017 contain explicit guarantees of gender equality. Notably, the Constitution Tunisia adopted following the revolution in 2014 guaranteed equal rights for men and women, which was a first for both the country and the region.²⁶

There are also specific rights that have particular importance for women that have been given constitutional protection. The rights include the right to be free of violence, reproductive rights, and equal rights in areas such as political representation, employment, education, marriage and family life.²⁷ These rights protections are considerably less common than broad guarantees of gender equality. For example, only 25% of constitutions contain some form of marriage equality rights, and just 6% of constitutions comprehensively guarantee equal rights within marriage and when entering and exiting marriage.²⁸ Improvement can be seen in this area as well, however. Specific rights of importance to women that have recently been incorporated into national constitutions include:

- Rwanda: the 2023 constitution provides a minimum 30% quota for women in all decision-making bodies.
- India: the constitution was amended in 2023 to reserve one third of seats for women in the Lower House of Parliament and all Federal State Assemblies.
- Mexico: electoral parity was enshrined in the constitution in 2014.
- Nepal: the 2015 constitution guarantees the right to “safe motherhood and reproductive health”.

²⁴ Susan H. Williams ed., *Constituting Equality: Gender Equality and Comparative Constitutional Law* (Cambridge University Press, 2009), p.9.

²⁵ Jody Heymann, “Why Addressing Gender is Foundational” in *Advancing Equality: How Constitutional Rights Can Make a Difference Worldwide* (University of California Press, 2020), p.50-51.

²⁶ *Ibid.*

²⁷ Williams, p.10.

²⁸ Heymann, p. 54.

- Columbia: the 2006 constitution guarantees the right to health, which Colombian Constitutional Court held prohibited a complete ban on abortion.

The continuing presence of ‘exclusionary clauses’ in a small group of constitutions is a serious concern, as they constrain the application of constitutional non-discrimination guarantees. Exclusionary clauses either take the form of stating that the constitution’s guarantee of non-discrimination will not apply to personal or family law issues, or stating that non-discrimination guarantees will not apply to customary law.²⁹ As of 2020, the constitutions of 8% of countries still contained provisions that limited the application of constitutional principles (including non-discrimination and gender equality) to customary and religious laws.³⁰ The impact of exclusionary clauses is to severely restrict women’s right to claim their rights to equality and non-discrimination, and also to deprive women of a crucial tool for negotiating the meaning of cultural norms and traditions in light of human rights entitlements.³¹ Fortunately, the trend is towards the elimination of exclusionary clauses, especially in Africa. For example, the new constitution that was adopted in Kenya in 2010 eliminated the exclusionary clauses that had been in their constitution since the time of independence, and the 2013 amendment of Zimbabwe’s constitution expanded the protection of gender equality and eliminated the exclusionary clause that appeared in the previous constitution.³²

Human rights law clearly rejects the concept of limiting guarantees of non-discrimination in this way. The CEDAW Committee has stated that constitutional non-discrimination protection must be extended “to all matters of personal status, family, marriage and inheritance law”.³³ The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol) provides comprehensive protection for women’s rights in the family, and in 2018 the African Court on Human and People’s Rights applied the Maputo Protocol to order amendment of the restriction of women’s inheritance rights in Mali’s Person and Family Code.³⁴ Similarly, the European Convention on Human Rights establishes that equality rights take precedence over discriminatory religious laws or practices. It should also be noted that the presence of exclusionary clauses in constitutions is a direct result of colonialism.³⁵ In some case this connection is obvious just on the face of the law. For example, remarkably similar exclusionary provisions appear in the constitutions of: the Bahamas, Barbados, Belize,

²⁹ Johanna Bond, “Gender and post-colonial constitutions” in *Sub-Saharan Africa Constitutions and Gender*, Helen Irving ed. (Edward Elgar, 2017), p. 80.

³⁰ Heyman, p. 65. According to Heymann the regional break-down of these countries is as follows: 17% Sub-Saharan Africa, 13% in East Asia and the Pacific, 10% in the Middle East and North Africa and 12% in South Asia.

