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,
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 For example, in criminal law, provisions that allow for the impunity of perpetrators of rape within marriage must be repealed,10 while new laws that criminalise rape within marriage must be passed, as some countries have done.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
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.”

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.
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 recognize rape as a crime for which there is no time limit, similar to murder and kidnapping cases.

**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. 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.

**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. 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. In Indonesia, mobile courts have also been used in the wake of the 2004 tsunami, which destroyed the
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
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 accountability:

1. the normative — seeking changes in the remit or mandate of the judicial system in terms of the constitution and legal framework;
2. the procedural — ensuring the imple-
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...
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.35

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.”36

FIGURE | National Police Forces Are Male-Dominated

A

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.

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage of Women in National Police Forces, Selected Countries 2001-2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>20</td>
</tr>
<tr>
<td>South Africa</td>
<td>20</td>
</tr>
<tr>
<td>Sweden*</td>
<td>18</td>
</tr>
<tr>
<td>Canada</td>
<td>18</td>
</tr>
<tr>
<td>Jamaica*</td>
<td>18</td>
</tr>
<tr>
<td>Cyprus</td>
<td>16</td>
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<tr>
<td>Sierra Leone</td>
<td>15</td>
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<tr>
<td>Kosovo</td>
<td>14</td>
</tr>
<tr>
<td>United States</td>
<td>13</td>
</tr>
<tr>
<td>Czech Republic*</td>
<td>12</td>
</tr>
<tr>
<td>Finland*</td>
<td>10</td>
</tr>
<tr>
<td>Venezuela*</td>
<td>10</td>
</tr>
<tr>
<td>Romania</td>
<td>8</td>
</tr>
<tr>
<td>India</td>
<td>2</td>
</tr>
</tbody>
</table>

Notes: Information corresponds to 2006 except for: Sweden, Jamaica and Czech Republic (2001), Venezuela and Australia (2002), Finland (2004) and Romania (2003). 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).