³¹ Bond, p. 81.

³² Heymann, p. 89.

³³ CEDAW, General Recommendation 33, par.42.

³⁴ Heymann, p. 65.

³⁵ Bond, p. 80.

Botswana, Dominica, Fiji, Gambia, Ghana, Kiribati, Malaysia, Sierra Leone, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, Singapore, the Solomon Islands, Turks & Caicos, and Zambia. These provisions state that the constitution's non-discrimination guarantee doesn't apply to laws "with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law" (the language is the same or just slightly changed in every country).³⁶ Each of these provisions first appeared in the new constitutions that were developed when the countries were negotiating transition from British rule or control.

3. THE ADMINISTRATION OF JUSTICE

As the CEDAW Committee has underlined – and as UN Women has extensively documented in *Progress of the World's Women: In Pursuit of Justice* – women face discrimination and obstacles coming from every dimension of justice systems.³⁷ Police may be dismissive of their claims or even personally hostile, decision-makers may be biased, procedural rules may be discriminatory, courts may be physically inaccessible or located in remote areas, court cases may be prohibitively expensive and time-consuming, lawyers and legal aid may be unavailable, favourable decisions may be unlikely, and enforcement of decisions may be difficult to obtain. Because of the multiple and compounding failures of justice systems, the women who do seek justice are often denied their rights and many other women are discouraged from attempting to pursue their rights, as is evidenced by the high rates of women's under-reporting and attrition of their cases.³⁸

Discriminatory attitudes on the part of police officers often present women's first obstacle in accessing justice, especially in cases involving domestic violence, sexual assault and sexual harassment. They may not take these crimes seriously, discouraging victims from reporting, failing to file incident reports, misclassifying sexual assaults as lesser crimes, and failing to conduct proper investigations. Police hostility towards certain groups of women can exacerbate this problem and even expose women who are trying to report crimes to abuse. Human Rights Watch has reported that lesbians and transgender people in South Africa and Honduras have been subjected to abuse and violence at the hands of the police and were therefore reluctant to report crimes committed against them. It has also been reported that Indigenous women in Canada

³⁶ Satang Nabaneh, Shelley Inglis and Lee Waldorf, "Decolonizing the narrative around constitutions, personal laws and women's rights", Open Global Rights 2023. [Decolonizing the narrative around constitutions, personal laws, and women's rights | OpenGlobalRights](#)

³⁷ CEDAW General Recommendation 33, par. 13; UN Women, *Progress of the World's Women: In Pursuit of Justice* (2012) pp. 46-63.

³⁸ UN Women, *Progress of the World's Women*, p.50.

have suffered similar treatment.³⁹ Women who are sex workers are at particularly high risk for police violence and abuse, as documented by Human Rights Watch in Cambodia, the Ukraine and the United States and the CEDAW Committee in Kyrgyzstan.⁴⁰

There are many discriminatory procedures and regulations in place in different countries that can disadvantage women victims and complainants in the adjudication of their cases. The CEDAW Committee has underlined its particular concern about:⁴¹

- The requirement for women to seek permission from their family or community before beginning legal action
- Stigmatization of women complaining of sexual crimes on the basis of 'character' evidence
- Rules that require women to discharge a higher burden of proof than men to establish an offence or seek a remedy
- Procedures that exclude or accord inferior status to the testimony of women

Discriminatory attitudes and stereotyping on the part of judges and other justice system officials also impair women's access to justice. Judges may hold rigid standard about what they deem appropriate behaviour for women and penalize those who do not conform. Stereotyping may affect jurors' assessment of the credibility of women's testimony as parties and witnesses, and this problem may be intensified for excluded groups of women, such as Black and Latina women in the United States.⁴² Prosecutors, law enforcement officials and other officials may be influenced by stereotypes in the course of investigations and trials, undermining the credibility of women victims and bolstering the defence of male perpetrators.⁴³ The CEDAW Committee has recommended awareness raising and capacity building programmes for all justice system personnel and law students to help eliminate gender stereotyping.⁴⁴ Internal guidelines for judicial decision-making can also be introduced, such as the Institutional Policy on Gender Equality in the Judiciary that was approved by Bolivia's Supreme Court of Justice.⁴⁵

It is also important to increase the representation of women as judges and other justice administration officials. Both CEDAW and Beijing affirm women's equal right to hold positions at all levels of public decision-making. While the presence of more women

³⁹ Human Rights Watch, Submission to the CEDAW Committee on General Recommendation 33 (2013), p. 5 & 8.

⁴⁰ Ibid., p. 9.

⁴¹ CEDAW, General Recommendation 33, par. 25.

⁴² UN Women, Progress of the World's Women, p. 55.

⁴³ CEDAW, General Recommendation 33, par. 26-27.

⁴⁴ Ibid., par. 29.

⁴⁵ OHCHR, Examples of Good Practices at Country Level: Reported in 3rd Cycle UPR 2017-2020

judges does not necessarily equate to the presence of more feminist judges, gender balance does matter in this area just as it does in the area of women's political representation. Improving women's representation as judges supports more inclusive decision-making and the representation of a broader range of interests, by tapping into knowledge, experiences and interpretations that are different from the male norm.⁴⁶ There is evidence that women judges can create a more conducive environment for women and can make a difference for the outcomes of their cases.⁴⁷ The presence of women judges also enhances the legitimacy of the courts, signalling that they are open and accessible to all.⁴⁸ As of 2017, 40% of judges around the world were women.⁴⁹ However, there is still a tendency for women judges to be clustered at the lower court levels and in certain specialised areas such as juvenile and family courts.⁵⁰ Some countries, such as Kenya, have made significant advances in promoting women judges to leadership positions. While its Court of Appeal had only one woman judge prior to 2010, women now represent 50% of Kenya's Appellate Court judges. As well, women account for 40% of the judges at the Supreme Court and 45% of the judges at the High Court.⁵¹ Factors that contributed to these increases include the Kenyan judiciary's development of a gender mainstreaming policy and gender audit, new gender sensitive policies regarding working conditions and sexual harassment, and trainings and other support to prepare women for higher court positions provided by the Kenyan Women Judges Association.⁵² The CEDAW Committee has recommended that countries remove barriers to women's participation in the judiciary and implement steps, including temporary special measure such as quotas, to ensure equal representation.⁵³

A range of factors may either prevent or strongly discourage women from entering courtrooms and participating in legal proceedings. The long distances that must be travelled to reach the courts can be a major obstacle, especially for women living in rural or isolated areas.⁵⁴ A UNDP study conducted in Indonesia found only 38% of respondents felt that formal courts were an accessible distance from their homes.⁵⁵ Long delays in court proceedings can be a serious disincentive – for example, Human Rights Watch found in its study of family courts in Bangladesh that women could wait for months or years for a result.⁵⁶ Court proceedings may be conducted in languages that

⁴⁶ International Development Law Organization, *Women Delivering Justice: Contributions, Barriers, Pathways* (2018), p. 15.

⁴⁷ UN Women, *Progress of the World's Women*, p. 61

⁴⁸ UNDP, *Women in Justice in Africa: A Comparative Study of Women Judges in 14 Countries* (2023), p. 13.

⁴⁹ United Nations, press release: International Day of Women Judges, 10 March 2017.

⁵⁰ IDLO, p. 7.

⁵¹ UNDP, p. 11

⁵² *Ibid.*

⁵³ CEDAW General Recommendation 33, par.15.

⁵⁴ *Ibid.*, par.16.

⁵⁵ UN Women, *Progress of the World's Women*, p. 54.

⁵⁶ Human Rights Watch, p.3.

many people in the country do not understand, and there may be no or limited provision made for translation.⁵⁷ Courts may lack the facilities required by women with disabilities, such as ramps, accessible podiums, sign language interpretation and large print text, and women with disabilities may be especially challenged by long distances that must be traveled to reach courts.⁵⁸ Domestic workers may not have access to labour courts, and migrant women who are subjected to abuse may avoid bringing their cases to court where their visa status is tied to their employers or husbands.⁵⁹ Women who have realistic fear of retribution from assailants, spouses, families or communities may be intimidated by court proceedings that don't provide privacy for their testimony and protect their identities.⁶⁰ Women may lack knowledge of their rights or understanding of the legal options that are available to them.⁶¹ Finally, many women whose resources are limited cannot attempt to advance their cases in court without the support of financial assistance and free legal advice and representation.

The criminal sentences and other penalties handed down as punishment can be lower than the seriousness of some crimes against women would seem to require, especially for cases of sexual assault, sexual harassment and domestic violence. This suggests judicial bias, stereotyping and the trivializing of harms done to women, as does the low prosecution and conviction rates for these crimes. However, some feminists have warned against the solution of simply intensifying the criminal law's response. They are concerned that such measures would strengthen the carceral state and deter women from reporting crimes committed against them. As Htun and Jensenius have observed:

Many activists object to using the criminal justice system (including tougher sentences and longer prison terms) to fight gender and sexual violence. So-called carceral feminism and its instruments, such as mandatory arrest laws, may empower law enforcement authorities at the expense of individual women, particularly intersectionally disadvantaged groups of women. As a result, women may be more likely to suffer revictimization by police and prosecutors, and minority communities may suffer biased treatment. In addition, carceral feminism runs the risk of diverting attention from the structural conditions conducive to gender violence, such as social inequalities and the concentration of economic and political power in men's hands.⁶²

⁵⁷ UN Women, *Progress of the World's Women*, p.54.

⁵⁸ Human Rights Watch, p.8.

⁵⁹ *Ibid.* p. 6.

⁶⁰ CEDAW General Recommendation 33, par. 18.

⁶¹ UN Women, *Progress of the World's Women*, p. 52.

⁶² Mala Htun, Francesca Jensenius, "Fighting Violence Against Women: Laws, Norms and Challenges Ahead", *Daedalus* Vol. 149 (2020), p. 154.

Innovative measures have been taken in many countries to improve the administration of justice and increase women's access to justice. Policing has been a particular area of focus. The CEDAW Committee has recommended that specific units or desks dedicated to women in police station share information about the justice mechanisms, procedures and remedies that are available to women, including in community languages.⁶³ In 2021, Botswana established a Gender and Child Protection Branch within the police services to ensure a victim-friendly environment for victims of gender-based violence.⁶⁴ Data from 39 countries show that the presence of women police officers correlates positively with reporting of sexual assault, and a number of countries have made efforts to increase the presence of women police officers, set up gender desks within police stations or create women-only police stations.⁶⁵ Studies found that the level of reporting for incidents of violence against women increased after the introduction of women's police stations in 13 Latin American countries.⁶⁶ One-stop shops are another important innovation. They integrate services needed by victims of gender-based violence, such as healthcare, psycho-social counselling and legal aid, to reduce the number of steps a woman has to take in accessing justice.⁶⁷

Free legal aid is a critical form of support for women regardless of the legal issue they are involved with, and women's NGOs and civil society organizations have played an important role in delivering these services.⁶⁸ Specialized courts can improve the functioning of the justice system for women. Mobile courts can help reach women in remote areas, and the mandate of local courts can be broadened to address their issues – for example, in 2024 Bangladesh expanded the mandate of its Village Courts to try family disputes.⁶⁹ Specialized gender-based violence or domestic violence courts can help ensure accountability, better protect victims' safety, streamline processes, provide closed sessions, and involve judges and other personnel who have increased expertise. These have been introduced in a number of countries in Latin America, North America, Europe, South Asia, and Africa.⁷⁰ For example, Kenya and Botswana have recently established specialized gender-based violence courts.⁷¹ It is important to ensure that such courts receive robust funding and are not considered peripheral to the mainstream of the judicial system. Gender-sensitive and women's human rights focused training can also be provided to judges and other judicial personnel across the whole

⁶³ CEDAW, General Recommendation 33, par.17.

⁶⁴ Beijing +30 National Report.

⁶⁵ UN Women, Progress of the World's Women, pp. 59-60.

⁶⁶ Ibid.

⁶⁷ Ibid. p. 57; CEDAW General Recommendation 33, par.17.

⁶⁸ UN Women, Progress of the World's Women, pp. 57-58.

⁶⁹ Ibid. p. 59; Beijing +30 National Report.

⁷⁰ UN Women, Progress of the World's Women, p.59.

⁷¹ Beijing +30 National Reports.

court system, and targeted policies and strategies can be adopted to address the processing of cases in specific areas of concern to women.

4. PLURAL LEGAL SYSTEMS

Many countries have plural legal systems, in which justice systems based on religious, customary, traditional, indigenous or other forms of law co-exist in parallel with or in direct relationship to the state justice systems detailed in the above discussion. For example, family matters are governed by different laws for different religious or ethnic communities in many countries in the Middle East, South Asia and parts of South-East Asia, and customary legal systems play a significant role in African countries.⁷² As well, many Latin American countries have plural legal systems, recognizing the rights of indigenous peoples to decide on their own forms of law and conflict resolution.⁷³ These justice systems often have long historical roots, and have evolved and adapted over time in response to internal and external pressures such as colonization, conflicts, globalization and changing social norms.⁷⁴ They often exhibit a different approach, with an emphasis on restorative justice, flexible rules and consent-based negotiation of solutions.⁷⁵

In some countries religious, traditional and customary law is a dominant presence because of the subject matters it governs. For example, disputes relating to family matters, land, housing, neighbours and money constitute 65% of all legal problems in Bangladesh, 63% in Uganda, 58% in Mali and 37.5% in Indonesia, and the concentration of these problems is highest for women.⁷⁶ Customary and traditional legal systems are also very significant in the lives of rural and isolated communities, as the more formal, state-operated systems are often concentrated in and around urban areas. Even where plural legal systems allow women the choice between different legal venues, they often elect to engage with religious, customary, traditional, indigenous or other forms of courts for a range of practical reasons, including: geographic accessibility, time and resource constraints, linguistic accessibility, social legitimacy, and the availability of flexible and tailored solutions.⁷⁷ Furthermore, as the CEDAW Committee has observed, even where a choice between systems is technically available, “women may not be as familiar with both systems or at liberty to decide which regime applies to them.”⁷⁸ Women can also consider traditional, indigenous or

⁷² UN Women, *Progress of the World’s Women*, pp.67-68.

⁷³ *Ibid.* p.68.

⁷⁴ IDLO Issue Brief, p.6

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*, p. 8

⁷⁷ *Ibid.*, p.9

⁷⁸ CEDAW General Recommendation 33, par 62.

customary law to be a good choice because of the emphasis on reaching peaceful agreement and restoring harmony.⁷⁹ As the South African Constitutional Court explained, “customary law places much store in consensus-seeking and naturally provides for family and clan meetings which offer excellent opportunities for the prevention and resolution of disputes and disagreements.”⁸⁰

While many women around the world rely on them, religious, customary, traditional, indigenous or other forms of law can pose serious challenges from the perspective of women’s human rights.⁸¹ Family and personal laws often disadvantage women in comparison to men and discriminate against women by, for example, allowing early or forced marriage, prohibiting divorce or making it difficult to obtain, automatically granting custody of children to fathers, and making child maintenance unavailable to mothers with custody.⁸² Customary, traditional or Indigenous systems may not entitle women to own land, fail to protect their land rights, prevent their inheritance of land, force eviction upon the death of a spouse or male relative, or restrict their rights in relation to communal land ownership.⁸³ Customary and religious laws may lack sanctions or impose inadequate sanctions against gender-based violence, and their procedural rules are frequently biased against women.⁸⁴ As well, it should be noted that women’s representation as decision-makers and administrative functionaries in religious and customary justice systems is often very low. For example, according to UNDP, women have no representation on religious courts in Kenya even though they otherwise represent 51% of judges in the country, and a similar pattern appears in Nigeria.⁸⁵

While customary, traditional, religious or indigenous justice systems may not be operated by the state, under CEDAW and other regional human rights instruments (such as the Maputo Protocol) it is clear that the state has an obligation to exercise sufficient control and direction over them to ensure that they respect women’s rights.⁸⁶ In 2015, the CEDAW Committee issued its first decision regarding a case involving customary law, *E.S. and E.C. v. Tanzania*, where they found that customary law denying two widowed women equal access to property and inheritance rights was discriminatory. The Committee held the state responsible for condoning this legal restriction of rights and failing to provide the women with redress.⁸⁷ The Committee not only recommended

⁷⁹ Tamar Ezer, “Forging a Path for Women’s Rights in Customary Law”, *Hastings Women’s Law Journal* Vol.27 (2016), p.73.

⁸⁰ *Ibid.*

⁸¹ Julie Ada Tchoukou, “Regulating Gender Violence in Postcolonial Societies: Is Legal Pluralism a Problem for Human Rights?” *Journal of Human Rights Practice*, Vol 17 ((2025), pp.22-42.

⁸² IDLO, p. 13.

⁸³ IDLO. P. 14.

⁸⁴ UN Women, *Progress of the World’s Women*, p. 69.

⁸⁵ UNDP, p. 44.

⁸⁶ Ezer, p. 74.

⁸⁷ *Ibid.*

relief for the two applicants, but also mandatory capacity-building for judges and other customary justice officials and awareness raising and education to increase women's knowledge of their rights.

A range of different interventions into plural justice systems may be required to protect women's rights. First, a process needs to be put in place that will harmonize laws, normative principles and procedural rules with human rights standards and constitutional guarantees of gender equality.⁸⁸ Such a process may already be required by a country's constitution, such as South Africa's. However, in those cases where the constitution explicitly exempts customary or other legal regimes from human rights protections, constitutional reform may be necessary.⁸⁹ Further interventions may include:⁹⁰

- Establishing connections between state operated and other justice systems and clarifying the mandates of each, including with regard to serious crimes and the appeal of decisions;
- Increasing the presence of women as judges and other officials;
- Providing women's human rights training and gender sensitization for judges and other members of court administrations;
- Giving individuals the ability to opt out of a customary, religious, traditional or indigenous system and utilize a state operated system;
- Providing education, awareness raising and legal aid for women to help them understand their rights and navigate the choices available to them in plural justice systems;
- Establishing processes for monitoring and oversight, including review of decisions to identify discriminatory patterns.

5. CONCLUSION

A wide range of measures have been introduced by different countries over the past several decades in the attempt to improve women's access to justice. Discriminatory laws have been repealed and new laws have been introduced to fill discriminatory gaps in legal frameworks. The administration of justice has been improved through changes to procedural rules and adjustments made to court structures, their proceedings and locations. More women have become judges, including at the higher court levels, and judges and court officials have benefited from trainings and gender sensitive protocols. Discriminatory and abusive policing has been the focus of intensive reform efforts.

⁸⁸ Williams, p. 16.

⁸⁹ Williams, p. 185; UN Women, *Progress of the World's Women*, p. 79.

⁹⁰ These recommendations can be found repeated in the publications cited above by the IDLO, UN Women, Williams, Ezer and the CEDAW Committee.

Some plural justice systems have become better integrated, with their normative standards better harmonized with human rights and constitutional requirements.

And still there is no country in the world in which women are provided access to justice on a basis of equality with men. The challenge is profound and requires the exercise of even greater commitment, political will and prioritization by countries that value women's human rights and gender equality. The successes of recent decades have shown, however, that efforts to improve women's' access to justice are not made in vain, and that consistent improvement over time is possible. They have also helped us to map out the most critical areas of concern for women in justice systems and provided approaches and options that can be taken up and adapted in different country contexts to support future reform efforts.

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